



CONSTRUCTION CONTRACT FOR SMALL WORKS

GENERAL CONDITIONS OF CONTRACT

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LIST OF ABBREVIATIONS

BOQ	Bill of Quantities
DNP	Defects Notification Period
EOT	Extension of Time
ILO	International Labour Organization
IPC	Interim Payment Certificate
IPR	Intellectual Property Rights
JV	Joint Venture
QMS	Quality Management System
VAT	value added tax

1 GENERAL PROVISIONS

1.1 Definitions

In the Contract, the following words and expressions shall have the meanings stated below:

“Advance Payment Security” means the security (or securities) to be provided under Sub-Clause 10.2 [*Advance Payment*].

“Affiliate” means:

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

For the purposes of this definition control means that a party possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other party, whether through the ownership of voting shares, by contract or otherwise, and the terms “controls” and “controlled” shall be interpreted accordingly.

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

“Authority” means all local, regional, territorial, free zone, municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, judicial or administrative body, recognized by the United Nations and having jurisdiction over the Works and/or the Contractor as well as its Affiliates.

“Base Date” means the date twenty-one (21) days before the latest date for submission of the Tender.

“Bill of Quantities” or “BOQ” means the document set out in Schedule 4.1.A [*Bill of Quantities*].

“Claim” means a request or assertion by one (1) Party to the other Party for an entitlement or relief under any Clause of the Conditions of Contract or otherwise in connection with, or arising out of, the Contract or the execution of the Works.

“Commencement Date” means the date stated in Schedule 1 [*Contract Details*], if not stated, twenty-one (21) calendar days after the Contract Effective Date.

“Conditions of Contract” or “these Conditions” means these General Conditions as amended by the Particular Conditions (if any).

“Contract” means the Instrument of Agreement together with these General Conditions, the Particular Conditions (if any), and all the Schedules and documents (if any) which are listed as forming the Contract in the Instrument of Agreement.

“Contract Effective Date” means the date of the latest signature by the Parties and on which the Contract comes into force and effect as stated in the Instrument of Agreement.

“Contract Price” means the price for the execution of the Works defined in Sub-Clause 10.1 [*Contract Price and Valuation of the Works*] and as identified in Schedule 1.2 [*Details Provided by the Contractor*] and includes any adjustments to the price made in accordance with the Contract.

“Contractor” means the entity named as the "Contractor" in the Instrument of Agreement and the legal successors in title and permitted assignee of such entity.

“Contractor Background Intellectual Property Rights” or “Contractor Background IPR” means IPR owned or licenced to the Contractor which exist prior to the Contract Effective Date and are used by the Contractor in carrying out the Works or otherwise made available to the Employer under or in connection with this Contract.

“Contractor’s Documents” means all the documents prepared by the Contractor under the Contract for the purposes of execution of the Works, including those specified in the Specification, calculations, digital files, computer programmes and other software, drawings, manuals, models, specifications and other documents of a technical nature.

“Contractor’s Equipment” means all apparatus, equipment, machinery, construction plant, vehicles and other items required by the Contractor for the execution and completion of the Works and remedying of any defects. Contractor’s Equipment excludes the Temporary Works, Plant, Materials and any other things intended to form or forming part of the Permanent Works as well as Employer’s Equipment (if any).

“Contractor’s Personnel” means the Contractor’s Representative and all personnel the Contractor utilizes on the Site, or other places where the Works are being carried out, which may include the staff, labour, agents and other employees of the Contractor and of each Subcontractor and any other personnel assisting the Contractor in the execution of the Works.

“Contractor’s Representative” means the person identified as such in Schedule 1 [*Contract Details*] or appointed from time to time by the Contractor under Sub-Clause 4.3 [*Contractor’s Representative*], who acts on behalf of the Contractor.

“Convention on the Privileges and Immunities of the United Nations” means the convention adopted by the General Assembly of the United Nations on 13 February 1946, which defines and specifies numerous issues relating to the status of the United Nations, its assets and its officials, in terms of the privileges and immunities that must be granted to them by its Member States.

“Convention on the Rights of the Child” means the convention adopted by the General Assembly of the United Nations on 20 November 1989, which defines the civil, political, economic, social and cultural rights to which all children are entitled.

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

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

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

“Date of Completion” means the date stated in the Taking-Over Certificate issued by the Employer’s Representative as the date on which the Works or Section are completed in accordance with the Contract, except for any minor outstanding work and/or defects which will not substantially affect the safe use of the Works or Section for their intended purpose.

“day” means a calendar day, unless provided otherwise.

“Daywork Schedule” means the document included in Schedule 4.1.B [*Daywork Schedule*] (if any), showing the amounts and manner of payments to be made to the Contractor for labour, materials and equipment used for daywork under Sub-Clause 9.4 [*Daywork*].

“Declaration on Fundamental Principles and Rights at Work” refers to the Declaration on Fundamental Principles and Rights at Work adopted by the International Labour Organization (ILO) on 18 June 1998.

“Defects Notification Period” or “DNP” means the period for notifying defects in the Works or a Section or a Part (as the case may be) under Sub-Clause 8.1 [*Completion of Outstanding Work and Remedying Defects*], as stated in Schedule 1 [*Contract Details*] as may be extended under the Contract. This period is calculated from the Date of Completion of the Works or Section or Part.

“Delay Damages” means the damages for which the Contractor shall be liable under Sub-Clause 6.5 [*Delay Damages*] for failure to comply with Sub-Clause 6.2 [*Time for Completion*] and any approved EOT.

“Dispute” means any matter where:

- (a) one Party makes a claim against the other Party (which may be a Claim, as defined in these Conditions, or a matter to be agreed or determined by the Employer’s Representative under these Conditions, or otherwise);
- (b) the other Party (or the Employer’s Representative) rejects the claim in whole or in part; and
- (c) the matter is referred to dispute resolution in accordance with Clause 17 [*Dispute Resolution*].

“Drawings” means the drawings of the Works included in Schedule 3.3 [*Drawings*], and any additional or modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.

“Eight Fundamental ILO Conventions” refer to the international conventions adopted by the ILO which are: the Freedom of Association and Protection of the Right to Organise Convention of 9 July 1948, the Right to Organise and Collective Bargaining Convention of 1 July 1949, the Forced Labour Convention of 30 June 1930 and its Protocol of 11 June 2014, the Abolition of Forced Labour Convention of 25 June 1957, the Minimum Age Convention of 26 June 1973, the Worst Forms of Child Labour Convention of 17 June 1999, the Equal

Remuneration Convention of 29 June 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention of 25 June 1958.

“Employer” means the Party named as the “Employer” in the Instrument of Agreement and the legal successors in title and/or its assignees or novatees of such entity.

“Employer's Documents” means documents, drawings and sketches, maps, plans, photographs, specifications, calculations, reports, computer software, databases, manuals, as-built documents, models, three-dimensional works pertaining to geography or topography or other technical design works, technical documents and any other items owned by or licenced to the Employer and provided to the Contractor by or on behalf of the Employer pursuant to the Contract.

“Employer's Equipment” means the apparatus, equipment, machinery, construction plant and/or vehicles (if any) to be made available by the Employer for the use of the Contractor in the execution of the Works under Sub-Clause 2.3 [*Employer-Supplied Materials, Employer's Equipment and Employer's Facilities*] but does not include Plant that has not been taken over by the Employer in accordance with Clause 7 [*Employer's Taking Over*].

“Employer's Facilities” means the facilities such as buildings, utilities and premises to be made available by the Employer for use by the Contractor under Sub-Clause 2.3 [*Employer-Supplied Materials, Employer's Equipment and Employer's Facilities*] but does not include the facilities which have not been taken over in accordance with Clause 7 [*Employer's Taking Over*].

“Employer's Personnel” means the Employer's Representative and the Employer's Representative's Assistants referred to in Sub-Clause 3.1 [*Employer's Representative*] and Sub-Clause 3.2 [*Employer's Representative's Assistant*] and all of the respective staff, labour and other employees of the Employer; and any other personnel notified to the Contractor, by the Employer or the Employer's Representative, as Employer's Personnel.

“Employer's Representative” means the person identified in Schedule 1 [*Contract Details*] or as otherwise notified by the Employer to the Contractor, who acts on behalf of the Employer within the delegation of authority stated in Schedule 3.8 [*Employer's Delegations*].

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

“Employer-Supplied Materials” means the materials (if any) to be supplied by the Employer to the Contractor under Sub-Clause 2.3 [*Employer-Supplied Materials, Employer's Equipment and Employer's Facilities*].

“Extension of Time” or “EOT” means an extension of the Time for Completion of the Works or a Section (as applicable) under Sub-Clause 6.4 [*Extension of Time*].

“Final Completion Certificate” means the certificate issued by the Employer under Sub-Clause 8.3 [*Final Completion Certificate*].

“Final Payment Certificate” means the payment certificate under Sub-Clause 10.9 [*Final Payment Certificate*].

“Final Statement” means the Statement defined in Sub-Clause 10.7 [*Final Statement*].

“Force Majeure” means an exceptional event or circumstance occurring after the Contract Effective Date:

- (a) which is beyond the Party's control;
- (b) which is Unforeseeable and/or such Party could not reasonably have provided against before the Contract Effective Date;
- (c) which, having arisen, the Party could not reasonably have avoided or overcome; and
- (d) which is not substantially attributable to the other Party.

“General Assembly” means the main deliberative, policymaking and representative organ of the United Nations.

“General Conditions” means this document entitled “Construction Contract for Small Works: General Conditions of Contract”.

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

“Health and Safety Improvement Notice” means a Notice to be issued under and in accordance with Sub-Clause 4.9 [*Health, Safety, Social and Environment*].

“Health and Safety Management Plan” means the Contractor's Health and Safety Management Plan (as may be updated and/or revised from time to time) which is submitted in accordance with Sub-Clause 4.9 [*Health, Safety, Social and Environment*].

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

“Instrument of Agreement” means the document entitled “Construction Contract for Small Works: Instrument of Agreement” signed by the Parties and forming part of the Contract.

“Intellectual Property Rights” or “IPR” means all IPR conferred by Law or equity and subsisting anywhere in the world, including:

- (a) (i) copyright and related rights; (ii) inventions (including patents, innovation patents and utility models); (iii) confidential information, trade secrets, technical data and know-how, whether or not confidential and in whatever form held, including formulae, design specifications, drawings, data, manuals and instructions; (iv) designs; (v) trademarks, trade name, service marks and domain names; (vi) circuit layout designs, semi-conductor topography rights and rights in databases, whether or not any of these is registered, registrable or patentable; (vii) goodwill, rights to sue for passing off; and/or (viii) proprietary rights and any other IPR, in each case whether registered or unregistered;

- (b) Moral Rights and any similar rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist now or in the future;
- (c) any applications and the right to apply for registration of any of the above; and
- (d) any information or advice that is subject to legal professional privilege.

“Interim Payment Certificate” or “IPC” means a payment certificate issued under Sub-Clause 10.4 [*Interim Payment Certificate*], other than the Final Payment Certificate and the payment certificate for advance payment.

“Joint Venture” or “JV” means a joint venture, association, consortium or other unincorporated grouping of two (2) or more persons or entities, whether in the form of a partnership or otherwise.

“Key Personnel” means those Contractor’s Personnel listed in Schedule 4.4 [*Key Personnel*] in the capacity and role identified therein or their replacements.

“Latent Defect” means any defect in the Works attributable to:

- (a) the design and/or construction of the Works for which the Contractor is responsible;
- (b) Plant, Materials or workmanship not being in accordance with the Contract; or
- (c) failure of the Contractor to comply with any other obligation under the Contract;

which a reasonable examination by the Employer prior to expiry of the last DNP would not have disclosed, and such defect results in the Works or part of the Works not being able to be used for the purposes for which they are intended by the Employer, causes the full or partial collapse of the Works, and/or threatens the stability or safety of the Works.

“Latent Defect Period” means the period as stated in Schedule 1 [*Contract Details*], commencing from the date stated on the Final Completion Certificate.

“Laws” means:

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

“Law Applicable to the Contract” means the law referred to in Sub-Clause 17.3 (j) [*Arbitration*].

“Materials” means things of all kinds (other than Plant) whether on Site or otherwise allocated to the Contract 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 the Contract.

“Member State” means a government of a country that holds membership in the United Nations.

“month” is a calendar month (according to the Gregorian calendar).

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

“No-objection” means that the Employer or Employer’s Representative has no objection to the Contractor’s submissions under the Contract.

“Nominated Subcontractor” means a Subcontractor named as such in Schedule 3.6 [*Nominated Subcontractors*] or whom the Employer instructs the Contractor to employ as a subcontractor to perform certain parts of the Works as specified in the Contract.

“Notice” means a written communication identified as a Notice and issued in accordance with Sub-Clause 1.3 [*Notices and Other Communications*].

“Notice of Claim” means a Notice to be issued under and in accordance with Sub-Clause 16.1 [*Notice of Claim*].

“Notice to Correct” means a Notice to be issued under and in accordance with Sub-Clause 11.1 [*Notice to Correct*].

“Part” means a part of the Works or part of a Section (as the case may be) which is used by the Employer and deemed to have been taken over under Sub-Clause 7.2 [*Taking-Over Certificate*].

“Particular Conditions” means the document entitled “Construction Contract for Small Works: Particular Conditions of Contract” included in the Contract, if any.

“Parties” means both the Employer and the Contractor.

“Party” means either the Employer or the Contractor, as the context requires.

“Performance Security” means the security (or securities) under Sub-Clause 4.2 [*Performance Security*].

“Permanent Works” means the works of a permanent nature which are to be executed by the Contractor under the Contract and the remedying of any defects therein.

“Plant” means the apparatus, equipment, machinery and vehicles (including any components) whether on the Site or otherwise allocated to the Contract and intended to form or forming part of the Permanent Works.

“Programme” means a fully detailed time programme, prepared and submitted by the Contractor, and any revision of such Programme, to which the Employer’s Representative has given (or is deemed to have given) a Notice of No-objection under Sub-Clause 6.3 [*Programme*].

“Prohibited Materials” means materials, goods or substances which:

- (a) pose a hazard to the health or safety of any person who may come into contact with the Works (whether during their construction or after their completion);
- (b) either 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 the normal life expectancy of any other materials or structure in which the Materials are incorporated or to which they are affixed;
- (c) are or become generally known within the international or national building, construction or engineering industries to be deleterious (either to health and safety or to the durability of the Works);
- (d) contravene any relevant standard code of practice (or similar) issued from time to time by any relevant Authority; or
- (e) do not conform to Schedule 3.2 [*Specifications*] or other plan or specification for the Works.

“Project” means the project described in Schedule 2.1 [*Project Details*].

“Proscribed Practices” means:

- (a) corrupt practice: the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
- (b) fraudulent practice: any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (c) coercive practice: an act or omission that impairs or harms, or threatens to impair or harm, directly or indirectly, any party or the property of the party to improperly influence the actions of a party;
- (d) collusive practice: an arrangement between two (2) or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (e) unethical practice: conduct or behaviour that is contrary to the conflict of interest, gifts and hospitality, post-employment provisions or other published requirements of doing business with the Employer; and/or
- (f) obstruction: acts or omissions by the Contractor that prevent or hinder the Employer from investigating instances of possible Proscribed Practices.

“Provisional Sum” means a sum (if any) which is specified in the Contract by the Employer as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 9.3 [*Provisional Sums*].

“Quality Management System” or “QMS” means the Contractor’s QMS (as may be updated and/or revised from time to time) in accordance with Sub-Clause 4.10 [*Quality Management System*].

“Retention Money” means the accumulated retention moneys which the Employer retains under Sub-Clause 10.3 [*Contractor’s Statement*] and pays under Sub-Clause 10.5 [*Release of Retention Money*].

“Review” means examination and consideration by the Employer or Employer’s Representative of a Contractor’s submission in order to assess whether (and to what extent) it complies with the Contract and/or with the Contractor’s obligations under or in connection with the Contract.

“Schedules” means the document entitled “Construction Contract for Small Works: Schedules” prepared by the Employer and completed by the Contractor and/or Employer (as appropriate), as included in the Contract. Such Schedules may include data, lists and schedules of payments, rates and prices, contract details, requirements, and forms of securities.

“Section” means a part of the Works (if any) specified in Schedule 1 [*Contract Details*].

“Senior Representatives” means personnel of the Parties identified as senior representatives and notified in writing by the Parties in the event of dispute resolution process in accordance with Sub-Clause 17.2 [*Amicable Resolution*].

“Site” means the places where the Temporary Works and Permanent Works are to be executed and to which Plant and Materials are to be delivered and stored as shown on Schedule 2.2 [*Site Plan*], and any places where activities associated with the Works are carried out, or any other places as shall be specified in the Contract as forming part of the Site.

“Site Conditions” means any conditions relating to the Site including:

- (a) the form and nature of the Site, including ground surface conditions, subsurface geology and conditions and all other physical conditions and characteristics on, above or below the surface which shall affect the performance by the Contractor of its obligations under this Contract;
- (b) the general and local conditions for environment, meteorological, seismic activity, hydrological, hydrographic, climatic conditions, ocean and sub-sea conditions;
- (c) the extent and nature of the work and Goods necessary for the execution of the Works and the remedying of any defects;
- (d) the Laws, procedures and labour practices of the Country; and
- (e) the availability and quality of both permanent and temporary access, accommodation, facilities, personnel, labour, power, transport, water, waste disposal, storage of Materials and all other services and utilities necessary for the performance of the Works in accordance with the Contract.

“Social and Environmental Management Plan” means the Contractor’s Social and Environmental Management Plan (as may be updated and/or revised from time to time), which is submitted in accordance with Sub-Clause 4.9 [*Health, Safety, Social and Environment*].

“Specification” means the requirements or documents as listed in Schedule 3.2 [*Specifications*] and any additions and modifications made to the Specification by the Employer in accordance with the Contract.

“Statement” means a statement submitted by the Contractor as part of an application for a payment under Sub-Clause 10.3 [*Contractor’s Statement*], Sub-Clause 10.6 [*Statement at Taking Over*] or Sub-Clause 10.7 [*Final Statement*].

“Statement at Taking-Over” means a statement submitted by the Contractor under Sub-Clause 10.6 [*Statement at Taking Over*].

“Subcontractor” means any person or entity named in the Contract as a subcontractor, or any person or entity appointed by the Contractor and consented by the Employer under Sub-Clause 4.4 [*Subcontracting*] as a subcontractor or designer or supplier of Materials, Plant and/or labour for a part of the Works, and the legal successors in title to each of these persons or entities.

“Taking-Over Certificate” means a certificate issued by the Employer’s Representative in accordance with Sub-Clause 7.2 [*Taking-Over Certificate*].

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

“Tender” means the Contractor’s proposal for the Works and on the basis of which the Parties have entered into this Contract.

“Time for Completion” means the time for completing the Works or a Section (as the case may be) under Sub-Clause 6.2 [*Time for Completion*], as stated in Schedule 1 [*Contract Details*] or as extended under Sub-Clause 6.4 [*Extension of Time*], calculated from the Commencement Date.

“Unforeseeable” means not reasonably foreseeable by the Base Date, by an experienced and competent contractor acting in accordance with Industry Best Practices.

“Variation” means any change to the Works, which is instructed as a variation under Sub-Clause 9.1 [*Right to Vary*].

“Variation Notice” means a written communication identified as a Variation Notice and issued in accordance with the provisions of Sub-Clause 1.3 [*Notices and Other Communications*].

“Works” means the Permanent Works and the Temporary Works, or either of them as appropriate.

“year” means a calendar year.

1.2 Interpretation

- (a) In the Contract, except where the context requires otherwise:
- (i) words indicating one (1) gender include all genders;
 - (ii) words indicating the singular also include the plural and words indicating the plural also include the singular;
 - (iii) references to the word "including" (or "includes") means including, but not limited to;
 - (iv) where an expression is defined, another part of speech or grammatical form of that expression has the corresponding meaning;
 - (v) references to a number of days or period of time from a particular date, shall be calculated exclusive of that date;
 - (vi) "consent" means that the Employer, the Contractor or the Employer's Representative (as the case may be) agrees to or gives permission for, the requested matter;
 - (vii) "may" means that the Party or person referred to has the choice of whether to act or not in the matter referred to;
 - (viii) "shall" means that the Party or person referred to has an obligation under the Contract to perform the duty referred to;
 - (ix) words indicating persons or parties shall be interpreted as referring to natural and legal persons (including corporations and legal entities) except where the context requires otherwise;
 - (x) "execute the Works", "executing the Works" or "execution of the Works" means, but not limited to, the construction and completion of the Works and the remedying of any defects (and shall be deemed to include design to the extent, if any, specified in the Contract);
 - (xi) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
 - (xii) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and
 - (xiii) a reference to any Laws, legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under that legislation or legislative provision.
- (b) In any list in these Conditions, where the second-last item of the list is followed by "and", "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 "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) All dates and periods shall be ascertained in accordance with the Gregorian calendar.
- (e) Where references are made in the Contract to industry or technical codes and standards in accordance with which the Works are to be executed, the edition or the revised version of such codes and standards current at the Base Date applies, unless otherwise specified.

1.3 Notices and Other Communications

- (a) Wherever these Conditions provide for the giving or issuing of a Notice, a Variation Notice or other form of communication including without limitation approvals, consents, No-objections, instructions and decisions, then such Notice, Variation Notice or communication shall be:
 - (i) in writing;
 - (ii) identified as such with reference to the Clause or Sub-Clause under which it is issued;
 - (iii) marked to the attention of the relevant representative of the Parties as set out in Schedule 1 [*Contract Details*]; and
 - delivered at the address set out in Schedule 1 [*Contract Details*]; or
 - sent or transmitted as a document, signed, scanned and attached in an email to the email address set out in Schedule 1 [*Contract Details*] or transmitted by any form of agreed system of electronic transmission stated in Schedule 1 [*Contract Details*].
- (b) If a Party has notified in writing a change of address or email address, then the communication shall be thereafter delivered to the changed email address or changed address accordingly.
- (c) Notices and other forms of communications shall take effect from the time it is received unless a later time is specified in it.
- (d) Notices and other forms of communications are deemed to be received:
 - (i) in the case of a delivery, when delivered to the relevant address (against a written receipt); and
 - (ii) in the case of a document attached to an email, upon receipt of the email in the inbox of the recipient's address, provided no non-delivery notification was received by the sender.
- (e) For the avoidance of doubt, any Notice or other form of communications shall not be deemed to have been given or made under the Contract if it is an email, other than as an attached document in accordance with Sub-Clause 1.3 (a) (iii) or in the form of meeting minutes.
- (f) Notices and other forms of communications shall not be unreasonably withheld or delayed.

1.4 Language

- (a) The language for communications shall be English, the language of these Conditions, which is the ruling language of the Contract.
- (b) Unless otherwise specified in the Particular Conditions, the Contractor's Documents shall be written in English.

1.5 Priority of Documents

- (a) The documents forming the Contract are to be taken as mutually explanatory of one another and shall be read as a whole. If there is any conflict, ambiguity or discrepancy, the priority of the documents shall be in accordance with the following order of precedence:
 - (i) the Instrument of Agreement;
 - (ii) Schedule 1 [*Contract Details*];
 - (iii) the Particular Conditions (if any);
 - (iv) these General Conditions;
 - (v) the Specification;
 - (vi) the Drawings;
 - (vii) the Bill of Quantities (as applicable);
 - (viii) the remaining Schedules; and
 - (ix) any other documents forming part of the Contract.
- (b) If the Contractor finds an ambiguity, conflict or discrepancy in or between the documents forming the Contract, the Contractor shall promptly give Notice to the Employer's Representative, describing the ambiguity, conflict or discrepancy. After receiving such Notice, or if the Employer itself finds an ambiguity, conflict or discrepancy in or between the documents, the Employer's Representative shall issue the necessary clarification or instruction.

1.6 Compliance with Laws

- (a) The Contractor undertakes that it shall, in executing the Works and performing all of its obligations under the Contract, comply with all applicable Laws and that the Contractor's Documents and the completed Works, shall comply with all Laws and/or to the extent required under the Contract.
- (b) The Contractor shall obtain and comply with all relevant permits, licences, authorizations and approval necessary to carry out the Works in accordance with the Contract.
- (c) The Contractor shall at its cost at all times during the execution of the Works ensure that any Contractor's Personnel who performs any part of the Works is registered and licenced as required by any applicable Laws and any Authority to execute the Works.

- (d) The Contractor shall give all notices, pay all taxes, duties and fees, as required by the Laws in relation to the execution of the Works.
- (e) In connection with the performance of its obligations under the Contract, the Contractor acknowledges that the imports and customs Laws and regulations of the Country shall apply to the furnishings and shipments of any products and components thereof to the Country. The Contractor specifically acknowledges that the aforementioned import and custom Laws and regulations of the Country prohibit, among other things, the importation of certain products and components into the Country.
- (f) For the avoidance of any doubt, while the Contractor shall provide the Works in accordance with any applicable Laws, the Law Applicable to the Contract shall be the law stated in Sub-Clause 17.3 (j) [*Arbitration*].

1.7 Assignment or Novation

- (a) The Contractor acknowledges and agrees that the Employer may, in its absolute discretion novate, assign, transfer and/or charge the benefit of, the Contract and/or any of its present or future rights and responsibilities, interest and/or benefits hereunder to any third party upon giving Notice thereof to the Contractor.
- (b) The Contractor acknowledges and agrees that it shall, if required by the Employer, take all further actions necessary to give effect to the novation or assignments, transfer or charge in Sub-Clause 1.7 (a), including executing a novation or an assignment agreement(s).
- (c) The Contractor shall not be entitled, without the prior written consent of the Employer, to novate or assign to any third party its interest under the Contract or any right or benefit, arising under the Contract.

1.8 Delayed Drawings or Instructions

- (a) The Contractor shall give a Notice to the Employer'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.
- (b) 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 Drawings or instructions are delayed or delivered late.

1.9 Confidentiality

- (a) Subject to Sub-Clause 1.9 (b) to (e), the Parties shall keep confidential and shall not, without the prior written consent of the other Party, disclose to any third party the terms and conditions of the Contract or any documents or other information furnished directly or indirectly by either Party in connection with the Contract or the Works, irrespective of whether such information has been furnished prior to the Contract Effective Date or at any time (including following termination of the Contract).

- (b) Either Party may disclose the terms and conditions of the Contract and any documents and other information acquired by it under or pursuant to the Contract without the prior written consent of the other Party if such disclosure is made in good faith:
 - (i) to the extent required by applicable Laws;
 - (ii) to any insurer under a policy of insurance issued pursuant to the Contract;
 - (iii) to its internal organs, including its employees, and the General Assembly in the case of the Employer;
 - (iv) to any Subcontractor for the furtherance of the performance of that Party's obligations under the Contract;
 - (v) to outside consultants or advisers engaged by or on behalf of the disclosing Party and acting in that capacity in connection with the Works (including insurance, tax and legal advisers); or
 - (vi) to the appropriate authorities of the Member States pursuant to the Employer's obligations under the Convention on the Privileges and Immunities of the United Nations.
- (c) Where disclosure by the Contractor is required by applicable Laws as per Sub-Clause 1.9 (b) (i), the Contractor shall consult the Employer regarding the privileges and immunities of the United Nations and also share to the Employer the terms and conditions, documents and/or information to be disclosed prior to making any such disclosure.
- (d) The obligations of a Party under this Sub-Clause 1.9 shall not apply to information and documents which:
 - (i) now or in the future have entered the public domain through no fault of the disclosing Party; or
 - (ii) otherwise lawfully become available to the disclosing Party from a third party under no obligation of confidentiality.
- (e) The obligation under this Sub-Clause 1.9 shall survive the completion, expiry or termination of the Contract.

1.10 Ownership and licence to use Employer's and Contractor's Documents

- (a) All Employer's Documents shall remain the property of the Employer and shall be returned to the Employer prior to issue of the Final Completion Certificate. The Contractor agrees that it shall not acquire any rights in the Employer's Documents whether under this Contract or otherwise and shall not use or disclose the Employer's Documents other than for the sole and exclusive purpose of the performance of its obligations under or in connection with this Contract.

- (b) The Contractor assigns to the Employer absolutely all of the Contractor's rights, title and interest, including all IPR, in the Contractor's Documents and any other documentation which the Contractor creates and is required to provide to the Employer or the Employer's Representative under the Contract, upon submission of the Contractor's Documents to the Employer's Representative.
- (c) The Contractor agrees to do everything necessary or requested by the Employer to enable the Employer to own the IPR in the Contractor's Documents, including formally assigning those rights or assisting the Employer or its nominee in obtaining registration of those rights in its own name.
- (d) The Contractor agrees to do everything necessary or requested by the Employer to enable the Employer to use the Contractor's Documents and the IPR in the Contractor's Documents, including, granting or procuring in the name of the Employer, a perpetual, unrestricted, non-exclusive, irrevocable, transferable, royalty-free licence for the Employer to use all the IPR in the Contractor's Documents, on terms acceptable to the Employer, from all other contributing parties in the performance of the Contractor's obligations under this Contract with rights, title and interest in any documents or other Copyright Works forming the Contractor's Documents.
- (e) The Contractor warrants that use of the Contractor's Documents by the Employer in connection with the Project and the Works or otherwise shall not infringe any rights, including the IPR, of a third party.
- (f) The Contractor shall procure the assignment of all rights, title and interest in any documents and other Copyright Works created by Subcontractors or other contributing parties in performance of its obligations under this Contract from those persons to the Employer.
- (g) The Contractor grants the Employer a perpetual, non-exclusive, non-transferable, royalty-free, irrevocable licence to use, reproduce, modify and adapt the Contractor Background IPR for the purpose of the Contract.
- (h) In the event of termination of the Contract, the Employer is entitled to receive the licence to use for the purposes of completing the Works and/or arranging for any other entities to do so or to receive the IPR for which the Contractor has received payment.
- (i) The Contractor shall procure at its own cost and risk from each Author express agreement that the Author will not enforce any Moral Rights the Author may have presently or in the future in the Contractor's Documents, including by executing any consents or waivers for Moral Rights required by the Employer.
- (j) This Sub-Clause 1.10 shall survive the termination of the Contract.

1.11 Joint and Several Liability

- (a) If the Contractor is a JV:
 - (i) the members of the JV shall be deemed to be jointly and severally liable to the Employer for the Works and performance of all of the Contractor's obligations under the Contract or failure in respect of the same. The actions of one (1) such member shall be deemed to be fully binding on the others;
 - (ii) the Contractor shall not alter its composition or legal status without the prior written consent of the Employer.

1.12 Entire Agreement and Amendment

- (a) The Contract constitutes the entire agreement between the Employer and the Contractor with respect to the subject matter of the Contract and supersedes all prior arrangements, representations, communications, negotiations, agreements and contracts (whether written or oral) made between or entered into by the Parties with respect to the subject matter of the Contract prior to the Contract Effective Date.
- (b) The Contract or aspects of the Contract shall not be amended except in writing signed by a duly authorized representative of each of the Parties.

1.13 Publicity and Use of the Name or Emblem of the Employer and the United Nations

- (a) The Contractor shall not:
 - (i) advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the Employer or the United Nations; or
 - (ii) in any manner whatsoever make use of the name, emblem or official seal of the Employer or the United Nations, or any abbreviation of the Employer's name or the United Nations in connection with its business or otherwise without the written permission of the Employer.
- (b) The Contractor may use material and information relating to the Works for tendering purposes with prior written consent of the Employer.
- (c) This Sub-Clause 1.13 shall survive the completion, expiry or termination of the Contract.

1.14 Privileges and Immunities

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

1.15 Taxes and Duties

- (a) Article II, Section 7, of the Convention on the Privileges and Immunities of the United Nations provides, inter alia, that the United Nations, including the Employer as a subsidiary organ, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs restrictions, duties, and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental Authority refuses to recognize the exemptions of the Employer from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with the Employer to determine a mutually acceptable procedure.
- (b) The Contractor authorizes the Employer to deduct from the Contractor's payment any amount representing such taxes, duties or charges, unless the Contractor has consulted with the Employer before the payment thereof and the Employer has, in each instance, specifically authorized the Contractor to pay such taxes, duties, or charges under written protest. In that event, the Contractor shall provide the Employer with written evidence that payment of such taxes, duties or charges have been made and appropriately authorized, and the Employer may reimburse the Contractor for any such taxes, duties, or charges so authorized by the Employer and paid by the Contractor under written protest.

2 THE EMPLOYER

2.1 Right of Access to the Site

- (a) The Employer shall give the Contractor right of access to, and non-exclusive possession of those parts of the Site within the time (or times) set out in Schedule 2.2 [*Site Plan*] and subject to any staged or shared access restrictions as specified in Schedule 2.2 [*Site Plan*].

2.2 Assistance

- (a) If requested by the Contractor, the Employer shall (where it is in a position to do so) promptly provide reasonable assistance to the Contractor in the application for any permits, licences or approvals required by Laws:
 - (i) which the Contractor is required to obtain under Sub-Clause 1.6 [*Compliance with Laws*];
 - (ii) for the delivery of Goods including clearance through customs; and/or
 - (iii) for the export of Contractor's Equipment when it is removed from the Site, if applicable.

2.3 Employer-Supplied Materials, Employer's Equipment and Employer's Facilities

- (a) If Employer-Supplied Materials and/or Employer's Equipment and/or Employer's Facilities are listed in the Specification for the Contractor's use in the execution of the Works, the Employer shall make such materials, equipment and/or facilities available to the Contractor in accordance with the details, timelines, arrangements, rates and prices stated in the Contract, if any.
- (b) The Contractor shall be responsible for each item of Employer's Equipment and/or Employer's Facilities and/or Employer-Supplied Materials whilst in use, occupation or in possession of them.

2.4 Employer's Instructions

- (a) The Employer and the Employer's Representative or the Employer's Representative's Assistant may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works in accordance with the Contract. The Contractor shall only take instructions from the Employer and the Employer's Representative or the Employer's Representative's Assistant to whom the appropriate authority to give instruction has been delegated under the Contract.
- (b) The Contractor shall comply with the instructions given by the Employer and the Employer's Representative (and the Employer's Representative's Assistant), with due expedition and without delay.
- (c) If the instruction states that it constitutes a Variation, Sub-Clause 9.1 [*Right to Vary*] shall apply.

3 THE EMPLOYER'S REPRESENTATIVE

3.1 Employer's Representative

- (a) The Employer shall appoint the Employer's Representative, who shall carry out the duties assigned in the Contract, and exercise the authority delegated by the Employer. The Employer's Representative shall be deemed to act on the Employer's behalf under the Contract.
- (b) The Employer's Representative's delegated duties and authorities are as expressed in the Contract and/or specified in Schedule 3.8 [*Employer's Delegations*]. Notwithstanding the delegated authorities to the Employer's Representative, the Employer shall still exercise its full authority under the Contract.
- (c) The Employer's Representative shall have no authority to amend the Contract, relieve or waive any duty, obligation or responsibility of the Contractor under or in connection with the Contract.

3.2 Employer's Representative's Assistants

- (a) The Employer or the Employer's Representative may from time to time assign duties and delegate authority to the Employer's Representative's Assistants, and may also revoke such assignment or delegation, by giving a Notice to the Contractor, describing the assigned duties and the delegated authority of the Employer's Representative's Assistants.
- (b) The Employer's Representative's Assistants shall have no authority to amend the Contract, relieve or waive of any duty, obligation or responsibility of the Contractor under or in connection with the Contract.

3.3 Instructions and Approvals

- (a) No approval, comment, consent, No-objection, Review or similar act (including the absence of disapproval, comment or Review) by or on behalf of the Employer, the Employer's Representative or the Employer's Representative's Assistant shall relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with the Contract.

4 THE CONTRACTOR

4.1 Contractor's General Obligations

- (a) The Contractor shall design (to the extent specified in the Contract) and execute the Works:
 - (i) properly and in accordance with the Contract and all applicable Laws;
 - (ii) exercising the standard of skill, care and diligence reasonably to be expected of an appropriately qualified contractor experienced in carrying out such work for projects of a similar type, nature and complexity to the Works;
 - (iii) acting in accordance with Industry Best Practices;
 - (iv) with properly equipped facilities and new, good quality and non-hazardous Materials and Plant, and where qualities of Materials, Plant and workmanship are not specified, they shall be fit for the purposes for which they are intended;
 - (v) in compliance with any requirements in relation to access; and
 - (vi) in such a way as to ensure the full, efficient, economic and safe commercial operation of the Works are completed with the minimum interruption for maintenance or repair.
- (b) The Contractor shall provide the Plant (and spare parts, if any) and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required to fulfil the Contractor's obligations under the Contract.
- (c) All approved Materials and Plant on Site intended to be incorporated as part of the Permanent Works are deemed to be the property of the Employer.
- (d) The Contractor shall be responsible for all aspects of Site management and superintendence, the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor shall be responsible for all Contractor's Documents, Temporary Works and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract.
- (e) The Contractor shall, in a form acceptable to the Employer's Representative, provide the Employer's Representative with monthly, or more frequently on request by the Employer's Representative, progress reports in relation to the Works and any health, safety, social and environmental aspects in connection with the Works. The reports shall comply with any requirements stated in Schedule 3.7 [*Reporting Requirements*].
- (f) If the Specification states that as-built records and/or operation and maintenance manuals apply, the Contractor shall submit to the Employer's Representative such, as-built records and/or operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this Section or part of the Works.

- (g) The Contractor shall also carry out training for the Employer's Personnel and/or other identified personnel in the operation and maintenance of relevant parts of the Works (if applicable) as stated in Schedule 3.2.G [*Training Requirements*].
- (h) The Contractor warrants that in carrying out the design (to the extent required by the Contract) and executing the Works it has not, and shall not, 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 as being Prohibited Materials, and shall, when requested, issue to the Employer and to such persons as the Employer may require a certificate confirming that no such materials have been specified for use or permitted to be used.

4.2 Performance Security

- (a) The Contractor shall obtain (at the Contractor's cost) an unconditional and irrevocable Performance Security to secure the Contractor's proper performance of the obligations under the Contract, for the amount and currency specified in Schedule 1 [*Contract Details*].
- (b) Unless otherwise specified in the Contract, the Contractor shall submit the Performance Security to the Employer within fourteen (14) days after the Contract Effective Date. The Performance Security shall be issued by a leading and accredited bank or financial institution approved by the Employer and shall be based on the terms and in the form set out in Schedule 5.2 [*Form for Performance Security*].
- (c) The Contractor shall ensure that the Performance Security remains valid and enforceable until the issue of the Final Completion Certificate or, if a dispute arises under the Contract, after the final determination of that dispute, whichever occurs later.
- (d) If the Contractor is a subsidiary of another corporation, the Contractor shall, if requested by the Employer in its absolute discretion, arrange for its ultimate parent company or any other parent company (as the Employer may approve in its absolute discretion) to provide a parent company guarantee in an approved format.
- (e) Despite any other provision of the Contract, the provision and maintenance of the Performance Security shall be at the expense in all respects of the Contractor and is a condition precedent to the entitlement of the Contractor to receive any payment from the Employer under the Contract, except advance payment under Sub-Clause 10.2 [*Advance Payment*], and no payment (except advance payment) shall be due or payable until this Sub-Clause 4.2 is satisfied.

4.3 Contractor's Representative

- (a) The Contractor's Representative is as named in Schedule 1 [*Contract Details*].
- (b) The Contractor shall notify the Employer of the extent of all authority delegated to the Contractor's Representative necessary to act for and on behalf of the Contractor under the Contract. The Contractor is responsible for all acts and omissions of the Contractor's Representative.

- (c) The Contractor shall not, without the Employer's Representative's prior consent, revoke the appointment of the Contractor's Representative or appoint a replacement. Once the Employer's Representative gives consent, the Contractor shall submit to the Employer's Representative for approval the name and particulars of the person the Contractor proposes to replace the Contractor's Representative.
- (d) The Contractor's Representative shall be qualified, experienced and competent in the main engineering disciplines applicable to the Works and fluent in the language for communications defined in Sub-Clause 1.4 [*Language*].
- (e) The Contractor's Representative shall be based at the Site for the whole time that the Works are being executed at the Site.

4.4 Subcontracting

- (a) The Contractor shall not subcontract the whole of the Works.
- (b) The Contractor shall not subcontract any part of the Works inclusive of supply of Materials, Plant and labour without the prior written consent of the Employer.
- (c) For the purposes of obtaining the Employer's prior written consent, the Contractor shall give a Notice to the Employer's Representative not less than twenty-eight (28) days before the intended appointment of a Subcontractor and provide detailed particulars of the proposed Subcontractor(s) to demonstrate that:
 - (i) the Subcontractor(s) meet the Employer's eligibility requirements; and
 - (ii) has the relevant experience and capacity to execute the subcontracted parts of the Works and/or supply of Materials and/or Plant.
- (d) The consent of the Employer shall not be required where the Subcontractor(s) are identified in the Contractor's Tender, accepted by the Employer and incorporated into the Contract, or are otherwise included in any of the documents constituting the Contract, or are Nominated Subcontractors.
- (e) The Contractor shall not terminate the subcontract without giving a prior Notice to the Employer of the intention to terminate the subcontract with particulars of the grounds for the termination.
- (f) The Contractor shall use reasonable endeavours to employ local Subcontractors in the Country.
- (g) The Employer may name Nominated Subcontractor(s) in the Contract and may instruct the Contractor to procure and employ the Nominated Subcontractor(s) for works to be executed, or plant, materials or services to be provided.
- (h) The Contractor shall not be under any obligation to employ a Nominated Subcontractor whom the Employer instructs and against whom the Contractor raises reasonable objection by giving a Notice to the Employer, with detailed supporting particulars, no later than fourteen (14) days after receiving the Employer's instruction.

- (i) The Contractor shall be responsible for the work of all Subcontractors and Nominated Subcontractors, for managing and coordinating all the Subcontractors' works, and for the acts, omissions or defaults of any Subcontractor and Nominated Subcontractor, any of their agents or employees, as if they were the acts or defaults of the Contractor.

4.5 Contractor's Personnel

- (a) The Contractor's Personnel (including Key Personnel) shall be appropriately qualified, skilled and experienced in their respective trades or occupations.
- (b) The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel (and their respective labour, employees and agents).
- (c) The Employer may require the Contractor to remove (or cause to be removed) any person employed by the Contractor or its Subcontractors on the Site or Works, including the Contractor's Representative and Key Personnel who in the opinion of the Employer or Employer's Representative:
 - (i) persists in any misconduct or lack of care;
 - (ii) is incompetent or negligent in their duties;
 - (iii) fails to conform with any provisions of the Contract;
 - (iv) persists in any conduct which is prejudicial to health, safety, and/or the protection of the environment;
 - (v) is found, based on reasonable evidence, to have engaged in Proscribed Practices; and/or
 - (vi) has been recruited from the Employer's Personnel in breach of Sub-Clause 4.5 (b).
- (d) Where Sub-Clause 4.5 (c) applies, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person for each person so removed.
- (e) The Contractor shall not, without the Employer's Representative's prior consent revoke the appointment of any of the Key Personnel, or appoint a replacement.
- (f) The Employer shall not be liable for any damages or compensation payable at law in respect or in consequence of any accident or injury to any of the Contractor's Personnel.
- (g) The Contractor shall inform the Contractor's Personnel regarding the procedures to be followed and the standards to be complied with under this Contract.

4.6 Non-payment by Contractor

- (a) If the Employer becomes aware that the Contractor has failed to pay any Subcontractor(s), Nominated Subcontractor(s) or the Contractor's Personnel in accordance with this Contract, the Employer may give the Contractor a Notice requesting the Contractor to submit reasonable documentary evidence:
 - (i) that the Subcontractor, Nominated Subcontractor or the Contractor's Personnel have received all amounts due; or
 - (ii) that satisfies the Employer that the Contractor is reasonably entitled to withhold or refuse payment to the Subcontractor, Nominated Subcontractor or Contractor's Personnel.
- (b) The Employer may in its absolute discretion, pay directly those Contractor's Personnel, Subcontractors or Nominated Subcontractors the amount the Employer determines as due and for which the Contractor has failed to submit the evidence described in Sub-Clause 4.6 (a). Thereafter, the Employer shall give a Notice to the Contractor stating the amount paid directly, and accordingly recover any such amount paid as a debt due from the Contractor to the Employer in accordance with Sub-Clause 10.12 [*Set-off*].
- (c) The Employer may request the Contractor to include in its Statement under Sub-Clause 10.3 [*Contractor's Statements*] confirmation of payments due to its Subcontractors, Nominated Subcontractors and Contractor's Personnel as per the payment schedule included in the agreement between the Contractor and its subcontractors and personnel.

4.7 Contractor's Equipment

- (a) The Contractor shall be responsible for and keep records of all the Contractor's Equipment on Site. When brought on to the Site, the Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of the Contractor's Equipment without the prior written consent of the Employer's Representative.
- (b) All Contractor's Equipment shall be in full working order, maintained and stored in accordance with manufacturers or suppliers recommendations for the duration of its use on the Site. Any defective or unsafe equipment shall not be used and shall be removed from the Site by the Contractor, at the Contractor's cost, when directed to do so by the Employer's Representative.

4.8 Setting Out

- (a) The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Employer's Representative. The Contractor shall be responsible for the correct positioning of all parts of the Works, including verifying the accuracy of all these items of reference prior to setting out the Works, and shall rectify any error in the positions, levels, dimensions or alignments of the Works.

4.9 Health, Safety, Social and Environment

- (a) Within twenty-one (21) days of the Commencement Date and before commencing any construction activities on the Site, the Contractor shall submit to the Employer's Representative the Health and Safety Management Plan and the Social and Environmental Management Plan which have been specifically prepared for the Works, the Site and other places (if any) where the Contractor intends to execute the Works. Thereafter, whenever the Plans are updated or revised, a copy shall promptly be submitted to the Employer's Representative.
- (b) The Contractor shall, throughout the execution of the Works:
 - (i) comply with all applicable health and safety regulations of the relevant Authorities and the health and safety policies, guidelines, procedures and requirements as set out in the Specification until the issue of the Final Completion Certificate;
 - (ii) implement and comply with a health and safety system which, as a minimum, shall comply with Sub-Clause 4.9 (b) (i) and any requirements which the Employer's Representative shall notify the Contractor, from time to time;
 - (iii) submit all procedures and compliance documents specified in the Contract and the Specification to the Employer's Representative for information before each design (if any) and execution stage of the Works is commenced, including safe work method statements, risk assessments, records that show that personnel have been made aware of risk assessments, critical controls and other information that help them to address key health and safety risks;
 - (iv) be responsible for the health and safety of all persons entitled to be on the Site;
 - (v) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to persons;
 - (vi) provide fencing, lighting, guarding and watching of the Works until the taking over under Clause 7 [*Employer's Taking Over*] and when any outstanding works and/or remedying of defects are ongoing;
 - (vii) 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
 - (viii) provide the Employer's Representative with reasonable access to the Contractor's records and facilities, both on and off the Site, to enable the Employer's Representative to assess the Contractor's compliance with this Sub-Clause 4.9.
- (c) In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the relevant Authorities or local medical or sanitary authorities for the purpose of dealing with or overcoming the epidemic.

- (d) Notwithstanding any other right or remedy the Employer may have, the Contractor agrees that in the event it fails to comply with its health and safety obligations as set out in the Contract, the Employer's Representative may issue a Health and Safety Improvement Notice to the Contractor. This Notice shall be given under Sub-Clause 11.1 [*Notice to Correct*]. In this case, the Contractor shall be responsible to implement any corrective measures required to comply with the Health and Safety Improvement Notice, and as may be instructed by the Employer's Representative in the Notice, at its own costs.
- (e) In accordance with a Notice to Correct, in case of a breach of a Health and Safety Improvement Notice by the Contractor, the Employer shall have the right to terminate the Contract under Clause 11 [*Termination by Employer*].
- (f) In addition, the Employer's Representative shall have the right to suspend all or part of the Works for and as long as the Contractor remains in breach of its health and safety obligations and until it has taken any required corrective measures, at its own costs, as may be instructed by, and to the satisfaction of, the Employer's Representative. For the avoidance of doubt, in case of such a suspension, the Contractor shall not be entitled to an EOT or any increase to the Contract Price in accordance with Sub-Clause 6.7 [*Consequence of Employer's Suspension*].
- (g) In the event of an imminent risk on the Site, notwithstanding any other provision of the Contract, the Employer's Personnel shall have the right to immediately suspend all or part of the Works, instructing orally, as may be appropriate. The Employer's Representative shall be informed as soon as possible and shall assess the situation and instruct the Contractor of any corrective measures that may be required before the Works can resume. The Employer shall then confirm the suspension and corrective measures in writing not later than forty-eight (48) hours after being informed of the suspension.
- (h) The Contractor shall also pay any monetary fines and remediation costs as specified in the Contract, if any, and/or as may be imposed by the relevant Authority for health, safety, social and environmental breaches.
- (i) The Employer may instruct the Contractor to terminate the Subcontractor and/or Nominated Subcontractor in case of breach of health and safety obligations by the Subcontractor and/or Nominated Subcontractor which in the opinion of the Employer's Representative is serious or repeated.
- (j) In case of any health and safety related incident that may occur during the execution of the Work, the Contractor's Representative shall, as soon as possible and within no more than twenty-four (24) hours after the incident, submit to the Employer's Representative a report detailing the incident.
- (k) The Contractor shall take all necessary measures to protect the environment (both on and off the Site) and consistently adhere to the Social and Environmental Management Plan for the Works and shall at all times:
 - (i) carry out its obligations under the Contract in an environmentally and socially responsible manner ensuring all necessary precautions are taken to prevent negative impacts on the environment and communities in accordance with Industry Best Practices (both on and off the Site);
 - (ii) limit damage and nuisance to people and property resulting from pollution, noise, vibration and other results of its operations. In the event there is damage or nuisance incurred, mitigation and remedial measures shall be taken by the Contractor at its cost;

- (iii) comply with the policies, guidelines, standards, procedures and requirements specified in the Specification and the policies, guidelines, standards, procedures and requirements of all relevant Authorities relating to protection of the environment; and
- (iv) ensure that emissions, surface discharges, effluent and any other pollutants from the Contractor's activities shall not exceed the values indicated in the Contract and as otherwise prescribed by Laws.

4.10 Quality Management System

- (a) The Contractor shall prepare and implement (and shall ensure that any Subcontractors and Nominated Subcontractors implement) a QMS to demonstrate compliance with the requirements of the Contract. The QMS shall be specifically prepared for the Works and submitted to the Employer's Representative within twenty-one (21) days after the Commencement Date.
- (b) The Contractor shall carry out an internal review of the QMS regularly and submit the results of such internal reviews to the Employer's Representative along with any proposed measures to improve and/or rectify the QMS and/or its implementation. Thereafter, whenever the QMS is updated or revised, a copy shall promptly be submitted to the Employers Representative.

4.11 Testing by the Contractor

- (a) The Contractor shall undertake all tests specified in the Contract in accordance with requirements set out in the Specification.
- (b) The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently.
- (c) The Contractor shall give a Notice to the Employer's Representative, stating the time and place for the specified testing of any Plant, Materials and other parts of the Works. The Contractor's Notice shall be given within reasonable time, having regard to the location of the testing and any site constraints therein.
- (d) The Employer may, under Sub-Clause 9.1 [*Right to Vary*], vary the location or timing or details of specified tests in the Contract or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or Works is not in accordance with the Contract, the Cost and any delay incurred in carrying out these Variations shall be borne by the Contractor.
- (e) In the event that the Contractor did not give sufficient Notice to the Employer's Representative before covering the relevant parts of the Works, or the Employer's Representative establishes that the Contractor's design, Materials, Plant or workmanship are defective or not in accordance with the Contract, the Contractor shall (at its cost) promptly make good the defect and ensure that the rejected item complies with the Contract or is replaced with an approved item. The Contractor is responsible for the full cost of uncovering and/or demolition, testing and reinstatement of the Work.

4.12 Site Conditions

- (a) The Contractor acknowledges that:
 - (i) it has visited and examined the Site and its surroundings and has obtained all necessary information and data pertaining to the Site Conditions and has taken account of all Site Conditions and other conditions which may affect the carrying out of the Works (including without limitation the surrounding area and the available means of access to and egress from the Site); and
 - (ii) to have acquainted itself with the Site Conditions and to have obtained all reasonably available information concerning any associated risks, contingencies and other circumstances that may influence or affect the execution of the Works.
- (b) The Employer will make available to the Contractor for information, all relevant data and information in the Employer's possession pertaining to the Site Conditions.
- (c) The Contractor shall be deemed to have allowed for all such Site Conditions within the Contract Price and Time for Completion. Discrepancies between the Site Conditions from those anticipated by the Contractor are at the Contractor's risk and shall not entitle the Contractor to an EOT, a Variation or an adjustment to the Contract Price.
- (d) No failure on the part of the Contractor to discover any such condition, risk, contingency, nor any misunderstanding in respect of any matter affecting the Site and its surroundings and the available means of access thereto shall relieve the Contractor from any risks or obligations imposed on or undertaken by it.
- (e) In this Sub-Clause 4.12, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.
- (f) If and to the extent that the Contractor encounters physical conditions which the Employer's Representative determines are Unforeseeable, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled, subject to Sub-Clause 16.1 [*Notice of Claim*], to:
 - (i) an EOT for any such delay, if completion is or will be delayed under Sub-Clause 6.4 [*Extension of Time*]; and
 - (ii) payment of any such Cost, which shall be added to the Contract Price as a Variation.

4.13 Rights of Way and Facilities

- (a) The Contractor shall bear all costs and charges for special and/or temporary rights of way which it may require to execute and complete the Works, including those for access to the Site. The Contractor shall also obtain, at its own risk and cost, any additional facilities outside the Site that it may require for the purposes of executing the Works.
- (b) The Contractor shall not, however, interfere with:
 - (i) the convenience of the public; and/or
 - (ii) the access to and use and occupation of all facilities, irrespective of whether they are public or in the possession of the Employer or of others, except to the extent required for the activities under the Contract.

4.14 Security of the Site

- (a) The Contractor shall be responsible for keeping unauthorized persons off the Site. Authorized persons shall be limited to the Contractor's Personnel, the Employer's Personnel, and any other personnel identified as authorized personnel by a Notice from the Employer or the Employer's Representative.
- (b) The security and safety of the Site, the Contractor's Equipment, Plant and Materials, the Employer's Equipment, and all other property or personnel on the Site are the sole responsibility of the Contractor. The Contractor shall comply with any other security requirements set out in Schedule 2.2 [*Site Plan*].

4.15 Unexploded Ordnances

- (a) If at any time during the carrying out of the Works, an unexploded ordnance or land mine is discovered at the Site, the Contractor shall immediately stop all Work at the Site, notify the Employer's Representative, and take all necessary steps to ensure the safety of all persons and property and secure the Site. The Contractor shall immediately resume Work at the Site when instructed by the Employer or Employer's Representative. Any substantive delay is subject to Sub-Clause 16.1 [*Notice of Claim*].

4.16 Blasting

- (a) The Contractor shall not store or use any explosives without the prior written permission of the Employer. The Contractor shall comply with all regulations in force in the Country regarding the storage and use of explosives (including the use of licenced personnel). In the event use of the explosives is approved by the Employer, the Contractor shall provide and shall ensure that appropriate storage facilities approved by the relevant Authorities are used.
- (b) The Employer's approval or refusal to permit the use of explosives shall not relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with the Contract and the Contractor shall not be entitled to any additional time or additional costs for the execution of the Works in relation to such approval or refusal.

4.17 Royalties

- (a) Unless otherwise stated in the Contract, the Contractor shall pay all royalties, rents and other payments for:
 - (i) Materials (including natural) obtained from outside the Site; and
 - (ii) the disposal of Material from demolitions and excavations and of other surplus Material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.
- (b) The cost of proper management of Material sites and the disposal of Materials in accordance with the Specification are deemed to be included in the Contract Price.

4.18 Mines

- (a) The Contractor warrants and represents that neither it nor any of the Contractor's subsidiaries or Affiliates (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.
- (b) Notwithstanding the notice periods in Sub-Clause 11.2 [*Termination for Contractor's Default*], the Contractor acknowledges and agrees that any breach of this Sub-Clause 4.18 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Contractor, without any liability to the Employer for termination charges or any other liability of any kind.

4.19 Official Not To Benefit and Proscribed Practices

- (a) The Contractor warrants that it has not engaged, or attempted to engage, in any way whatsoever, in any Proscribed Practices in connection with the selection process or the execution of this Contract or any other activities of the Employer or any other entity of the United Nations, involving, in any way whatsoever, any Employer's Personnel or Employer's Representative, officials, or other agent of the Employer or any other entity of the United Nations.
- (b) Notwithstanding the notice periods in Sub-Clause 11.2 [*Termination for Contractor's Default*], the Contractor acknowledges and agrees that any breach of this Sub-Clause 4.19 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Contractor without any liability to the Employer for termination charges or any other liability of any kind.

4.20 Disorderly Conduct

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

4.21 Supply of Water

- (a) The Contractor shall, having regard to local conditions, provide on the Site, for the duration of the Works, an adequate supply of drinking and other water for the use by the Contractor's Personnel.

4.22 Alcoholic Liquor or Drugs

- (a) The Contractor shall not bring onto or store on the Site, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs on the Site, or permit or suffer any such importation, sale, gift, barter or disposal thereto by Contractor's Personnel and/or its Subcontractors.

4.23 Arms, Ammunition and Explosives

- (a) Unless otherwise stated in the Specification or instructed or permitted by the Employer in writing, the Contractor shall not bring onto or store on the Site, give, barter or otherwise dispose of, to any person or persons, any arms, ammunition or explosives of any kind or allow the Contractor's Personnel or its Subcontractors to do so.

4.24 Festivals and Religious Customs

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

4.25 Fundamental Principles and Rights at Work

- (a) The Contractor warrants that it shall comply with and ensure the Contractor's Personnel will comply with the 1998 ILO Declaration on Fundamental Principles and Rights at Work and the Eight Fundamental ILO Conventions, whichever has the highest standards. These universal rights include freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.
- (b) The Contractor shall provide a safe and secure working environment, all necessary accommodation, sanitary and welfare facilities for the Contractor's Personnel in accordance with the Specification and shall provide separate amenities on the Site for women employed in the execution of the Works.
- (c) Notwithstanding the notice periods in Sub-Clause 11.2 [*Termination for Contractor's Default*], the Contractor acknowledges and agrees that any breach of this Sub-Clause 4.25 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Contractor without any liability to the Employer for termination charges or any other liability of any kind.

4.26 Child Labour

- (a) The Contractor represents and warrants that neither it nor the Contractor's Personnel nor any of the Contractor's subsidiary or Affiliates (if any) are engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.
- (b) Notwithstanding the notice periods in Sub-Clause 11.2 [*Termination for Contractor's Default*], the Contractor acknowledges and agrees that any breach of this Sub-Clause 4.26 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Contractor without any liability to the Employer for termination charges or any other liability of any kind.

4.27 Sexual Harassment, Exploitation and Abuse

- (a) The Contractor shall take all appropriate measures, including any other requirements (if any) set out in the Specification, to prevent sexual harassment, exploitation or abuse of anyone by the Contractor's Personnel. For these purposes, sexual harassment, exploitation and abuse include sexual activity with any person less than eighteen (18) years of age, regardless of any Laws relating to consent, unless such sexual activity is consensual between two (2) persons who are married and such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's Personnel.
- (b) In addition, the Contractor shall refrain from and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favours or activities, or from engaging in any sexual activities that are exploitive or degrading to any person.
- (c) Notwithstanding the notice periods in Sub-Clause 11.2 [*Termination for Contractor's Default*], the Contractor acknowledges and agrees that any breach of this Sub-Clause 4.27 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Contractor without any liability to the Employer for termination charges or any other liability of any kind.

5 DESIGN BY CONTRACTOR

5.1 Contractor's Design Obligations

- (a) To the extent specified in the Contract, the Contractor shall carry out the design of Temporary Works and a minor element of the Permanent Works for inclusion in any Section or part of the Works.
- (b) The Contractor shall ensure such design is prepared by appropriately and professionally qualified and experienced designers in accordance with Industry Best Practices, the Laws and the requirements of all relevant Authorities and who shall also comply with the additional criteria (if any) stated in the Specification.
- (c) The Contractor shall promptly submit to the Employer's Representative all designs prepared by the Contractor under the Contract for Review, together with a Notice indicating the design is ready for review.
- (d) Within fourteen (14) days of receipt of the Contractor's design, the Employer's Representative shall complete a Review and shall give a Notice to the Contractor:
 - (i) of No-objection (that may include comments concerning minor matters which will not substantially affect the Works); or
 - (ii) stating that the design submitted is not in accordance with the Contract and/or the Specification, with reasons.
- (e) The Contractor shall not construct any element of the Permanent Works designed by the Contractor until receipt of a Notice of No-objection is given by the Employer under Sub-Clause 5.1 (d). Design that has been rejected shall be promptly amended and resubmitted. The Contractor shall resubmit all designs commented on, taking these comments into account as necessary.
- (f) The Contractor shall be responsible and liable for any design it has prepared in relation to the Works, which shall include shop drawings, Temporary Works and any other design-related aspects.
- (g) When completed, the part of the Works where the Contractor is responsible for the design shall be fit for the intended purposes as defined in the Contract and shall be in accordance with applicable technical standards, codes and regulations as stated in the Specification.

6 COMMENCEMENT, DELAYS AND SUSPENSION

6.1 Commencement of Works

- (a) The Contractor shall commence the execution of the Works (including, without limitation, mobilization and procurement) on, or as soon as is reasonably practicable after, the Commencement Date and shall then proceed with the Works with due expedition and without delay.

6.2 Time for Completion

- (a) 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) as stated in Schedule 1 [*Contract Details*], including completion of all work, passing all tests, rectifying all defects and submitting all information and/or documentation which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking over under Sub-Clause 7.1 [*Taking Over of the Works or Section*].

6.3 Programme

- (a) Not later than twenty-one (21) days after the Commencement Date, the Contractor shall submit to the Employer's Representative a fully detailed Programme for the Works in accordance with the Contract detailing how and when the Contractor proposes to carry out each stage of the Works, in accordance with Schedule 3.5 [*Programme Requirements*].
- (b) The Employer's Representative shall complete a Review of the Programme and give a Notice to the Contractor no later than fourteen (14) days after receiving the Programme stating the necessary changes to comply with the Contract or give a Notice of No-objection.
- (c) The Programme will be used to monitor the progress of the Works under the Contract, and the Employer's Personnel shall rely on the Programme for the administration of the Contract. The Employer's Representative may request the Contractor to submit a revised Programme at any time if the Programme fails to comply with the Contract, or ceases to reflect the actual progress.

6.4 Extension of Time

- (a) Subject to Sub-Clause 16.1 [*Notice of Claim*], the Contractor shall be entitled to an EOT if and to the extent that the Time for Completion is or will be delayed by any of the Employer's risks as described in Sub-Clause 13.2 [*Employer's Risks*] or any other cause of delay giving rise to an entitlement to an EOT under a Sub-Clause of these General Conditions, provided that:
 - (i) the delay can be clearly demonstrated to have delayed the overall completion of the Works; and
 - (ii) the Contractor can demonstrate to the Employer's Representative's satisfaction that it has used its best endeavours to mitigate such delay and any costs and losses associated with it.

- (b) If a delay caused by a matter which is the Employer's responsibility is concurrent with a delay caused by a matter which is the Contractor's responsibility, the Contractor's entitlement to an EOT shall be waived for the period of concurrence.
- (c) Despite any other provisions of the Contract, the Employer's Representative may, at the sole and absolute discretion of the Employer, at any time make a fair and reasonable EOT. The Employer's Representative has no obligation to grant, or to consider whether to grant, an EOT and is not required to exercise this discretion for the benefit of the Contractor.

6.5 Delay Damages

- (a) If the Contractor fails to complete the Works or a Section (if any) within the Time for Completion, the Contractor shall pay Delay Damages to the Employer for this default.
- (b) The Delay Damages shall be the amount stated in Schedule 1 [*Contract Details*], which shall be paid for every day which shall elapse between the relevant Time for Completion and the Date of Completion of the Works or relevant Section (if any).
- (c) These Delay Damages shall not relieve the Contractor from its obligations to complete the Works or from any other duties, obligations or responsibilities which it may have under this Contract.
- (d) If the cumulative amount of Delay Damages reaches the maximum amount stated in Schedule 1 [*Contract Details*], the Employer may terminate the Contract in accordance with Sub-Clause 11.2 [*Termination for Contractor's Default*].
- (e) This Sub-Clause 6.5 shall not limit the Contractor's liability for Delay Damages in any case of fraud, gross negligence, deliberate default or reckless misconduct by the Contractor.

6.6 Suspension by Employer

- (a) The Employer or the Employer's Representative may at any time instruct the Contractor through a Notice to suspend the progress of part or all of the Works, and the Employer or the Employer's Representative may, in its discretion, notify the Contractor of the cause of the suspension.
- (b) If the Contractor receives a Notice of suspension under this Sub-Clause 6.6, it shall immediately suspend the progress of the Works (or relevant part of the Works) until such time as the Employer or the Employer's Representative gives a Notice to the Contractor to resume progress of the Works or those parts of the Works which have been suspended.
- (c) If the suspension under this Sub-Clause 6.6 continues for more than one hundred and eighty (180) consecutive days, the Contractor may give a Notice to the Employer requesting permission to resume the suspended Works. If the Employer does not give a Notice of resumption of Work within twenty-eight (28) days after receiving the Contractor's Notice for permission to resume, the Contractor may, by giving a second Notice to the Employer, treat the suspension as an omission of the affected parts of the Works under Sub-Clause 9.1 [*Right to Vary*]. If the suspension affects the whole of the Works, the Contractor may give a Notice in accordance with Sub-Clause 12.2 [*Termination by Contractor*].

6.7 Consequence of Employer's Suspension

- (a) If the Contractor suffers delay and/or incurs Cost from complying with an Employer's instruction under Sub-Clause 6.6 [*Suspension by Employer*] and/or from resuming the work, the Contractor shall give Notice to the Employer and shall be entitled subject to Sub-Clause 16.1 [*Notice of Claim*] to an EOT and/or payment of such Cost.
- (b) During such suspension, the Contractor shall protect, store and secure the Works (or relevant part of the Works) against any deterioration, loss or damage.
- (c) The Contractor shall not be entitled to an EOT, or to payment of the Cost incurred, in respect of making good:
 - (i) of any defect, deterioration or damage caused by the Contractor's faulty or defective design (if any), workmanship, Plant or Materials;
 - (ii) any deterioration, loss or damage caused by the Contractor's failure to protect, store or secure the Works in accordance with Sub-Clause 6.6 [*Suspension by Employer*]; and/or
 - (iii) if the suspension is due to breach of the Contract by the Contractor or Contractor's Personnel.
- (d) After the permission or instruction to proceed is given, the Parties shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect or loss of the Works or Plant or Materials, which has occurred during the suspension.

7 EMPLOYER'S TAKING OVER

7.1 Taking Over of the Works or Section

- (a) The Works or a Section of the Works shall be taken over by the Employer when:
 - (i) the Works or relevant Section have been completed in accordance with the requirements of the Contract, except for any minor omissions, outstanding work and defects which will not affect the safe use of the Works for the intended purpose;
 - (ii) if applicable, the Contractor has provided, and the Employer's Representative has given No-objection to as-built records and operation and maintenance manual;
 - (iii) if applicable, the Contractor has provided the training and completed testing specified in the Contract;
 - (iv) if applicable, the Contractor has satisfactorily completed clearance and/or reinstatement of designated Sites in the Contract;
 - (v) any requirements for taking over under the Contract have been fulfilled; and
 - (vi) a Taking-Over Certificate for the Works or Section has been issued.
- (b) Accordingly, the Contractor may apply for a Taking-Over Certificate by giving a Notice to the Employer's Representative at least fourteen (14) days before the Works or a Section of the Works (if any) will be complete and ready for taking over in accordance with this Sub-Clause 7.1.

7.2 Taking-Over Certificate

- (a) The Employer's Representative shall, within twenty-eight (28) days after receiving the Contractor's Notice under Sub-Clause 7.1 [*Taking Over of the Works or Section*], either:
 - (i) issue the Taking-Over Certificate to the Contractor stating the Date of Completion (this may have attached a list of minor omissions, outstanding work and defects); or
 - (ii) reject the application by giving a Notice to the Contractor with reasons and specifying the work required to be completed, the defects required to be corrected and/or documents required to be submitted by the Contractor or conditions to be fulfilled in accordance with Sub-Clause 7.1 [*Taking Over of the Works or Section*].
- (b) In case of Sub-Clause 7.2 (a) (ii), the Contractor shall then satisfactorily complete the work and correct the defects (except for any minor omissions, outstanding work and defects which will not affect the safe use of the Works or Section for the intended purpose) before issuing a further Notice under Sub-Clause 7.1 [*Taking Over of the Works or Section*].
- (c) The Contractor acknowledges and agrees that it has full responsibility for the Works or Section until the Taking-Over Certificate has been issued by the Employer.
- (d) In the event that the Employer uses (or occupies) any Part of the Works or Sections before the Taking-Over Certificate is issued, the Part shall be deemed to have been taken over and the Employer shall issue a Taking-Over Certificate with the date on which the Part of the Works or Section were occupied.

8 DEFECTS LIABILITY

8.1 Completion of Outstanding Works and Remedying Defects

- (a) The Employer may at any time prior to the expiry of the relevant DNP give a Notice to the Contractor of any defects or outstanding work with an identified time for rectification arising from:
 - (i) Plant, Materials or workmanship which is not in accordance with the Contract (fair wear and tear excepted);
 - (ii) the Contractor's design (if any) of the Works; and/or
 - (iii) improper operations or maintenance which was attributable to the as-built records and/or operation and maintenance manuals and/or training for which the Contractor is responsible, if applicable.
- (b) The Contractor shall remedy the defect or damages within the time specified by the Employer in the Notice under this Sub-Clause 8.1. All work under this Sub-Clause 8.1 shall be executed at the risk and cost of the Contractor.
- (c) If the Contractor fails to rectify the defect or damages within the time specified in the Notice, or any further period as agreed with the Employer, the Employer may carry out the work by itself or engage another party to do so (including testing) at the Contractor's risk and expense. The Employer shall be entitled under Sub-Clause 10.12 [*Set-off*] to payment by the Contractor of the cost reasonably incurred by the Employer in remedying the defects and/or damages.
- (d) The Employer shall be entitled to an extension of the DNP if and to the extent that the Works, Section, Part of the Works or a major item of Plant (as the case may be):
 - (i) cannot be used for its intended purpose(s) by reason of a defect or damage; or
 - (ii) due to failure by the Contractor to comply with any other obligation of the Contract.
- (e) Such extension of the DNP will be reasonable and as determined by the Employer and notified accordingly to the Contractor.

8.2 Further Tests after Remedying Defects

- (a) If the work of remedying any defect or damage may affect the performance of the Works, the Employer's Representative may require the repetition of any of the tests described in the Contract and that are necessary to demonstrate that the remedied Works and/or Plant or Material comply with the Contract. These repeated tests shall be carried out at the risk and cost of the Contractor as part of the cost of the remedial work under Sub-Clause 8.1 [*Completion of Outstanding Works and Remedying Defects*].

8.3 Final Completion Certificate

- (a) Performance of the Contractor's obligations shall not be considered to have been completed until the Employer has issued the Final Completion Certificate to the Contractor, stating the date on which the Contractor fulfilled its obligations under the Contract.
- (b) The Employer shall issue the Final Completion Certificate within twenty-eight (28) days after the expiry of the DNP for the whole Works or the latest of the expiry dates of the DNPs for Sections, or as soon thereafter as the Contractor has supplied all relevant documents and completed and tested all of the Works, including remedying defects notified under Sub-Clause 8.1 [*Completion of Outstanding Works and Remedying Defects*].

8.4 Unfulfilled Obligations

- (a) After the Final Completion Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which becomes apparent at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.
- (b) Subject to any express provision in the Contract to the contrary, the respective warranties, obligations or liabilities of the Parties do not cease on the completion, expiry or termination of this Contract.
- (c) Notwithstanding the issue of a Final Completion Certificate, the Contractor shall be responsible for remedying at its cost and expense any Latent Defect, as well as any damage to the Works caused by such Latent Defect, which appears or occurs at any time during the Latent Defect Period.

8.5 Clearance of Site

- (a) Promptly after the issue of the Final Completion Certificate, the Contractor shall at its own cost:
 - (i) remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site;
 - (ii) reinstate all parts of the Site which were affected or altered by the Contractor's activities during the execution of the Works; and
 - (iii) leave the Site and the Works in a clean and safe condition.

9 VARIATIONS AND ADJUSTMENTS

9.1 Right to Vary

- (a) The Employer may, in its absolute discretion and at any time before the Taking-Over Certificate is issued, initiate or instruct Variations by giving a Notice to the Contractor.
- (b) Variation may include:
 - (i) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation);
 - (ii) changes to the quality and other characteristics of any item of work;
 - (iii) changes to the levels, positions and/or dimensions of any part of the Works;
 - (iv) omission of any part of the Works;
 - (v) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated tests on completion, boreholes and other testing and exploratory work; and/or
 - (vi) changes to the sequence or timing of the execution of the Works (including advancing or postponing the Time for Completion).
- (c) The Contractor shall submit a proposal, unless the Contractor promptly gives a Notice to the Employer's Representative stating (with detailed supporting particulars) that:
 - (i) the Contractor does not have the relevant expertise;
 - (ii) the Contractor cannot readily obtain the Goods required for the Variation; or
 - (iii) any other reason that adversely affects the Contractor's obligations under the Contract.
- (d) The Contractor shall within fourteen (14) days of receipt of the Notice, and before the Contractor carries out the Variation, submit to the Employer's Representative a detailed proposal, including:
 - (i) a detailed description of the varied works to be performed including pertinent details such as resources, methodology and Programme;
 - (ii) a breakdown of the increase or decrease in the Contract Price and any effect on the Programme and Time for Completion; and
 - (iii) any further particulars that the Employer's Representative may reasonably require.
- (e) The Employer's Representative shall respond with approval, disapproval or comments to the proposal. The Contractor shall then be bound by any such Variation Notice and shall execute the Variation with due expedition and without delay.

9.2 Valuation of Variations

- (a) Variations shall be valued by the Employer's Representative as follows:
 - (i) where appropriate, at rates or prices in the BOQ, or if there are no applicable rates or prices in the BOQ, at the rates or prices included in Schedule 4.1.B [*Daywork Schedule*]; or
 - (ii) in the absence of appropriate rates or prices in the BOQ and Daywork Schedule, the Employer's Representative shall make a fair and reasonable valuation of the Variation; or
 - (iii) if the Employer's Representative so instructs, daywork rates set out in Schedule 4.1.B [*Daywork Schedule*] shall be applicable.

9.3 Provisional Sums

- (a) If a Provisional Sum is included in the Schedule 3.4 [*Valuation and Payment*], it will be payable by the Employer if and to the extent that the Employer's Representative so instructs the Contractor in writing to perform an element and/or part of the Works, supplies and/or services to which the Provisional Sum relates.
- (b) If the Employer directs the Contractor to perform an element or part of the Works, supplies or services through a Provisional Sum, the work or item will be priced by the Employer's Representative in accordance with Sub-Clause 9.2 [*Valuation of Variations*].
- (c) Each Statement that includes a claim related to a Provisional Sum shall also include all applicable invoices, vouchers and accounts or receipts in substantiation of the Provisional Sum.

9.4 Daywork

- (a) For work of a minor or incidental nature, the Employer may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with Sub-Clause 9.2 [*Valuation of Variations*].
- (b) The Contractor shall keep records of hours of labour and Contractor's Equipment and quantities of Plants and/or Materials used.

9.5 Adjustments for Changes in Laws

- (a) The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in Laws made and/or officially published after the Base Date, which affect either Party in the performance of obligations under the Contract.

9.6 Adjustments for Changes in Cost

- (a) Unless otherwise expressly stated in the Particular Conditions (if any), the Contract Price shall not be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works.
- (b) The Contract Price and the rates and prices shall be deemed to include amounts to cover contingency of rises and falls in the cost of labour, Goods and other inputs to the Works.

10 CONTRACT PRICE AND PAYMENT

10.1 Contract Price and Valuation of the Works

- (a) Unless otherwise stated in the Contract:
 - (i) the Contract Price shall be the value of the Works in accordance with Schedule 1.2 [*Details Provided by the Contractor*] and as may vary under Sub-Clause 9.2 [*Valuation of Variations*] and subject to adjustments, additions and/or deductions in accordance with the Contract; and
 - (ii) the Contractor is deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price and all fixed unit rates and prices in the Contract.
- (b) As stated in the Contract:
 - (i) if the payment option is “measure and pay”, the rates shall be as set out in Schedule 4.1 [*Quantities and Rates*] and shall be applied to the relevant quantity of Works measured as completed. The quantities in the Schedules stated in this Sub-Clause 10.1 (b) are not to be taken as the actual quantities of the Works which the Contractor is required to execute, or for the purposes of valuation; or
 - (ii) if the payment option is “lump sum”, the lump sums, the price items and quantities as set out in the Schedule 3.4 [*Valuation and Payment*], Schedule 4.1.A [*Bill of Quantities*] are fixed regardless of the actual quantities of the Works, unless adjustments are made in accordance with Clause 9 [*Variations and Adjustments*].
- (c) Except as otherwise stated in the Contract, the Employer’s Representative shall value each item of work by applying the measurement agreed or determined and method of measurement stated in the Contract, and the appropriate rate, price specified in the BOQ or lump sum price for the item.
- (d) The Contractor shall pay all taxes, duties and fees required to be paid by the Contractor under the Contract and as required by Laws, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 9.5 [*Adjustments for Changes in Laws*] and Sub-Clause 9.6 [*Adjustments for Changes in Cost*] (if applicable). This obligation shall include value added tax (VAT) unless the Employer has obtained an exemption for such VAT from the relevant Authorities on behalf of the Contractor.

10.2 Advance Payment

- (a) If no advance payment is set out in Schedule 1 [*Contract Details*] then this Sub-Clause 10.2 shall not apply.
- (b) Subject to the following provisions of this Sub-Clause 10.2, the Employer shall make an advance payment (if any) set out in the Schedule 1 [*Contract Details*], for mobilization costs and to enable the Contractor to commence the Works.
- (c) The Employer may also, at its sole discretion, make an advance payment or increase the existing advance payment under exceptional circumstances, if requested by the Contractor and provided the Contractor submits an additional Advance Payment Security to cover the total amount of the advance payment.

- (d) The Employer shall pay the advance payment within thirty (30) days, only after receiving the Advance Payment Security in the amount and currencies equal to the advance payment.
- (e) The Advance Payment Security shall be a duly executed and enforceable, unconditional and irrevocable on-demand guarantee in the form set out in Schedule 5.1 [*Form for Advance Payment Security*] from a leading and accredited bank or financial institution approved by the Employer.
- (f) The Contractor shall ensure that the Advance Payment Security is valid and enforceable until the whole of the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor in the interim payments.
- (g) If the terms of the Advance Payment Security specify its expiry date, and the advance payment has not been repaid by twenty-eight (28) days prior to the expiry date, the Contractor shall extend the validity of the Advance Payment Security until the advance payment has been repaid. If the Employer does not receive this evidence of the extension of the Advance Payment Security, the Employer shall be entitled to claim under the guarantee the amount of advance payment which has not been repaid.
- (h) The advance payment shall be repaid by the Contractor through percentage deductions from each IPC at the rate stated in Schedule 1 [*Contract Details*], until such time as the advance payment has been fully repaid and within the period of repayment stated in Schedule 1 [*Contract Details*], if applicable.
- (i) If the advance payment has not been fully repaid prior to the issue of the Taking-Over Certificate for the Works or prior to the date of termination of the Contract, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

10.3 Contractor's Statements

- (a) The Contractor shall submit a Statement with supporting documents including relevant progress reports to the Employer's Representative in accordance with the requirements and timings stated in Schedule 3.4 [*Valuation and Payment*] or otherwise as notified by the Employer or Employer's Representative in writing.
- (b) The Statement shall be based on the prices and/or rates set out in the BOQ or lump sum instalments and/or milestone payments as otherwise set out in Schedules.
- (c) If Plant and/or Materials are intended for incorporation in the Permanent Works and are listed in Schedule 3.4 [*Valuation and Payment*], the Contractor shall be entitled to a percentage of the substantiated value of those Materials and/or Plant as specified in Schedule 3.4 [*Valuation and Payment*], if such Plant and/or Materials are in accordance with the Contract, delivered to and properly stored on the Site, and are protected against loss, damage or deterioration, or are those listed in Schedule 3.4 [*Valuation and Payment*] for payment when shipped and have been shipped to the Country en route to the Site in accordance with the Contract.

- (d) Each Statement shall be in a form approved by the Employer's Representative and shall include the following items, as applicable, which shall be expressed in the currencies in which the Contract Price is payable:
 - (i) the estimated Contract value of the Works executed including approved Variations up to the end of the period of payment;
 - (ii) any amounts to be added and/or deducted for changes in Laws under Sub-Clause 9.5 [*Adjustments for Changes in Laws*] and for changes in Costs under Sub-Clause 9.6 [*Adjustments for Changes in Cost*];
 - (iii) any amount to be deducted for retention at the rate/percentage of retention stated in Schedule 1 [*Contract Details*] until the amount reaches to the limit of the Retention Money stated in Schedule 1 [*Contract Details*];
 - (iv) any amounts to be added and/or deducted for advance payment and repayments in accordance with Sub-Clause 10.2 [*Advance Payment*];
 - (v) any amounts to be added and deducted for Plant and/or Materials in accordance with this Sub-Clause 10.3 and as listed in Schedule 3.4 [*Valuation and Payment*];
 - (vi) any amount to be added in accordance with Sub-Clause 9.3 [*Provisional Sums*];
 - (vii) any amounts to be added in accordance with Sub-Clause 9.4 [*Daywork*];
 - (viii) any amounts to be added for release of Retention Money under Sub-Clause 10.5 [*Release of the Retention Money*];
 - (ix) any other additions and/or deductions which have become due under the Contract;
 - (x) the deduction of amounts certified in all previous IPCs; and
 - (xi) the VAT unless the Employer has obtained an exemption for such VAT from the relevant Authorities on behalf of the Contractor.
- (e) The Employer is not bound by any sum previously considered by the Employer to be due to the Contractor and hence may make any correction or modification to any previous payments.

10.4 Interim Payment Certificate

- (a) Within forty-two (42) days after receiving the Contractor's Statement and supporting documents submitted in accordance with Sub-Clause 10.3 [*Contractor's Statements*], the Employer shall pay to the Contractor the IPC amount which the Employer's Representative certifies and fairly considers to be due to the Contractor.
- (b) The Employer may withhold from the IPC:
 - (i) the value of work or obligation that the Contractor was or is failing to perform in accordance with the Contract; and
 - (ii) the value of Plant and/or Materials supplied and work completed which are not in accordance to the Contract or is defective.

10.5 Release of Retention Money

- (a) The Contractor shall submit a request:
 - (i) for the first half of the Retention Money applicable to the Works or Section of the works taken over (or as applicable) within fourteen (14) days after the issue of the relevant Taking-Over Certificate under Sub-Clause 7.2 [*Taking-Over Certificate*]; and
 - (ii) for the second half of the Retention Money (or outstanding balance) within fourteen (14) days after receiving the Final Completion Certificate for the whole Works under Sub-Clause 8.3 [*Final Completion Certificate*].
- (b) The Employer shall then release the corresponding amount of the Retention Money within twenty-eight (28) days after receiving the Contractor's requests under Sub-Clause 10.5 (a).

10.6 Statement at Taking Over

- (a) Within forty-two (42) days after the Employer's Representative issues the Taking-Over Certificate under Sub-Clause 7.2 [*Taking-Over Certificate*], the Contractor shall submit to the Employer's Representative a Statement at Taking Over with supporting documents, in accordance with Sub-Clause 10.3 [*Contractor's Statements*] showing:
 - (i) the value of all work done in accordance with the Contract up to the Date of Completion of the Works or the Section;
 - (ii) any further sums which the Contractor considers to be due at the Date of Completion of the Works or the Section;
 - (iii) any Claim for which the Contractor has issued a Notice under Sub-Clause 16.1 [*Notice of Claim*] in respect of the Works or relevant Section taken over, which the Contractor considers to be due from the Employer for all events and circumstances that have occurred up to the Date of Completion; and
 - (iv) any disputed Claims relating to the whole of the Works or relevant Section, as applicable.
- (b) The Employer shall then proceed in accordance with Sub-Clause 10.4 [*Interim Payment Certificate*].
- (c) The Contractor is not entitled to make a Claim, and the Employer is released from any new Claim or an increase in any existing Claim against the Employer in respect of the Contract Price or otherwise, in respect of all events and circumstances that have occurred up to the earlier of the submission of the Statement at Taking Over or expiration of the twenty-eight (28) days after the Employer issues the Taking-Over Certificate for a Section or the whole of the Works, as taken over.

10.7 Final Statement

- (a) Within twenty-eight (28) days after receiving the Final Completion Certificate under Sub-Clause 8.3 [*Final Completion Certificate*], the Contractor shall submit a Final Statement in the same form as the Statement under Sub-Clause 10.3 [*Contractor's Statements*] to the Employer's Representative together with any documentation reasonably required to ascertain the final Contract value of all Works done in accordance with the Contract.

10.8 Discharge

- (a) When submitting the Final Statement, the Contractor shall submit a discharge in the form set out in Schedule 5.3 [*Form of Discharge*], which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract.
- (b) This discharge shall state that the total of the Final Statement is subject to any payment that may become due in respect of any Dispute for which arbitration is in progress under Clause 17 [*Dispute Resolution*].

10.9 Final Payment Certificate

- (a) Within forty-two (42) days after receiving the Final Statement and the discharge under Sub-Clause 10.7 [*Final Statement*] and Sub-Clause 10.8 [*Discharge*] respectively, the Employer shall pay to the Contractor the Final Payment Certificate amount which the Employer's Representative certifies and fairly considers is finally due to the Contractor.

10.10 Currency of Payment

- (a) Payment shall be made in the currency or currencies and proportions (in case of payments with more than one (1) currency) as stated in Schedule 1 [*Contract Details*].
- (b) The proportions or amounts of the currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in Schedule 1 [*Contract Details*], except as otherwise agreed by the Parties.

10.11 Delayed Payment

- (a) If the Contractor does not receive payments within the relevant times stated in the Contract, the Contractor shall be paid eligible financing charges compounded monthly on the amount unpaid during the period of delay at the rate(s) and details stated in Schedule 1 [*Contract Details*] on the amount overdue calculated from the expiry of the time for payment of the IPC amount to the actual date payment is received from the Employer.

10.12 Set-Off

- (a) The Employer, without prejudice to any other right it may have, may set-off any amount that may be due by the Contractor to the Employer under the Contract against any amount that may be due by the Employer to the Contractor under the Contract.

10.13 Audit and Investigations

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

10.14 Contractor's Performance Evaluation

- (a) The Employer shall conduct evaluation of the Contractor's performance under the Contract. The Contractor shall provide its full and timely cooperation towards such performance evaluation by the Employer.

11 TERMINATION BY EMPLOYER

11.1 Notice to Correct

- (a) If the Contractor fails to carry out any obligations under the Contract the Employer's Representative may, by giving a Notice to Correct, require the Contractor to make good the failure and to remedy it within the specified time.
- (b) The Notice to Correct shall:
 - (i) describe the Contractor's failure;
 - (ii) state the Sub-Clause and/or provisions of the Contract under which the Contractor has the obligation; and
 - (iii) specify a reasonable time within which the Contractor shall remedy the failure.
- (c) No later than seven (7) days after receiving the Notice to Correct, the Contractor shall respond by giving a Notice to the Employer's Representative and describing the measures the Contractor will take to remedy the failure within the specified time in the Notice to Correct.
- (d) The time specified in the Notice to Correct shall not give rise to an EOT.

11.2 Termination for Contractor's Default

- (a) The Employer shall be entitled to give a Notice to the Contractor of its intention to terminate the Contract if the Contractor:
 - (i) has not taken all practicable steps to remedy the default within the time specified in the Notice to Correct under Sub-Clause 11.1 [*Notice to Correct*] and such failure constitutes a material breach of the Contractor's obligations under the Contract;
 - (ii) abandons the Works or otherwise demonstrates an intention not to continue performance of the Contractor's obligations under the Contract;
 - (iii) fails to proceed with the Works expeditiously in accordance with Sub-Clause 6.1 [*Commencement of Works*];
 - (iv) fails to comply with Sub-Clause 4.2 [*Performance Security*];
 - (v) fails to comply with its obligations under Clause 15 [*Insurance*]; or
 - (vi) is otherwise in material breach of the Contract.
- (b) Unless the Contractor complies with the Notice of intention to terminate the Contract given under Sub-Clause 11.2 (a) and remedies the matter within fourteen (14) days of receiving the Notice, the Employer may immediately terminate the Contract by Notice of termination. The date of termination shall be the date the Contractor receives this Notice of termination.
- (c) In the case of Sub-Clause 11.2 c (i) to (iv), the Employer shall be entitled to terminate the Contract immediately by Notice of termination, without the Notice of intent to terminate, if the Contractor:

- (i) is declared insolvent under any applicable Laws;
 - (ii) is in breach of Sub-Clauses 4.18 [*Mines*], 4.19 [*Official Not To Benefit and Proscribed Practices*], 4.25 [*Fundamental Principles and Rights at Work*], 4.26 [*Child Labour*], 4.27 [*Sexual Harassment, Exploitation and Abuse*] or 6.5 [*Delay Damages*];
 - (iii) submits a security, insurance, certificate, statement, test result or any other document the Contractor is required to submit under the Contract that is false or intentionally misleading; or
 - (iv) subcontracts the whole, or any part of, the Works in breach of Sub-Clause 4.4 [*Subcontracting*], or assigns or novates the Contract without the required prior consent from the Employer under Sub-Clause 1.7 [*Assignment or Novation*].
- (d) After termination of the Contract under this Sub-Clause 11.2, the Contractor shall:
- (i) comply immediately with any reasonable instructions included in the Notice given by the Employer under this Sub-Clause 11.2 for the assignment of any subcontract and for the protection of life or property or for the safety of the Works;
 - (ii) deliver to the Employer any Goods which the Employer or the Employer's Representative instructs, in writing, is to be used for the completion of the Works and all Contractor's Documents and design documents made by or for the Contractor; and
 - (iii) demobilize and leave the Site in a clean and safe condition and, if the Contractor does not do so, the Employer shall have the right to restrict the Contractor's access to the Site.
- (e) After termination under this Sub-Clause 11.2, the Employer may complete the Works and/or arrange for any other entities to do so.

11.3 Valuation and Payment after Termination

- (a) After termination of the Contract under Sub-Clause 11.2 [*Termination for Contractor's Default*] the Employer's Representative shall proceed and agree or determine the value of the Works, Plants and Contractor's Documents and any other sums due to the Contractor for the work completed in accordance with the Contract.
- (b) The valuation shall include any additions and/or deductions, and the balance due (if any).
- (c) The rates in the Contract will be used as the basis for valuation after termination, or if not applicable, the Employer's Representative will make a reasonable valuation.
- (d) The Employer may withhold any payments due to the Contractor until all the costs, losses and damages (if any) incurred by the Employer have been established.

- (e) The Employer shall be entitled to payment by the Contractor of:
 - (i) the additional costs of execution of the works and all other costs reasonably incurred by the Employer;
 - (ii) any losses and damages suffered by the Employer in completing the Works;
 - (iii) Delay Damages if the Contract is terminated after the Time for Completion under Sub-Clause 11.2 [*Termination for Contractor's Default*]; and
 - (iv) repayment of outstanding advance payment.

11.4 Termination for Employer's Convenience

- (a) The Employer may in its absolute discretion terminate the Contract for convenience, at any time, by giving a Notice of such termination to the Contractor.
- (b) The termination under this Sub-Clause 11.4 shall take effect twenty-eight (28) days after the Contractor receives the Notice.
- (c) The Employer shall then return the Performance Security to the Contractor within twenty-one (21) days after the termination takes effect.
- (d) Unless and until the Contractor has received payment of the amount for the value of work done, as adjusted by any amounts to which the Employer is entitled under the Contract, the Employer shall not execute (any part of) the Works or arrange for (any part of) the Works to be executed by any other entities.

11.5 Valuation and Payment after Termination for Employer's Convenience

- (a) After termination under Sub-Clause 11.4 [*Termination for Employer's Convenience*], the Contractor shall, as soon as practicable, submit detailed supporting particulars (as reasonably required by the Employer's Representative) of:
 - (i) the value of work done, which shall include the matters described in Sub-Clause 14.5 (b) [*Optional Termination and Payment*]; and
 - (ii) the amount of any loss of profit or other losses and damages suffered by the Contractor as a result of this termination.
- (b) The Employer's Representative shall then proceed in accordance with Sub-Clause 14.5 (c) [*Optional Termination and Payment*].

12 SUSPENSION AND TERMINATION BY CONTRACTOR

12.1 Suspension

- (a) The Contractor may, by giving twenty-one (21) days' Notice to the Employer under this Sub-Clause 12.1, suspend work (or reduce the rate of work), if the Employer fails to:
 - (i) pay the Contractor the amount due within the period stated in the Contract; and/or
 - (ii) comply with the Employer's obligations under the Contract, which constitutes a material breach under the Contract.
- (b) The suspension shall continue unless and until the Employer has remedied such default as under Sub-Clause 12.1 (a).

12.2 Termination by Contractor

- (a) The Contractor may give Notice (referring to this Sub-Clause 12.2 and stating the default) to the Employer of the Contractor's intention to terminate the Contract if:
 - (i) the Employer has not remedied the default under Sub-Clause 12.1 [*Suspension*] within twenty-one (21) days after the Contractor's suspension of the Works; and/or
 - (ii) a prolonged suspension (if the suspension continues for more than one hundred and eighty (180) consecutive days) of part of the Works affects the whole of the Works as described in Sub-Clause 6.6 (c) [*Suspension by Employer*].
- (b) Unless the Employer remedies the matter described in a Notice issued under Sub-Clause 12.2 (a) within twenty-eight (28) days of receiving the Notice, the Contractor may immediately terminate the Contract by giving a second Notice to the Employer.
- (c) The date of termination shall then be the date the Employer receives this second Notice.

12.3 Payment after Termination by the Contractor

- (a) After termination under Sub-Clause 12.2 [*Termination by Contractor*], the Employer shall promptly pay the Contractor:
 - (i) as described in Sub-Clause 14.5 [*Optional Termination and Payment*]; and
 - (ii) subject to the Contractor's compliance with Sub-Clause 16.1 [*Notice of Claim*] the amount of any loss of profit or other losses and damages suffered by the Contractor as a result of this termination.
- (b) The Employer shall promptly return the Performance Security, or parts thereof, to the Contractor.

13 RISK AND RESPONSIBILITY

13.1 Contractor's Care of the Works

- (a) Unless the Contract is terminated, the Contractor shall take full responsibility for the care of the Works, Goods and Contractor's Documents from the Commencement Date until the issue of the Taking-Over Certificate for the Works under Sub-Clause 7.2 [*Taking-Over Certificate*], at which time responsibility for the care of the Works (or any Section or part of the Works as the case may be) shall pass to the Employer.
- (b) The Contractor shall continue to take responsibility for the care of any part of the Works or Sections which is outstanding on the Date of Completion until this outstanding work has been completed.
- (c) 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 13.2 [*Employer's Risks*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

13.2 Employer's Risks

- (a) The Employer's Risks are:
 - (i) any delay or disruption caused by any Variation, except where that Variation is caused by the Contractor's failure, act, omission or breach;
 - (ii) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site;
 - (iii) any negligent act, omission or breach by the Employer or its agents, employees or other contractors and consultants;
 - (iv) 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 has been agreed upon with the Contractor or is necessary for the execution of the Works in accordance with the Contract;
 - (v) use or occupation of any part of the Permanent Works by the Employer, except as may be specified in the Contract before the Taking-Over Certificate has been issued;
 - (vi) fault, error, defect or omission in any element of the design of the Works provided by the Employer; and/or
 - (vii) Force Majeure events under Sub-Clause 14.1 [*Force Majeure*].

13.3 Consequence of Employer's Risk

- (a) If and to the extent that any of the events listed in Sub-Clause 13.2 [*Employer's Risks*] occurs and results in loss or damage to the Works, Materials, Plant and the Contract Documents, the Contractor shall promptly give a Notice to the Employer's Representative. Thereafter, the Contractor shall rectify any such loss and/or damage to the extent instructed by the Employer's Representative. Such instruction shall be deemed to have been given under Sub-Clause 9.1 [*Right to Vary*].
- (b) If the Contractor suffers delay and/or incurs Cost from rectifying the loss and/or damage, the Contractor shall subject to Sub-Clause 16.1 [*Notice of Claim*] be entitled to:
 - (i) an EOT for any such delay, if the Time for Completion is or will be delayed, under Sub-Clause 6.4 [*Extension of Time*]; and
 - (ii) payment of any such Cost, which shall be added to the Contract Price as a Variation. In the case of Sub-Clause 13.2 (a) (i), (ii), (iii), (v) and (vi) [*Employer's Risks*] profit shall also be included.

13.4 Liabilities and Indemnities

- (a) The Employer and the Contractor shall be responsible for their respective obligations under the Contract and indemnify the other party for damages it may have suffered as a result of the breaching Party's acts and omissions. Any claim and dispute between the Parties in this regard shall be addressed in accordance with Clause 17 [*Dispute Resolution*].
- (b) In defending the Employer, the Contractor shall not enter into any settlement agreement, or agree to any settlement or other compromise, or settlement of any claim, without the prior written approval of the Employer.
- (c) Neither Party shall be liable to the other Party for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, except as may be provided for under the Contract.
- (d) This Sub-Clause 13.4 shall not limit liability in any case of fraud, gross negligence, deliberate default or reckless misconduct by the defaulting Party.

14 FORCE MAJEURE

14.1 Force Majeure

- (a) Subject to Sub-Clause 14.1 (b), Force Majeure may include, but is not limited to, the following events or circumstances, so long as the conditions set out in Sub-Clause 1.1 [*Definitions*] for Force Majeure are satisfied:
- (i) war (whether war be declared or not), invasion or act of foreign enemies within the Country;
 - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war within the Country;
 - (iii) munitions of war, ionizing radiation or contamination by radio-activity within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radioactivity;
 - (iv) in-country epidemic or pandemic declared by health Authorities;
 - (v) measures and/or actions taken by Authorities, which prevent the execution of Works under the Contract. Such measures and/or actions do not constitute a Force Majeure event if the Authority's action is due to the Contractor's failure to comply with applicable Laws, regulations or procedures; or
 - (vi) earthquake, hurricane, typhoon, tsunami, volcanic activity, fire or other natural disaster that is outside the normal range for that place at that time of year, but excluding any other weather conditions which should reasonably have been foreseen by the Party claiming Force Majeure and which were not exceptionally adverse.
- (b) The Contractor acknowledges and agrees that, with respect to any of its obligations under the Contract, the Contractor will be performing such obligations in areas in which the United Nations, including the Employer, is engaged in, preparing to engage in, or disengaging from peacekeeping, humanitarian or disaster recovery or similar operations and any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, shall not, in and of itself, constitute a Force Majeure event, unless the conditions set out in Sub-Clause 1.1 [*Definitions*] for Force Majeure are satisfied.

14.2 Notice of Force Majeure

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

- (c) The Affected Party shall, having given a Notice, be excused from performance of such obligations for so long as such Force Majeure prevents it from performing them.
- (d) Notwithstanding any other provision of this Clause 14 [*Force Majeure*], Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.
- (e) Notwithstanding any other provision of this Clause 14 [*Force Majeure*], a Force Majeure shall not relieve any Party from an obligation which arose before the occurrence of that event, including the care of the Works prior to the issuance of a Taking-Over Certificate.

14.3 Duty to Minimize Delay

- (a) Each Party shall at all times use all reasonable endeavours to overcome the adverse effects of and minimize any delay in the performance of the obligations under the Contract as a result of a Force Majeure event or circumstance.
- (b) An Affected Party shall give notice to the other Party when it ceases to be affected by Force Majeure, but in any event, not later than seven (7) days after the Affected Party ceases to be affected by the Force Majeure event or circumstance. The Affected Party shall then, as soon as is reasonably practicable, recommence the performance of its obligations under the Contract.

14.4 Consequences of Force Majeure

- (a) If the Contractor is prevented from performing any of its obligations under the Contract by Force Majeure of which a Notice has been issued under Sub-Clause 14.2 [*Notice of Force Majeure*], and the Works are delayed and/or suspended by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 16.1 [*Notice of Claim*] to an EOT, if the Time for Completion is or will be delayed, under Sub-Clause 6.4 [*Extension of Time*].
- (b) After receiving the Notice under Sub-Clause 14.2 [*Notice of Force Majeure*] and subject to Sub-Clause 16.1 [*Notice of Claim*], the Employer shall proceed to agree or determine the matters contained in such Notice.
- (c) Without prejudice to the Contractor's rights to Sub-Clause 13.3 [*Consequences of Employer's Risks*], the Contractor shall not be entitled to reimbursement of any additional Cost incurred and/or any corresponding adjustment to the Contract Price resulting from Force Majeure.
- (d) For the avoidance of doubt, if the Contractor is instructed by the Employer's Representative to implement mitigation measures related to Force Majeure, these shall be deemed to have been given under Sub-Clause 9.1 [*Right to Vary*].

14.5 Optional Termination and Payment

- (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 Force Majeure of which Notice has been given under Sub-Clause 14.2 [*Notice of Force Majeure*], or for multiple periods which total more than one hundred and forty (140) days due to the same Force Majeure, then either Party may give to the other Party a Notice of termination of the Contract. In this event, the termination shall take effect fourteen (14) days after the receipt of the Notice by the other Party. The Contractor shall then proceed in accordance with Sub-Clause 14.6 [*Contractor's Obligation after Termination*].
- (b) After the date of termination, the Contractor shall, as soon as practicable, submit to the Employer's Representative (with a copy to the Employer) detailed supporting particulars which shall include:
 - (i) the value of the Works executed up to the date of termination and for which the Contractor has not been paid;
 - (ii) the actual costs of Materials and Plant reasonably delivered to the Site and are in accordance with the Contract;
 - (iii) any sums to which the Contractor is entitled under Sub-Clause 16.1 [*Notice of Claim*]; and
 - (iv) the reasonably and properly incurred Cost of repatriation and demobilization.
- (c) The Employer's Representative shall then proceed to agree or determine the net balance due to the Contractor adjusted by any amount to which the Employer is entitled under the Contract. The Employer shall accordingly pay to the Contractor the amount so agreed or determined in accordance with Sub-Clause 10.4 [*Interim Payment Certificate*] issued by the Employer's
- (d) Representative, without the need for the Contractor to submit a Statement.

14.6 Contractor's Obligation after Termination

- (a) After termination of the Contract under Sub-Clause 12.2 [*Termination by Contractor*], Sub-Clause 11.4 [*Termination for Employer's Convenience*] or Sub-Clause 14.5 [*Optional Termination and Payment*] the Contractor shall promptly:
 - (i) cease all further work (except to the extent specified in the Notice of termination from the Employer) and take such action as necessary or as directed by the Employer for the transfer, protection and preservation of the Employer's property, for protection of life or property or for the safety of the Works;
 - (ii) deliver to the Employer all Contractor's Documents, Plant, Materials and other work for which the Contractor has received payment; and
 - (iii) remove all other Goods from the Site (except as necessary for safety) and any wreckage, rubbish and debris of any kind and leave the Site in a clean and safe condition.

15 INSURANCE

15.1 Extent of Cover

- (a) The Contractor shall, on or prior to the Commencement Date, effect and thereafter maintain the following valid and enforceable insurances in the joint names of the Parties (to the extent possible), as applicable:
 - (i) Construction all risks insurance: for loss and damage to the Works, Materials, Plant, Contractor's Documents and the Contractor's Equipment for not less than the full reinstatement cost, including the costs of demolition, removal of debris and professional fees and profit;
 - (ii) Public liability insurance: for liability of both Parties for loss, damage, death or injury to third parties or their property arising out of the Contractor's performance of the obligations under the Contract, including the Contractor's liability for damage to the Employer's property other than the Works;
 - (iii) Workers' compensation insurance: against liability for claims, damages, losses and expenses on no-fault basis or negligence (including legal fees and expenses) arising out of the execution of the Works in respect of injury, sickness, disease or death of any Contractor's Personnel. The Employer shall also be indemnified, except losses and claims to the extent that arise from any act or neglect of the Employer or of the Employer's Personnel; and
 - (iv) all other insurances required by Laws, trade associations and industry bodies in the Country and those identified in Schedule 3.11 [*Insurance Requirements*].
- (b) If stated in Schedule 3.11 [*Insurance Requirements*], the Contractor shall also effect and maintain professional indemnity insurance in relation to the Contractor's obligations concerning the design of the part of Works to the extent specified in the Contract.
- (c) The Contractor shall also procure and maintain at all times any other valid and enforceable insurances as may be required by Laws and cause its Subcontractors to effect and maintain at all times such valid and enforceable insurance(s).
- (d) Unless otherwise instructed by the Employer, the Contractor's insurances shall be placed with insurers of good repute and with a financial rating of not lower than Standard & Poor's BBB, Moody's Baa or A.M. Best BBB+.

15.2 Arrangements

- (a) All Contractor's insurances under Sub-Clause 15.1 [*Extent of Cover*] shall conform with the requirements described in Schedule 3.11 [*Insurance Requirements*].
- (b) The Contractor shall effect and maintain all insurances with insurers and in terms approved by the Employer. The Contractor shall provide the Employer with evidence that any required insurance policy is in force and that the premiums have been paid.

- (c) The insurances referred to in Sub-Clause 15.1 [*Extent of Cover*] shall:
 - (i) name or firmly indicate the Employer as co-insured;
 - (ii) contain a clause waiving the insurers' subrogation rights against each insured party, its personnel and agents (except where such rights are due to a vitiating act); and
 - (iii) provide that the Employer shall receive a written notice from the insurer not less than fourteen (14) days prior to any cancellation, non-renewal or amendment.
- (d) All payments received from insurers relating to loss or damage to the Works shall be held jointly by the Parties and used for the repair of the loss or damage or as compensation for loss or damage that is not to be repaired.
- (e) The Contractor shall be responsible for handling any claims under the Contractor's insurances. In this regard, the Contractor shall keep the Employer fully informed and seek the cooperation of the Employer and its professional advisors.
- (f) The Contractor shall not, without obtaining the prior written consent of the Employer and the insurer (as may be required under the applicable insurance):
 - (i) make any admission of liability to a third party;
 - (ii) enter into any negotiation to settle or compromise a claim under a Contractor insurance;
 - (iii) enter into a settlement or compromise a claim on the Contractor's insurances; or
 - (iv) commence litigation or arbitration proceedings.
- (g) The Contractor shall be responsible under any of the insurance policies required under Sub-Clause 15.1 (a) [*Extent of Cover*] for any deductible, fees and other costs or failure to recover in whole or part, in which case the Contractor shall indemnify the Employer in respect of such deductible, fees and other costs or failure to recover.
- (h) If the Contractor fails to procure or maintain at all times any of the insurances required under Sub-Clause 15.1 [*Extent of Cover*], or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause 15.2, the Employer may, at its option and without prejudice to any other right or remedy, after having notified the Contractor in writing, pay any premiums or take any such other steps as may be required to procure or maintain such insurance in force at the expense of the Contractor.
- (i) Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve the Contractor of its liabilities and obligations under the Contract. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities.
- (j) The cost of the Contractor's insurances shall be deemed to be incorporated into the Contract Price.
- (k) The obligations in this Clause 15 [*Insurance*] shall remain valid following the completion, termination or expiry of the Contract.

15.3 Failure to Insure

- (a) If the Contractor fails to effect or keep in force any of the insurances referred to in Sub-Clause 15.1 [*Extent of Cover*], or fails to provide satisfactory evidence, policies or receipts, the Employer may, at its option and without prejudice to any other right or remedy, terminate the Contract immediately by Notice of termination in accordance with Sub-Clause 11.2 [*Termination for Contractor's Default*].

16 CONTRACTOR'S CLAIM

16.1 Notice of Claim

- (a) The Contractor shall give a Notice to the Employer's Representative as soon as practicable, in writing and no later than fourteen (14) days (or within a time frame notified by the Employer) after the Contractor becomes aware of any event or circumstance which may delay or disrupt the Works, or which may give rise to a claim for additional payment, Costs and/or other entitlements or relief from obligations arising out of or in connection with the Contract. The Contractor shall take all reasonable and necessary steps to minimize and mitigate the effects of the event or circumstance.
- (b) If the Contractor considers itself to be entitled to an EOT and/or any additional payment resulting from the notified event or circumstance, then the Contractor shall, but not later than twenty-eight (28) days after the Notice submitted under Sub-Clause 16.1 (a), submit to the Employer's Representative a fully detailed Claim including:
 - (i) a detailed description of the event or circumstance giving rise to the Claim;
 - (ii) the contractual basis of the Claim along with all contemporary records; and
 - (iii) detailed supporting documents and particulars describing the EOT claimed and the nature and extent of any Costs or additional payment associated therewith.
- (c) Upon receipt of the Contractor's fully detailed Claim, the Employer's Representative shall assess the Claim along with the supporting documents and records and notify its agreement or determination of the Contractor's entitlement (if any) under the Contract for:
 - (i) additional payment; and/or
 - (ii) an EOT.
- (d) The Contractor shall not be entitled to an EOT or any additional payment or Costs if it fails to give a Notice of Claim within the period of fourteen (14) days in accordance with Sub-Clause 16.1 (a), in which case the Contractor shall be deemed to have waived its entitlement to make such Claim, the Employer shall be discharged from any liability arising out of or in connection with the event or circumstances giving rise to the Claim, and the Contractor shall comply with its obligations to perform the Works by the Time for Completion and for the Contract Price.

17 DISPUTE RESOLUTION

17.1 Right to Joinder

- (a) The Contractor and the Employer agree to resolve Disputes under or in relation with the Contract in accordance with this Clause 17 [*Dispute Resolution*].
- (b) They further agree that if the Employer, after the signature of this Contract, enters into a subsequent contract with another party that is related to the Works, then the other party (such as another consultant or a works contractor) may become party to this Clause 17 [*Dispute Resolution*] by incorporation by reference in the subsequent contract entered into between the Employer and the other party. In this case, the Employer shall inform the Contractor in writing of such incorporation by reference.

17.2 Amicable Resolution

- (a) In the event of a Dispute between the Parties, either Party may provide Notice of such Dispute to the respective representative(s) of the other Party(ies). That Notice shall:
 - (i) set out the legal and contractual basis of the Dispute;
 - (ii) set out the facts upon which the Dispute is based;
 - (iii) have annexed copies of correspondence and any relevant background material;
 - (iv) contain detailed particulars of the quantification of the Dispute; and
 - (v) be duly signed by the authorized signatory of the Party issuing the Notice.
- (b) Upon receipt of such Notice, the Party that has received the Notice may join any other party(ies) that may have become party to this Clause 17 [*Dispute Resolution*] by incorporation by reference under Sub-Clause 17.1 [*Right to Joinder*] with copy to the Party that provided the Notice.
- (c) Then, the Parties' representatives shall attempt to resolve the Dispute amicably. If the Employer's Representative and the Contractor's Representative are unable to resolve the Dispute amicably within twenty-eight (28) days of receipt of the Notice, the Dispute shall be referred by either Party to Senior Representatives of the Parties, to be designated in writing by the Parties at that time.
- (d) If the Senior Representatives of the Parties are unable to resolve the Dispute amicably within twenty-eight (28) days of such reference of a Dispute, the Dispute shall be finally resolved, at the request of either Party, through arbitration in accordance with the provisions of Sub-Clause 17.3 [*Arbitration*].

17.3 Arbitration

- (a) Any Disputes between the Parties arising out of or in connection with the Contract and the contracts set out in Sub-Clause 17.1 [*Right to Joinder*] shall be finally resolved, at the request of either Party, through arbitration in accordance with the United Nations Commission on International Trade Law Arbitration Rules (UNCITRAL) then in effect (the “Procedural Rules”).
- (b) Any Party to this Clause 17 [*Dispute Resolution*] (either directly or under Sub-Clause 17.1 [*Right to Joinder*]) may, either separately or together with any other party to this Clause 17 [*Dispute Resolution*], initiate arbitration proceedings against one or multiple parties to this Clause 17 [*Dispute Resolution*].
- (c) Any Party to this Clause 17 [*Dispute Resolution*] named as Respondent in a Notice of Arbitration may join any other party(ies) that may have become party to this Clause 17 [*Dispute Resolution*] by incorporation by reference under Sub-Clause 17.1 [*Right to Joinder*] in the arbitration by submitting a Notice of Joinder to the other party(ies) within thirty (30) days from the receipt by such Respondent of the relevant Notice of Arbitration, together with its response to the Notice of Arbitration to the Party that requested the arbitration. In this case, the party(ies) that received the Notice of Joinder shall have thirty (30) days to respond to the Notice of Arbitration and the Notice of Joinder before the proceedings can continue.
- (d) There shall be three (3) arbitrators, selected according to the procedure set out in Sub-Clauses 17.3 (e) to 17.3 (g).
- (e) If the Notice of Arbitration names only one (1) Claimant and one (1) Respondent and no Party has exercised its right to joinder in accordance with Sub-Clause 17.1 [*Right to Joinder*], each Party shall appoint one (1) Arbitrator within fourteen (14) days after the expiry of the period during which parties can exercise their right to joinder. The two (2) Arbitrators shall appoint the third Arbitrator, who shall act as chairperson.
- (f) If more than two (2) Parties are named in the Notice of Arbitration, or at least one (1) Party exercises its right to joinder, the Claimant(s) shall (jointly) appoint one (1) Arbitrator and the Respondent(s) shall (jointly) appoint the other Arbitrator, both within fourteen (14) days after the expiry of the period during which the Parties can exercise their right to joinder. If the Claimant(s) and the Respondent(s) appoint the arbitrators as provided, the two (2) Arbitrators shall then appoint the third Arbitrator, who shall act as chairperson. If one (1) or both of the Parties fail to appoint an Arbitrator as provided, the Secretary General of the Permanent Court of Arbitration shall, upon the request of any party, appoint all three (3) Arbitrator(s) on their behalf and designate one (1) of them to act as chairperson.
- (g) If more than one (1) arbitration is initiated under this Clause 17 [*Dispute Resolution*] (either directly or under Sub-Clause 17.1 [*Right to Joinder*]) and any Party thereto contends that two (2) or more arbitrations are substantially related and that the issues should be heard in one (1) proceeding, the arbitrators selected in the first filed of such arbitrations shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before those Arbitrators.

- (h) The seat or place of arbitration shall be determined at the time of the Dispute.
- (i) The language of the arbitration shall be English.
- (j) The decisions of the Arbitrators shall be guided by the general principles of international commercial law as codified in the International Institute for the Unification of Private Law (UNIDROIT) in effect at the Contract Effective Date, as the Law Applicable to the Contract.
- (k) The Arbitrators shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of the United States Federal Reserve Bank of New York's Secured Overnight Financing Rate (SOFR) then prevailing, and any such interest shall be simple interest only.
- (l) The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such Dispute.
- (m) The arbitral proceedings and any information and documents relating to these proceedings shall be regarded as confidential, subject to Sub-Clause 1.9 [*Confidentiality*].

17.4 Dispute Resolution Not to Delay Execution of the Works

- (a) Despite any activation of the dispute resolution procedures under this Clause 17 [*Dispute Resolution*], the Contractor shall continue to execute the Works and its other obligations under and in connection with the Contract.

17.5 Survival

- (a) This Clause 17 [*Dispute Resolution*] survives the completion, expiry or termination of the Contract.