**[REVISED] ICC MODEL TURNKEY CONTRACT FOR MAJOR PROJECTS**

**FOR CLP COMMISSION APPROVAL BY 15 JULY 2019**

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**ICC MODEL TURNKEY CONTRACT FOR MAJOR PROJECTS**

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

(Employer)

and

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

(Contractor)

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# FOREWORD

The ICC Commission on Commercial Law and Practice is, like ICC, in business for business, and acts as a focus group for all parties to international transactions. To accommodate such international transactions, without any intent to exclude national transactions, the Commission on Commercial Law and Practice has published a number of model forms such as a model form Joint Venture Agreement, a model form Consortium Agreement, that together with this ICC Model Turnkey Contract for Major Projects and its Subcontract form a suite of model agreements attuned to one another with the object to ensure successful completion and delivery of such projects, being a) delivery for the agreed price and thus within the available budgets, b) within the allotted time, c) whereby the built facility delivers the required outputs and performance, d) all without serious disputes and to the satisfaction of all stakeholders. Each of the Model Agreements can also be used on a stand-alone basis.

An international Model Contract can never be entirely independent of applicable laws and it is a requirement to check which provisions of the applicable law, with particular vigilance as to the outreach of mandatory and/or public policy provisions, will come into play with effect on the contractual balance of the Model Agreement.

The international construction industry is undergoing a change of business culture with a departure from the former antagonistic approach of Contractor vs. Employer in terms of rights and obligations. Primary focus on successful delivery of the project through a more collaborative relationship has been found to be more productive in profit and loss terms for both parties.

With the extended scope of work for the contractor under a turnkey project comes an increased risk profile for the Contractor, but not a transfer of *all* risks, as the Employer must remain responsible for the contents of the Employer’s Requirements and the correctness of their accompanying data and information, which together form the very foundation of the project. Where the Contractor is expected to carefully examine the Employer’s Requirements and the accompanying information and data, the Employer must exercise due diligence in formulating and assemblying them.

This Model Agreement resolutely aims at providing a legal framework for a more collaborative approach to turnkey projects. Successful delivery is what all parties involved in such projects have always wanted. It may be the influence of project finance in construction that has brought about the mind change of the parties towards the avoidance of costly disputes. It requires a different mindset, for differences of opinion will always occur, but the success of a project as defined above depends heavily on how quickly and effectively the parties resolve their issues between themselves. Hence the focus on contract management in this Model Agreement.

ICC’s Dispute Board Rules aim to help the parties in a construction project to resolve their issues that have evolved into disputes quickly and effectively. A suite of balanced model contracts is intended to be an effective additional tool to achieve successful delivery of projects and it is the hope of all involved in the conception of these models that they may be as successful as the ICC Incoterms in being an instrument towards successful delivery of major projects in both the business or the public realm.

ICC is very grateful for the recent efforts to review and comment on both the first edition of this model contract published in 2007 and for the suggestions to optimize the provisions where they thought necessary or preferable and for the subsequent review of the penultimate draft 2017 version by: Shy Jackson of Pinsent Masons; John Gilbert of K&L Gates LLP; the European International Contractors, Norman Milne of SAFCEC, and George R. Earle.

The working group that conceived this second edition of the ICC Model Turnkey Contract for Major Projects comprised: Helena Prata (Angola); Guenther Horvath (Austria); Jihong Wang (China); Cindy Zhou (China); Francine Gurral (France); Bettina Geisseler (Germany); Heike Brehm (Germany); Claus Lenz (Germany); Thomas Buehrmann (Germany); Jens Machoy (Germany); Prashant Sharma (India); Giovanni Leo (Italy); Claudio Perella (Italy); Arnoud Penseel (Netherlands); Norman Milne (South Africa); Ben Beaumont (UK); Jane Davies-Evans (UK); Isabelle Smith-Monnerville, Vice Chair (France) and Eric Eggink, Chair (Netherlands) and the organizational skills of Emily O’Connor and Florence B. Diao-Gueye of the ICC Secretariat in Paris, France.

The working group owes a debt of gratitude to Christian Hybbinette(Sweden) and Fredrik Sandström (Sweden) for providing helpful commentary and suggestions on the penultimate and final drafts of the model.

# INTRODUCTION

“Turnkey” means the obligations of the Contractor to design, procure, supply, install, execute, commission, test and hand over, including the remedying of potential defects, on time and within the agreed Contract Price, the Works as defined by the Employer as to scope, purpose, performance and the functions of the Works as set out in the original Employer’s Requirements and the Assumptions and as amended in accordance with the provisions of the Contract.

The inevitable complexity of a turnkey project can be managed by creating a strong and predictable contractual framework for the execution of the project. The Employer must clearly and unequivocally state what he wants in the Employers Requirements.

The basic principle to be followed in this Contract is that the Employer specifies the desired final Works and provides the information and co-operation required by the Contractor, and the Contractor develops the Design and implements the methods intended to complete the Works to specification and within the time allowed under the Contract.

Formulating the Employer’s Requirements can be a challenging task and the information supplied in the “ER’s” may be lacking information that is nonetheless indispensable for the Contractor to assess his risks and develop his solutions. Therefore, this model form uses the concept of “Assumptions”, being written statements by either contract party provided before signing the contract (or before coming to an agreement on a variation of the works). A party states the conclusions it has derived from the information provided in writing by the other party and sets out certain assumptions on data that were not provided by the other party but which are necessary for the execution of the works and on which the assuming party may reasonably rely. This concept is necessary to reduce the incidence of disagreements due to information which is missing or unclear in the Employer’s Requirements or the Contractor’s bid which may turn into disrupting (both to budget and time to taking over) disputes. For this reason, detailed Variations provisions are included, to ensure that the Contractor is paid a reasonable price and granted a suitable extension of time for any changes in the Works.

In comparison to more traditional models of turnkey contracting, the concept of “Assumptions” will require the Employer to increase its efforts and transparency in order to be able to foresee the final Contract Price (since any material lack of information in the ER is likely to lead to an Assumption and an increased risk of costs for Variations). However, the benefits of this approach is that the Contractor should be able to provide a more competitive offer (since the need for a risk premium for uncertain events is reduced).

A significant majority of disputes on major construction projects find their origin in (1) issues relating to reliability of information provided by the Employer and/or Contractor or lack thereof and (2) deficiencies and/or ambiguities in the scope of work. This Model Agreement aims at preventing the snow ball effect of a minor misconception, for instance at the design phase, which can cause incurring major costs later on.

With this model form of contract, ICC aims to provide a balanced contract for three reasons:

1. ICC represents all parties to all transactions
2. Risks are allocated to the party that is better situated to control the occurrence of the risk event, or its impact on the project, or both.
3. A balanced contract promotes the completion of a successful project in which both the Employer and the Contractor achieve their objectives.

The parties using this model form of contract are urged to leave the general conditions of this model form intact and focus their efforts on providing clear, simple and solid Employer’s Requirements on the one side and a comprehensive bid on the other, all on the basis of these un-amended general conditions of contract, with all changes or specifications duly recorded solely in the special conditions.

**ICC MODEL TURNKEY CONTRACT FOR MAJOR PROJECTS**

# Main Contract Form

**THIS CONTRACT** is made on **[**\_\_\_\_\_ \_\_\_\_\_, \_\_\_\_\_**]**

**Between:**

**[\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ ]** (a **[**\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ **]** company with registered number **[**\_\_\_\_\_ **]**) whose registered office is at **[**\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ **]** and represented by \_\_\_\_\_\_\_\_\_\_acting through a duly authorised power of attorney (the ***Employer,*** which expression shall include successors and permitted assigns);

and

**[**\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ **]** (a **[**\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ **]** company with registered number **[**\_\_\_\_\_ **]**) whose registered office is at **[**\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ **]** and represented by \_\_\_\_\_\_\_\_\_\_acting through a duly authorised power of attorney (the ***Contractor***,which expression shall include successors and permitted assigns),

each a ***Party*** and collectively the ***Parties***.

**Whereas**

1. The Employer has decided to appoint the Contractor to design, procure, supply, execute, install, commission, test and hand over, including the remedying of potential defects, on time and within the agreed Contract Price, the Works as defined by the Employer as to scope, purpose, performance and the functions of the Works as set out in the original Employer’s Requirements and the Assumptions and as amended in accordance with the provisions of the Contract;
2. The Contractor has agreed to such appointment on the terms and subject to the conditions of this Contract as provided herein; and
3. In this Main Contract Form, all capitalised words and expressions shall have the same meanings as are assigned to them in this Main Contract Form or in the General Conditions.

**It is agreed as follows**:

1. The Contractor shall design, procure, supply, execute, install, commission, test and hand over, including the remedying of potential defects, on a Turnkey basis, the Works as described in this Contract, and perform the Works for the compensation provided for herein as more particularly described in the General Conditions of Contract and the Special Conditions attached hereto;
2. The Employer shall pay the Contractor the price of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[1]](#footnote-1) (the Contract Price) and perform the other actions required of it as more particularly described in the General Conditions of Contract and the Special Conditions attached hereto; and
3. The following Sections shall be read as one document and form the Contract and, in the event of ambiguity or contradiction between the Sections, the ambiguity or contradiction shall be resolved by giving precedence to the Sections in the order listed as follows:

- Main Agreement Form

- Section I – Special Conditions and Appendices thereto

- Section II – General Conditions of Contract

**Whereas the Parties have executed this Contract by duly authorised representatives on the day and year first above written**. [[2]](#footnote-2)

**EMPLOYER  
NAME Witness**

**CONTRACTOR  
NAME**

**Witness**

The remainder of this page has been intentionally left blank.

# SECTION I - Special Conditions of Contract

**The reference to Articles in these Special Conditions refers to the Articles of the General Conditions which these Special Conditions amend or complement.**

**As the case may be, Appendices to these Special Conditions shall be numbered by the number of the** **Articles of the General Conditions to which reference is made by these Special Conditions.**

**Article 1.1** The Employer’s Requirements are set out in Appendix ….

The agreed rate for Overheads are …% (optional).

The agreed rate for Profit is …% (optional)

**Article 4** The Parties agree that the ruling language of this Contract and any disputes or differences decided in relation to it is ……………….(Optional).

**Article 5.1** The law governing this Contract shall be the law(s) of …………………..

**Article 8.1** Assumptions of the Parties are set out in the Appendix to Article 8.

**Article 9.1** The permits, third party licences and authority approvals that each Party shall obtain are set out in Article 9.1, or, as the case may be, in the Appendix to Article 9.1.

**Article 10.1** Each Party shall provide (at its own expense) the following guarantee(s), bonds or other securities[[3]](#footnote-3):

|  |  |
| --- | --- |
| By the Employer | By the Contractor |
| - ………… | - ……….  - ……….. |

**Article 10.2** The guarantees, bonds and/or other securities required under the Contract shall be in the form set out in Article 10.2[[4]](#footnote-4).

**Article 14.2** The maximum period for the Employer to evidence the financial arrangements required under Article 14.2. is of ………..

**Article 21.1** The original points, lines and levels of reference are given by the Employer in Article 21.1.

**Article 26** Each Party’s responsibilities with respect to protection of the environment are detailed in Appendix …

**Article 30.1** Article 30.1 is amended as follows (optional):



**Article 30.3** Article 30.3 is amended as follows (optional):



**Article 35.5** The maximum aggregate value exceeding the Contract Price and/or the number of Days exceeding the Time to Taking-Over shall be respectively: …..% of the Contract Price and … Days.

**Article 35.8** The Parties agree on the list of unit rates appended as Article 35.8 d).

**Article 36.1** Time to Taking-Over shall be calculated from the Start Date and shall be ….. months.

**Article 36.2** The Start Date shall be determined as follows:



**Article 36.2** The Employer shall issue the Notice to Proceed to Contractor in the form set out in Article 36.2.

**Article 37.3** The rate for each complete Week of delay and for an incomplete Week shall be respectively: …. of the Contract Price per Week or …. of the Contract Price per Day up to a maximum ….. of the Contract Price.

**Article 37.7** The rate for each complete Week of enhancement and for an incomplete Week of enhancement shall be respectively: …. of the Contract Price per Week or …. of the Contract Price per Day up to a maximum ….. of the Contract Price.

**Article 38.1** The Contractor undertakes to perform the Design and the Works in accordance with the Contract and also the Schedule of Contractual Dates as set out in Article 38.1.

**Article 41.2** The Parties recognise and agree that the Contract Price is payable in instalments according to the progress of the Works in an Invoice Period and/or milestones as set out in Article 41.2.

**Article 42.3** Applications for payment shall be submitted in the form set out in any Appendix to Article 42.3 or, if there is no such Appendix, in a form established by the Contractor and agreed by the Employer.

**Article 42.9** All payments made under this Contract shall be made by the method set out in Article 42.9 or otherwise by bank transfer to an account or accounts nominated by the Contractor.

**Article 45.2** The period in which the Employer shall either deliver to the Contractor a Certificate of Completion or a Notice that in his opinion Completion has not been achieved shall be …………….... Days after receipt of Contractor’s Notice of Completion.

**Article 46.2** Any commissioning activities shall be set out in Article 46.2 or otherwise agreed by the Parties.

**Article 46.3** The agreed Guaranteed Performance and, as the case may be, Minimum Performance are set out in Article 46.3. Performance Tests are those tests set out in Article 46.3 required to demonstrate the achievement of the Guaranteed Performance. Unless otherwise agreed by the Parties, all Performance Tests shall be performed and completed prior to Taking-Over.

The Contractor shall provide the Employer with the Contractor’s methodology for conducting the Performance Test(s) no later than………..;

**Article 46.10** Performance-related liquidated damages shall be specified in an Appendix to 46.10 (if any), and shall be of a maximum amount of ………….

**Article 46.14** To the extent that the performance of the Works is better than Guaranteed Performance, the Contractor shall/shall not[[5]](#footnote-5) be entitled to a bonus calculated in accordance with the Appendix to Article 46.14 (if any). If no option has been chosen, by default it shall be deemed that the Contractor is not entitled to any bonus.

**Article 47.4** The Contractor’s access to the Site, to areas of land necessary for preparation off site of part of the Works, and/or the Works after Taking-Over shall be governed by Article 47.4 .

**Article 47.5** If the Works or any Section are to be completed in more than one step or phase, then Article 47.5 or such other reasonable stepped or phased schedules as established by agreement, shall apply.

**Article 47.6** When the Contractor believes that it has met the Taking-Over Conditions of the Works or any Section in accordance with Articles 47.1 and 47.2, it shall deliver to the Employer a Notice thereof in the form set out in Article 47.6 and otherwise any other reasonable form if none is set out.

**Article 47.7** The period in which the Employer shall either deliver to the Contractor a Certificate of Completion or a Notice that in his opinion Completion of a Section of the Works has not been achieved shall be ……………………………………. Days after receipt of Contractor’s Notice of Completion for such Section.

**Article 48.**1 The assessment procedures after Taking-Over are set in Article 48.1. For all procedures, the principles are set out in Appendix….. If there are no such procedures set out in Appendix….., then Article 47.4 shall apply.

**Article 49.1** By exception to Article 49.1. of the General Conditions, the Defect Correction period shall be of … months.

**Article 49.13** Final Acceptance shall occur when:

(a) The Works and Punch List items, (if any) have been completed in accordance with the Contract;

(b) The Defect Correction Period has expired and the Contractor’s obligation under Article 49 has been carried out;

(c) The final as-built drawings and manuals (if any) have been delivered; and

(d) The conditions for Final Acceptance, as set out in Article 49.13 are met.

**Article 51.3** The maximum of the aggregate liability under this Contract shall be ……………….. % of the Contract Price.

**Article 54.2** The number of unworkable Days due to inclement weather the Parties have allowed for in the Time to Taking-Over shall be … Days.

**Article 55.8** The minimum number of Days to give Notice of termination of this Contract shall be ……………………….. Days.

**Article 62.1** The Employer has advised the Contractor and the Contractor accepts that the party providing finance for the Project is granted a security interest in the Project and will have a step-in right under the terms and conditions of the assignment agreement which the Parties countersign for identification on the date of signature of this Contract.

**Article 64.2** The Parties do/do not[[6]](#footnote-6) agree to appoint a CDB at the time of entering into the Contract. If the Parties agree to appoint a CDB at the time of entering into the Contract, the number of members of the CDB shall be ….. If the Parties do not agree to appoint a CDB at the time of entering into the Contract, or have not selected an option in this Article, then they may at all times decide to appoint a CDB for the avoidance and/or resolution of any Dispute by way of entering into a CDB Agreement according to the ICC DB Rules. In that case, Articles 64.3 to 64.9 will apply with all necessary changes.

**Article 64.5** The Parties do/do not[[7]](#footnote-7) agree to have Disputes with a monetary value of less than two (2) million Euros or equivalent of such amount in the agreed currency resolved between them through the Expedited Procedure as per Article 30 of the ICC Rules of Arbitration.

If no option has been chosen, by default it shall be deemed that the Parties have not opted out of the expedited procedure provisions of the applicable ICC Rules of Arbitration.

# SECTION II - General Conditions of Contract

# CHAPTER 1 GENERAL AND PRELIMINARY ARTICLES

Article 1 Definitions

1.1 As used in this Contract, the following terms shall have the meanings set out below. Words indicating persons or parties include corporations, and other legal entities, as well as unincorporated joint ventures except where the context requires otherwise.

“**Advance Payment Guarantee**” means the guarantee (if any) provided under Article 10.1, and which may form an Appendix hereto.

**“Affiliate Companies”** means in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

**“Appendix”** or **“Appendices”** means the appendix or appendices to the Contract referred to throughout these Conditions of Contract.

**“Article”** means any article or sub-article of these Conditions of Contract as the context requires.

**“Assumptions”** means the statements contained in the document referred to in the Special Conditions regarding the reasonable conclusions derived from data provided in writing by the other Party and setting out non-provided data (if any) that are necessary for the execution of the Works.

**“Breach of Contract”** means any omission or failure on the part of any of the Parties to fulfil any of its obligations or duties under the Contract.

**“Breach of Warranty”** means any discrepancy, whether intentional or not, failing or non-conformity in respect of a Warranty.

**“Business Day”** means, unless otherwise agreed, a Day on which banks are open for general business in the Country or, in the case of a local Business Day, in the country in question.

**“CDB”** means the Combined Dispute Board appointed under this Contract.

**“Certificate of Completion”** is a certificate issued for Completion of the Works or part thereof, as the case may be.

**“Certificate of Final Acceptance”** is the certificate issued according to Article 49.14.

**“Completion”** means the moment the Works or any part thereof, as the case may be, have been physically completed to the extent they are ready to be commissioned and “**Completion of Construction**” and “**Mechanical Completion**” shall have the same meaning.

**“Conditions of Contract”** means these General Conditions of Contract as may be amended by the Special Conditions of Contract.

**“Contract”** means the Main Contract Form, including the Special Conditions and these General Conditions of Contract together with all Appendices and subsequent alterations and additions agreed in writing.

**“Contract Date”** means the Date the Contract becomes effective as set out in Article 2.

**“Contract Price”** has the meaning set out in Article 40.1.

**“Contractor”** means the legal or natural person(s) named as Contractor in the Contract, its agents, assignees agreed by the Employer and the legal successors in title to this or these person(s).

**“Contractor’s Group”** means the group composed of Contractor, its employees, agents and representatives, including the employees, agents and representatives of its suppliers, contractors, consultants, Subcontractors, co-owners and Affiliated Companies.

**“Contractor’s Documents”** mean all documents, software and any other form of recording and transferring of information submitted or to be submitted by the Contractor under this Contract to the Employer, including, without limitation, the construction documents, licences and permits, operation and maintenance manuals and as-built drawings, all as specified in this Contract as being part of the Work, or, if there is no such specification, as may be identified by referring to the requirements of Article 33.

**“Contractor’s Equipment”** means the Equipment owned by the Contractor and provided for the Works and/or as may be set out in an Appendix.

**“Contractor’s Personnel”** means persons in the employ of or seconded to the Contractor and acting for it, or other persons authorised to act for the Contractor, in relation to the Works.

**“Contractor’s Variation Proposal”** has the meaning set out in Article 35.6.

**“Cost”** includes any element of reasonably incurred and documented expense plus Overheads.

**“Country”** means the country where the Site is located.

**“Day”, “Days”** or **“Date/s”** mean, unless otherwise agreed, references to a 24-hour calendar day in the Gregorian calendar with "**year**" meaning 365 days under that calendar, unless it is a 366-day leap year. Periods of time are calculated from the Day after receipt of the relevant instruction or other action requiring an activity to commence.

**“Defect”** means a visible, hidden or latent non-conformity with the Employer’s Requirements, in the Works.

**“Defect Correction Period”** means the period for correction of Defects as established under Article 49.

**“Delay Damages”** means the monetary compensation paid under Articles 37 or 38.4.

**“Design”** includes sketches, schemes, models, plans, drawings, technical criteria or standards, and descriptions with aesthetic or functional elements for making up a building, machine, facility or other object or process intended for the Works. Design also includes, without limitation, performance descriptions, specifications or requirements.

**“Employer”** means the legal or natural person(s) named as employer in the Contract, its agents, assignees agreed by the Contractor and the legal successors in title to this or these person(s). If the Employer named in the Contract does not have separate legal personality under the laws governing its status, the Employer includes any organisation of which it is a part that does have separate legal personality.

**“Employer’s Group”** means the group composed of Employer, Employer’s Affiliated Companies, Employer’s other contractors of any tier and/or Employer’s consultants, employees and/or agents.

**“Employer’s Equipment”** means any Equipment provided by the Employer for the Works and/or as may be set out in an Appendix.

**“Employer’s Personnel”** means persons in the employ of or seconded to the Employer and acting for it, or other persons authorised to act for the Employer in relation to the Works.

**“Employer’s Requirements”** means the document(s) prepared by, or on behalf of, the Employer setting out the comprehensive Employer’s requirements for the Works, at the signing of the Contract, in the form of an Appendix and any subsequent Variations thereto. The Employer’s Requirements include, without limitation, documents specifying the purpose, scope, time frame for completion, and/or basic and/or other technical criteria, and/or conceptual elements for the Works.

**“Equipment”** means all appliances, machinery, vehicles, tools or other things required by the Contractor for the execution and completion of the Works and the remedying of any Defects. Equipment excludes, however, Temporary Works, Plant, materials and any other things intended to form, or forming, part of the Works.

**“Final Acceptance”** has the meaning set out in Article 49.13.

**“Force Majeure”** has the meaning set out in Article 54.

**“Good Practice”**means the exercise of that degree of skill, diligence, prudence, foresight and that would reasonably and ordinarily be expected from a professional person under circumstances the same as, or similar to, the Project.

“**Gross Negligence**” means the conscious or reckless disregard for the need for, and the use of, Good Practice.

**“Guaranteed Performance”** means the performance levels of the Works (if any) that are guaranteed by the Contractor to be achieved during the Performance Tests as may be set out in an Appendix to the Special Conditions to this Contract.

**“Hazardous Materials”**means any hazardous or toxic substance or hazardous or toxic waste, contaminant, or pollutant as defined in or regulated by the law governing such matters.

**“Instruction”** is an Employer’s requirement expressed in writing after the Contract Date, that the Contractor shall do or shall refrain from performing a task, or shall perform tasks at a different time. An Instruction may or may not be a Variation.

**“Invoice Period”** means, if not otherwise defined, a calendar month commencing on the first Day of the month and ending on the last Day of the month. The first Invoice Period shall begin on the Day the Start Date and end on the last day of that month.

**“Main Contract Form”** means the main contract form, including the Special Conditions of Contract, to which these General Conditions of Contract Appendices are supplemental.

**“Method Statement”** means a statement or statements submitted by the Contractor describing how the Contractor proposes to meet the Employer’s Requirements, detailing how the Contractor intends to deploy Plant, personnel, material, Equipment and other resources to accomplish the Works in the Time to Taking-Over.

**“Minimum Performance”** means the minimal level of performance of the Works (if any) to be achieved during Performance Tests, as are set out in this Contract.

**“Negligence”** means any act or omission which is not in line with Good Practice.

**“Notice”** has the meaning set out in Article 63.1.

**“Notice to Proceed”** means the Notice given under Article 36.2.

**“OSS”** has the meaning set out in Article 34.5.

“**Overheads**” means administrative costs which cannot be directly attributed to the execution of the Works under the Contract and which are expressed in a percentage in the Special Conditions (or if not stated in the Special Conditions, a reasonable percentage).

“**Payment Certificate**” means an application for payment submitted in the form set out in an Appendix to Article 42.3 or, if there is no such Appendix, in a form established by the Contractor and the Employer, which application is subsequently approved in writing by the Employer and sent to the Contractor.

**“Performance Tests”** means those tests (if any) to be performed, specified as such in the Contract, in accordance with an Appendix (if any).

**“Plant”** means any and all apparatus, machinery or devices (if any) intended to form, or forming, part of the Works.

**“Profit”** meansaprofitmargin expressed as a percentage in the Special Conditions (or if not stated in the Special Conditions, a reasonable percentage)

**“Project”** means, if the context so requires, the larger project (if any) the Employer is developing, of which the Works are a part.

**“Punch List”** has the meaning set out in Article 47.10.

**“Reference Date”** means, in the case of a bidding procedure without negotiations, the Date twenty-eight (28) Days prior to the latest Date for the submission of Tenders, and, in the case of a negotiated contract, the Date twenty-eight (28) Days prior to the first signature on the Contract.

**“Representative”** means the physical person(s) appointed from time to time by the Contractor or the Employer under Article 18 to act as such under the Contract.

**“Rules”** has the meaning set out in Article 64.2.

**“Schedule of Contractual Dates”** is the schedule (if any) set out in or in accordance with Article 38.1.

**“Section”** means any part of the Works or Site as the context requires.

**“Site”** (or **“Sites**” as the context requires) means the land or other places made available to the Contractor by or on behalf of the Employer and on, under, in or through which the Works are to be constructed. The Site does not include places the Contractor has taken possession of or has access to for the purposes of the Works, but which were not made available to the Contractor by or on behalf of the Employer.

**“****Special Conditions”** means the annexure to the Main Contract Form described as Section I – Special Conditions and referred to throughout these General Conditions of Contract, which Special Conditions describe particular amendments to these General Conditions of Contract.

**“Start Date”** means the Date determined in accordance with Article 36.2.

**“Subcontractor”** means any person named in the Contract as a Subcontractor, or any person appointed as a Subcontractor, for a part of the Works, and the legal successors in title and/or interest to this or these person(s).

**“Taking-Over”** means the moment when the Works are or are deemed to be provisionally accepted by the Employer under Article 47, and “**Provisional Acceptance**” shall have the same meaning. Taking-Over can be accomplished by Section, if the Parties agree, or shall occur in fact if the Employer actually takes possession of a Section of the Works.

**“Taking-Over Certificate”** means the Certificate(s) issued under Article 47.7, specifying that the Taking Over Conditions of the Works, or section thereof, as the case may be, have been achieved.

**“Taking-Over Conditions”** has the meaning set forth in Article 47.2.

**“Taking-Over Date”** has the meaning set forth in Article 47.1.

**“Temporary Works”** meansall temporary works of every kind required in or around the Site for the construction and/or completion of the Works and the remedying of any Defects.

**“Tender”** means the Contractor’s tender (Contractor’s offer to execute the Works) and any additions or modifications to that document or its appendices.

**“Time Schedule”** means the schedule provided for under Article 38.4.

**“Time to Taking-Over”** means the number of Days the Contractor has to achieve Taking-Over of the Works or particular Sections of the Works, as this time may be amended in accordance with the Contract.

**“Turnkey”** means the obligations of the Contractor to design, procure, supply, execute, install, commission, test and hand over, including the remedying of potential Defects, on time and within the agreed Contract Price, the Works as defined by the Employer as to scope, purpose, performance and the functions of the Works as set out in the original Employer’s Requirements and the Assumptions and as amended in accordance with the provisions of the Contract.

**“Variation”** includes any change to the Project or Works, or their location, or the time in which they or any part of them are to be constructed, including, without limitation, any change to the type, form or composition of materials to be used, sequence(s) or timing of construction, performance or other specifications, or any changes relating to the Design.

**“VAT/GST”** means the applicable value-added tax, goods and services tax or equivalent consumption tax charged on any goods and/or services (usually described as a percentage of the selling price) howsoever described.

**“Warranty”** means a written undertaking or statement in the Contract or an undertaking which is implicit under the applicable law or Good Practice that a certain fact in relation to the Contract or Works is or shall be as it is stated or promised to be.

**“Week”** means a period of seven (7) Days.

**“Works”** means the physical works to be completed by the Contractor under this Contract and the associated supplies and services, including software as appropriate.

Article 2 Entry into force of the Contract

2.1 This Contract shall become effective and be binding on the Parties on the Date it is signed by both Parties or on agreed effective date (the “**Contract Date**”). The responsibility for, and expense of stamp duties and similar charges (if any) imposed by law in connection with the signature of this Contract shall be borne by the Employer.

Article 3 Good faith and fair dealing

3.1 In performing their obligations under this Contract the Parties shall act in accordance with the principles of good faith and fair dealing under or in connection with the Contract. The provisions of this Contract and the conduct of the Parties during the pre-contractual phase shall be interpreted in accordance with the principles of good faith and fair dealing.

3.2 Good faith and fair dealing in this context includes, without limiting this duty, the duty to co-operate, to not intentionally mislead, and to carry out the Contract to the mutual benefit of both Parties, accepting that each is entitled to achieve its reasonable objectives, and requires the Parties to:

(a) Provide in a forthwith information relevant to the performance of the Contract, subject to obligations of confidentiality;

(b) Co-operate and consult in such manner as necessary to achieve the completion of the Works;

(c) Warn forthwith of the potential consequences, including cost consequences, of proposed actions or other matters that will affect the Parties’ obligations;

(d) Avoid unnecessary interference in each other’s activities; and

(e) Respond to enquiries in a forthwith manner, unless the solution to the inquiry will impede the progress of the Works.

3.3 Whenever consultation is required by this Contract, the Parties shall exchange their opinions prior to any final decisions being taken about the matter requiring consultation.

Article 4 Language of the Contract

4.1 Unless otherwise specified in the Special Conditions or otherwise in the Contract, the ruling language of this Contract and any disputes or differences decided in relation to it, is English.

4.2 If there are versions of any part of the Contract that are written in more than one language, the version that is in the ruling language shall prevail.

4.3 Unless otherwise agreed in writing, the language for day-to-day communications between the Parties on or off the Site shall be the ruling language.

4.4 Minor communications that do not need to be recorded may be in any language.

Article 5 Applicable laws

Governing substantive law

5.1 This Contract shall be governed by and construed in accordance with the law(s) agreed by the Parties in the Special Conditions. In the absence of such agreement, this Contract shall be governed by and construed in accordance with the law(s) of the Country. Such choice of law shall refer only to substantive law and shall not include its conflict-of- law rules.

Laws and regulations of the Country

5.2 The Parties shall, in performing the Contract, comply with all applicable laws in force in the Country.

Article 6 New or changed laws, standards, regulations, etc.

6.1 If there is a change of applicable laws, regulations, agreed standards, or their interpretation after the Reference Date, which may affect the performance of the Contract, either Party shall give Notice to the other of the change as soon as they are published.

6.2 In the event that such change was not reasonably foreseeable by the Contractor at the Reference Date, and:

(a) compliance is required, and

(b) compliance increases the Cost of the Works and/or the time of execution of the Works

the Contractor shall be entitled to a Variation and the corresponding effect in time and Cost.

Article 7 Interpretation of the Contract

7.1 The documents forming the Contract are to be read together and interpreted as mutually explanatory of one another. If there is a direct inconsistency in specific obligations, then for the purposes of interpretation, and unless otherwise agreed, the priority of the Contract documents shall be in accordance with the following sequence:

1. The Main Contract Form
2. The Special Conditions and Articles;
3. The General Conditions of Contract,
4. The Employer’s Requirements;
5. The Tender;
6. Any other documents forming part of the Contract.

7.2 The above sequence of interpretation shall be adopted only to the extent required to deal with an inconsistency or ambiguity. In the event of conflicting terms, specific terms agreed take priority over general statements, and terms in Contract documents created at a later Date govern over terms in earlier Contract documents. Subject to the foregoing, the terms of the groups of documents set out in the sub-sections of Article 7.1 all have equal importance within their group.

7.3 Unless specified elsewhere in the Contract, the words **“reasonable efforts”** shall mean, with regard to a given obligation, the efforts that a determined and reasonable Party would use to comply with that obligation as promptly as reasonably possible.

Article 8 Assumptions; statements about measurements

8.1It is agreed that when either Party makes or has made statements of measure, whether distances, dimensions, strengths, qualities, quantities, volumes or such, these statements or figures are taken as statements of fact. Each Party must make all reasonable efforts to ensure that any such statement is accurate*.*

Article 9 Obtaining permits, planning and other permissions

9.1 Unless otherwise set out in the Special Conditions, each Party shall obtain at its own expense all permits, licences or approvals from all local, state/provincial or national government authorities or public service undertakings, which are required to be obtained by it in its name and which are necessary for the execution of the Works, including those that are required for the performance by both the Contractor and the Employer of their respective obligations, materials under the Contract, and those required for the importation of the Contractor’s Equipment and the Plant into the Country.

9.2 Each Party shall, at the reasonable request of the other Party, assist the other Party at its own expense in a timely and expeditious manner in obtaining permits, licences or approvals, which are required for the performance of any part of the Works, for delivery (including clearance through customs) of Plant, materials and Contractor's Equipment, and for the completion of the Works. Such requests may also include requests for assistance in applying for any necessary government consent to the export of Contractor's Equipment when it is removed from the Site.

Article 10 Guarantees, bonds or other securities

10.1 To the extent provided in the Special Conditions or elsewhere in the Contract, each Party shall provide (at its own expense) the guarantee(s), bonds or other securities required under the Contract.

10.2 Unless otherwise agreed, each Party shall deliver any guarantee(s), bonds or other securities to the other Party within twenty-eight (28) Days after the Contract Date. Each such security shall be issued by an entity and from within a country (or other jurisdiction) acceptable to the other Party, and shall be in the form set out in the Special Conditions (if any), or as otherwise agreed by the Parties.

10.3 Unless otherwise agreed in the Special Conditions, all guarantees and counter-guarantees under this Contract shall be subject to the Uniform Rules for Demand Guarantees (URDG) in the most recent version at the Contract Date, as they are current at the time of the signing of this Contract, including, *inter alia*, its extend or pay provisions and the requirement to be issued by a AA or higher-rated bank.

Article 11 Demands under guarantees, bonds or other securities

11.1 Any Party who will have made a payment demand under any guarantee, bond or other security when it was not entitled to do so or when the value of the payment demand materially exceeded such Party’s proper entitlement, will be obliged to compensate the other Party for all damages, losses and expenses (including legal fees and related expenses) caused to them by such payment demand.

11.2 Each Party shall endeavour to return the guarantee(s), bonds or other securities to the other Party within twenty-one (21) Days after the security expires, and/or when the Contractor has become entitled to receive the Certificate of Final Acceptance. All securities howsoever described shall be invalid, null and void on the Date that they should have been returned, whether returned or not.

Article 12 No agency – independent contractor

12.1 The Parties agree that neither Party will perform any act or make any statement to any person to the effect that it is acting or has acted under this Contract as agent for the other Party.

12.2 The Contractor shall be an independent contractor with respect to the Project, each of its parts, and the Works, and neither the Contractor nor its Subcontractors nor the employees of either shall be deemed to be agents, representatives, employees or servants of the Employer in the performance of the Works, or any part thereof, or in any manner dealt with herein.

# CHAPTER 2 THE PARTIES' OBLIGATIONS

Article 13 The Contractor’s general obligations

13.1 The Contractor’s obligation to complete the Works on a “Turnkey” basis shall mean: to design, procure, supply, execute, install, commission, test and hand over, including the remedying of potential Defects, on time and within the agreed Contract Price, the Works as defined by the Employer as to scope, purpose, performance and the functions of the Works as set out in the original Employer’s Requirements and the Assumptions and amendments in accordance with the provisions of the Contract.

13.2 The Contractor shall, with due diligence, complete the Works on a Turnkey basis. When completed, the Works shall be fit for the purposes for which the Works are intended as specifically defined in the Contract.

13.3 The Contractor shall, in accordance with the Contract, provide all superintendence, labour, services, Plant, materials, Contractor's Equipment, Temporary Works and all other things, whether of a temporary or permanent nature, required in and for such design, procurement, supply, execution, commissioning, testing and Completion of the Works and dealing with any Defects therein.

13.4 Unless otherwise agreed, the Contractor shall obtain all import permits or licences required for any part of the Plant or Works within the time stated in the Contract or, if not so stated, in reasonable time having regard to the time for Delivery of the Plant and the time for Completion or as agreed by the Contractor; Unless otherwise agreed, the Contractor shall pay all customs and import duties arising from the importation of Plant into the country in which the Plant is to be erected and deliver all materials, Plant and the like under current Incoterms as Delivery Duty Paid: “DDP”.

13.5 The Contractor shall procure with due diligence the guarantees it shall be obliged to provide to the Employer under the Contract, so that such guarantees can be provided to the Employer within fourteen (14) Days from the Contract Date.

13.6 The Contractor shall be responsible for its own construction activities on the Site, and the adequacy and stability of its Site operations, including Temporary Works. It shall co-ordinate at its own expense its activities with those of other contractors, in order to avoid disruption, to the extent (if any) specified in the Employer’s Requirements.

13.7 The Contractor shall, as specified elsewhere in the Contract or as reasonably requested or instructed by the Employer and where it does not materially affect the Contractor’s own work, allow appropriate opportunities for carrying out work to:

(a) The Employer’s Personnel;

(b) Any other contractors employed by the Employer; and

(c) The personnel of any public authorities;

who may be employed in the execution on or near the Site of any work not included in the Contract.

13.8 Any request or instruction from the Employer for co-operation that materially affects the Time to Taking-Over or any intermediate delay and/or Cost shall give an entitlement to an extension of the Time to Taking-Over or intermediate delay and additional Cost reimbursement by means of a Variation.

13.9 If co-operation could include the use of Equipment, Temporary Works or access arrangements that are the responsibility of the Contractor, the Contractor shall be entitled to refuse such co-operation or ask for reasonable payments in respect of the Equipment or services where this hinders the Contractor’s performance.

13.10 Unless otherwise provided, to the extent that the Employer’s other contractors or the Employer’s own personnel delay the Works, those actions shall be regarded as Variations.

Article 14 The Employer’s general obligations

14.1 The Employer shall pay the Contract Price as varied in accordance with the Contract and perform all prerequisites for such payment, in particular review any payment applications by the Contractor and approve to the Contractor the amount due and payable to the Contractor with respect to each application for payment within the period foreseen in the Contract or, if no such period has been specified, within thirty (30) Days.

14.2 Unless otherwise agreed, upon request by the Contractor and within twenty-one (21) Days of such request, the Employer shall evidence to the reasonable satisfaction of the Contractor that financial arrangements such as, but not limited to, guarantees, bonds or other securities, have been made and are maintained which will enable the Employer to pay the Contract Price at any time after the Start Date. If such evidence is not submitted within the aforesaid period, the Contractor may withhold its performance until such evidence is provided. If this period exceeds the number of Days as stated in the Special Conditions or, failing such statement, a reasonable time period, the Contractor may terminate the Contract for Breach of Contract by the Employer.

14.3 The Employer’s responsibilities include the obligation to cooperate at any time in good faith with the Contractor in order to enable the Contractor to perform its duties, as set out in this Contract, and not to hinder or delay the Contractor in the Contractor’s performance of the Works.

14.4 The Employer shall be responsible, to the extent necessary for the purposes of the Works, for acquiring and providing legal and physical possession of the Site (or Sections of it) and access thereto, and providing possession and use of and access to all areas reasonably required for the proper execution of the Works by the Contractor, including all requisite rights of way and access routes, utilities, such as water, electrical power, etc., if applicable, with the Articles and other terms of the Contract and shall give all rights of access thereto no later than the Date or Dates set out in this Contract, or, if there are no such Dates, the reasonable Dates which the Contractor provides to the Employer with reasonable advance Notice.

14.5 When the Contract provides for any Performance Tests or any other tests on Site, the Employer shall, unless otherwise expressly agreed in writing, provide free of charge utilities, such as water, electrical power, etc., skilled and unskilled labour, materials, apparatus, instruments and feedstocks as may be requisite and as may reasonably be requested by the Contractor to enable the tests to be carried out effectively.

14.6 Unless otherwise stated in the Special Conditions, the possession is to be absolute and not hindered by the Employer or other contractors associated with the Employer and/or the Project, free from obstacles and barricaded with statutory approvals, permits and licences in place. If the Contractor suffers delay and/or incurs Cost from failure on the part of the Employer to acquire and provide such legal and physical possession of, and/or right of access to, the Site and all other areas reasonably required, the Contractor shall give Notice to the Employer. This shall be regarded as a Variation.

14.7 The Employer shall reasonably assist the Contractor in ascertaining the nature and extent of, and to comply with, any laws, regulations, orders or bylaws of any local or national authority having the force of law in the Country or which may affect the Contractor in the performance of his obligations under the Contract. The Employer shall, if requested, provide copies thereof and the Contractor shall reimburse the costs thereof.

14.8 The Employer shall provide information, data, drawings and documents as required by the Time Schedule, or if there are no Dates specified in the Time Schedule, in a timely manner, to enable the Contractor to commence and complete the Works as per the Time Schedule.

Article 15 Co-operation with other Contractors and Co-ordination of Activities

15.1 The Contractor shall be responsible for its own construction activities on the Site, and the adequacy and stability of its Site operations, including Temporary Works. The Employer shall co-ordinate at its own expense the Contractor’s activities with those of other contractors (except for entities within the Contractor’s Group).

15.2 The Contractor shall, as specified elsewhere in the Contract or as reasonably requested or instructed by the Employer and where it does not disrupt the Contractor’s own work, allow appropriate opportunities for carrying out work to:

(a) the Employer’s Personnel;

(b) any other contractors employed by the Employer; and

(c) the personnel of any public authorities;

who may be employed in the execution on or near the Site of any work not included in the Contract.

15.3 Any request or instruction from the Employer for co-operation not provided for under Subclause 15.2 shall entitle the Contractor to an extension of the Time to Taking-Over and, if applicable, additional expense by means of a Variation.

15.4 If co-operation could include the use of Equipment, Temporary Works or access arrangements that are the responsibility of the Contractor, the Contractor shall be entitled to refuse such co-operation or ask for reasonable payments in respect of the Equipment or services.

15.5 Unless otherwise provided, to the extent that the Employer’s other contractors or the Employer’s own personnel delay the Works, those delays shall be compensated as Variations to the Contract Price and extensions of the Time to Taking-Over.

Article 16 Quality assurance

16.1 The Contractor shall put into place and provide to the Employer a quality assurance system to demonstrate compliance with the requirements of the Contract within twenty-eight (28) Days of the Start Date. The system shall be in accordance with any details stated in the Contract. If there are no such details, the Contractor shall implement a system that is appropriate in the Country, for demonstrating compliance with the Contract.

16.2 Compliance with the quality assurance system shall not relieve the Contractor of any of its duties, obligations or responsibilities under the Contract.

16.3 Without prejudice to the Contractor’s obligations under this Article 16, the Employer shall be entitled to audit at any time the Contractor’s, or its Subcontractor’s, compliance with the quality assurance system, provided that such an entitlement does not impede the progress of the Works.

Article 17 Staff and labour

Employment of Contractor’s staff and labour

17.1 Unless otherwise specified in the Employer’s Requirements, the Contractor shall be responsible for the employment of all its staff and labour whether local or otherwise, for the purpose of executing the Works and the performance of the Contract and shall be responsible where relevant for their payment, accommodation, supply of food and transport and any other matters specified in this Contract.

17.2 The Contractor shall observe the conditions of labour, comply with all relevant labour laws, including those relating to employment, working hours, health, safety, social welfare, immigration and emigration that are relevant and applicable in the Country and shall pay its staff and labour wages consistent with those established or, if not established, practised for the trades and industries of the Country.

17.3 The Contractor shall keep full records of its staff and labour employed on the Site and shall make these available to the Employer upon request.

Facilities for staff and labour

17.4 The Contractor shall provide and maintain the facilities for its own staff and labour.

17.5 If the Employer or its agent(s) require facilities for Employer’s staff and labour, and no such requirement is found in the Contract, the Cost of providing facilities for the Employer or its agent(s) shall be a Variation to the Contract. In such cases the Contractor shall not proceed to provide facilities without the specific written authorisation of the Employer.

Health, welfare of staff and labour

17.6 The Contractor shall provide and maintain the health facilities specified in the Contract (if any). Whether or not such facilities are specified and, in any event, the Contractor shall be responsible for ensuring that adequate medical facilities are provided for and available. The Contractor shall collaborate with local health authorities and shall take the necessary measures to ensure the welfare, hygiene and prevention and control of epidemics amongst the Contractor’s staff and labour.

Customs of the Country

17.7 Each Party shall have due regard and respect for religious practices, Days of rest and other recognized customs of the Country.

Disruptive conduct

17.8 Each Party shall be responsible for taking all reasonable measures to prevent unlawful, riotous or disruptive conduct amongst its staff and labour.

Subcontractors

17.9 All of the relevant subcontracts involving work on the Site shall contain the provisions of this Article 17, and each Party shall in any event ensure and be responsible for observance of the provisions of this Article by its Subcontractors.

Article 18 Representatives of the Parties

18.1 Each Party shall appoint by Notice to the other Party a Representative within seven (7) Days of the Contract Date.

18.2 The Parties’ Representatives shall each have the appropriate professional qualifications or experience necessary for each of them to carry out their duties and exercise the authority specified in or required of them under the Contract in a competent and professional manner.

18.3 The Parties’ Representatives shall each be appointed to spend the majority of their time for the purpose of the execution of the Works and the performance of the Contract. This may be done on or off the Site.

18.4 The Parties’ Representatives shall, unless parts of their authority are specifically reserved in advance in writing by the Party concerned, be deemed to have been given full authority for all of their actions under the Contract and any such actions shall be binding on the Party that employs them.

18.5 The Parties’ Representatives may from time to time assign duties and delegate authority vested in them under the Contract to assistants (including if necessary site representatives) employed by the Party for the purpose of the Contract and may at any time revoke such assignment or delegation. Such assignment, delegation and revocation shall be confirmed, if requested, by Notice to the other Party with a copy to the other Party’s Representative. Unless otherwise stated in advance and in writing, such duties and authorities carried out and/or exercised by such assistants shall be deemed to have been carried out and/or exercised by the Party’s Representative.

18.6 Unless otherwise agreed, the Parties’ Representatives and their assistants shall be fluent in speaking and writing the ruling language.

Article 19 Each Party’s duty to notify

19.1 Without prejudice to the general scope of Article 3 and any specific review procedures set out elsewhere in the Contract, each Party shall diligently and promptly review the scope of its obligations and the other Party’s documents prior to the Start Date and thereafter as circumstances require until Taking-Over. Each Party shall give prompt Notice to the other Party of any error found in the other Party's documents or any other items of reference supplied by the other Party. In the event that an Employer’s error, or involves a change or modification to the Contractor’s Documents or the Works, this shall constitute a Variation.

# CHAPTER 3 THE EXECUTION OF THE CONTRACT

Article 20 Scope of the Contract Price and Works

20.1 Both Parties confirm that the Contract sets out the whole of the scope of work of both Parties and the Contract Price.

Article 21 Setting out on the Site

21.1 The Contractor shall set out the Works in relation to original points, lines and levels of reference set out in the Special Conditions……… or, if not so specified, given by the Employer as agreed, or otherwise in writing within twenty-eight (28) Days of the Contract Date.

21.2 Unless otherwise agreed in writing, errors in setting out or failure to provide accurate set-out data that affect the performance of the Works shall be rectified. Errors attributable to the Employer shall be rectified at the Employer’s expense and the Contractor shall, if delayed or put to additional expense, be entitled to an extension of the Time to Taking-Over and/or payment as a Variation. The Contractor shall rectify, at its expense, any error attributable to the Contractor in the positions, levels, dimensions or alignment of the Works.

Article 22 Site information for the Contractor’s Design and use

22.1 The Employer shall be responsible for information relating to the Site and its physical elements at the time the Contractor takes possession of the Site. The Contractor shall have informed itself in an objectively reasonable way about the risks it will face.

22.2 Accordingly, in order to allow the Contractor to be acquainted with the potential risks for the construction of the Works at the Site, the Employer shall have made, make or cause to be made a diligent survey of the Site and its surroundings, including data on subsurface, hydrological and environmental aspects of the Site and environs, and at the time of calling for Tenders, or at least Reference Date, shall make all such data obtained available to the Contractor for its study and use. The Employer shall similarly make available to the Contractor all such data and other information relating to the Site and its surroundings that is or later comes into the Employer’s possession.

22.3 The Contractor shall be considered to have taken such data as made available to it at the Reference Date in accordance with Article 22.2 into account in pricing the Works. The Contractor shall further be considered to have entered into the Contract on the basis of an objectively reasonable examination and interpretation of the data and information relating to the Works provided by the Employer and of information that it could have obtained from a visual inspection of the Site if access to it was available.

22.4 The preceding Article 22.3 shall not apply to sub-surface conditions except to the extent that boreholes and similar information can be taken to be indicative of the quality of the sub-surface materials and, if applicable, hydrological conditions at the place the borehole was made.

Article 23 Unexpected artificial or physical conditions or obstructions

23.1 The Contractor shall notify the Employer if, during the execution of the Works, it encounters on the Site any artificial or physical conditions or obstructions (whether sub-surface or otherwise) that were not reasonably to be expected prior to the submission of the Tender on the basis of the examination of data provided by the Employer under Article 22. If the Contractor has provided design or construction Assumptions prior to or at Tender that include statements of the conditions it expects, such Assumptions, to the extent they were not contradicted by the Employer prior to signing the Contract, will be presumed to be decisive of the issue of whether or not such artificial or physical condition or obstruction was reasonably to be expected, without need to re-determine the reasonableness requirement.

23.2 If as a result of encountering on the Site any artificial or physical conditions or obstructions (whether sub-surface or otherwise, which were not reasonably to be expected, as set out in Article 23.1) the Contractor considers it will incur or has incurred unexpected additional Cost and/or will require additional time to perform its obligations under the Contract, it shall submit proposals to take account of the unexpected artificial or physical conditions or obstructions encountered. If any re-design arising from such proposals is such as to require a significant change in:

(a) The selected construction methods; and/or

(b) The Design; and/or

(c) Resources; and/or

(d) Temporary Works;

the Employer shall, after consulting the Contractor, by Notice determine the appropriate Cost and/or time implications arising from changes to the Method Statement, using the Method Statement and the Assumptions as the basis for such determination, and provisionally adjust the Contract Price and/or revise the Time to Taking-Over accordingly. These adjustments are binding unless and until the Contract Price and/or the Time to Taking-Over are further revised by agreement or under Chapter 13.

Use of the Method Statement to determine the time or cost implications under this Article

23.3 Whenever required by the Employer, or if it wishes on its own initiative to do so in order to ascertain valuations and for assessments of time or cost under this Article 23, the Contractor shall provide details to establish that:

(a) The selected Design, construction methods, resources and/or Temporary Works and the Time Schedule were appropriate to the conditions envisaged in the Assumptions (if any);

(b) The change in the Design, construction methods, resources and/or Temporary Works is/was directly necessitated by the conditions encountered being significantly different than the Assumptions; and

(c) Any revision to the Time Schedule and extension of the Time to Taking-Over sought is directly necessitated by the conditions aforesaid.

23.4 Where, because of the circumstances surrounding the Contract, it is not possible or practicable to follow the requirements of Articles 23.2 and 23.3, the Parties shall endeavour to agree on another appropriate methodology and decide the time and/or Cost implications in any event. If no agreement is reached within twenty-one (21) Days, then either Party may submit the Dispute for resolution in accordance with Chapter 13.

Fossils, mineral deposits of economic interest and items of archaeological interest

23.5 All fossils, coins, mineral deposits of economic interest, articles of value or antiquity and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer who shall deal with them in accordance with the law of the Country. The Contractor shall take reasonable precautions to prevent Contractor’s Personnel or other persons from removing or damaging any of these finds.

23.6 The Contractor shall, upon discovery of any such finding, promptly give Notice to the Employer, who shall issue Instructions for dealing with it. If the Contractor suffers delay and/or incurs Costs, the Contractor shall give a further Notice to the Employer and this shall constitute a Variation in accordance with Article 35.

Article 24 Safety

24.1 Where the Contractor has possession of Sections of the Site, it has the primary responsibility for safety in those Sections. Accordingly, the Contractor shall:

(a) Comply with all applicable safety regulations, and if none are applicable, Good Practice;

(b) Take care for the safety of all persons entitled to be on Site, and not knowingly create hazards for persons not entitled to be on the Site;

(c) Use reasonable efforts to keep the Site and Works clear of unnecessary obstructions so as to avoid danger to all persons;

(d) Provide reasonable fencing, lighting, and security of the Works until Taking-Over; and

(e) Provide any Temporary Works (including roadways, footways, guards and fences) that may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of areas adjacent to the Site.

24.2 The Contractor shall keep records concerning health, safety and incidents and such records shall be made available to the Employer at its request. Details of any accident shall be sent to the Employer as soon as reasonably possible after its occurrence.

24.3 As a part of its obligation to abide by all safety requirements and regulations in force at the Site or in relation to the Works (including safety requirements and regulations reasonably issued by the Employer), the Contractor shall make available all such requirements and regulations to the Contractor’s employees and Subcontractor(s) and instruct them to observe and abide by such requirements and regulations.

24.4 The Contractor shall, when preparing all sub-contracts and purchase orders, include terms requiring that all applicable safety requirements and security regulations for the Site and the Works shall be complied with, and a notice that the terms of all such requirements and regulations are available on request, and shall (when aware of them) notify the Employer of any violations of such requirements and regulations and recommend corrective actions thereof.

Article 25 Public convenience

25.1 The Contractor shall not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

25.2 The Contractor shall use reasonable efforts to prevent any access route (including roads, bridges and water routes) from being damaged by the Contractor’s traffic or by the Contractor’s personnel, save to the extent such damage is caused by reasonable fair wear and tear. These efforts shall include the proper use of appropriate vehicles and routes. Any such damage caused by the Contractor shall be repaired by or on behalf of the Contractor at its own expense.

Article 26 Environmental protection

26.1 The Parties shall take reasonable steps not to damage the environment (either on or off the Site) or cause a nuisance to people or property from pollution, noise or other results of its operations. If such problems seem likely to arise, the Parties shall seek guidance from the local authorities concerned.

26.2 The Parties shall ensure that air emissions, noise, surface discharges and pollution from the construction activities shall not exceed the values indicated in the Contract (if any), in the relevant permits, third party licences or authority approvals, and shall not in any event exceed the values prescribed by applicable laws.

26.3 The Contractor shall not be responsible for any damage, nuisance or other effects to people or property resulting from pollution, noise or any other consequence of pre-existing conditions of the Site, or the activities of other contractors of the Employer or third parties.

26.4 Each Party shall store and handle Hazardous Materials it needs for the Works with care and diligence and pursuant to the applicable law and Good Practice. As between the Employer and the Contractor,

a.) Contractor shall be responsible for the removal, remediation or other appropriate action with respect to any Hazardous Materials which:

i. Were brought on to the Site by the Contractor or any Subcontractor and which are not needed for the Works; or

ii. Otherwise got to the Site as the result of any negligent, wilful, or unlawful act or omission of the Contractor or any Subcontractor.

(b) Employer shall be responsible for the removal, remediation or other appropriate action with respect to any Hazardous Materials present at, on, in or under, or migrating and/or emanating to or from the Site that are required to be removed or remedied by applicable law other than as specified in Clause 26.4(a).

Article 27 Services or supplies to be supplied by the Employer or public utilities

27.1 The Employer shall be responsible for the provision of all power, water and other services or supplies to the Site as set out in the Appendices or elsewhere in the Contract. If no such supplies are specified, the Contractor shall be responsible for these supplies. Unless stated otherwise, the Contractor shall be entitled to recover increases in the Costs of such supplies and services due to inflation of the currency of the Country occurring after the Reference Date.

Payment for services provided by the Employer and public utilities

27.2 If there are services supplied by the Employer, the Contractor shall pay the Employer at cost.

27.3 In the event that the Contractor is delayed or suffers extra Cost in its execution of the Works due to a failure or inadequacy in the supply of services referred to in this Article 27, or services provided by any other service supplier of the Employer, the additional Cost and any delay shall be treated as a Variation.

Article 28 Employer-supplied Plant, materials or Equipment

28.1 The Employer undertakes to provide the items of all goods, materials, Plant and Equipment, buildings and storage facilities in accordance with the provisions of the Contract. The Employer shall, at its risk and Cost, transport such items to the Contractor or the Site, as the case may be, at the time and place specified in the Contract, or upon agreement with the Contractor. Employer-supplied goods, materials or Plant and Equipment are offered as being fit for the purposes indicated in the Employer’s Requirementsand shall be insured by the Employer against damage or loss.

28.2 The Contractor shall visually inspect items upon receipt at such place, and shall notify the Employer of any shortage, defect or default; then, either the Employer shall within reasonable time rectify any shortage, defect or default, or the Contractor (if the Contractor and the Employer so agree) shall carry out such rectification as a Variation. After visual inspection, such items shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve the Employer of liability for any defect or default which could not be identified through visual inspection.

28.3 The Parties undertake, as applicable, to operate the items of Plant and Equipment in accordance with Good Practice and in accordance with the more specific details, arrangements and charges (if any) given in the Contract.

Article 29 Responsibility for shipping and storing goods and materials

29.1 Unless otherwise stated in the Contract, the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all goods and other things to be supplied by or on its behalf and required for the Works, and shall bear all expenses associated with these activities.

Article 30 Ownership of goods, material, Plant and Equipment / liens, trusts and similar claims

30.1 Unless otherwise agreed and as between the Parties, all goods, materials, Plant and Equipment supplied hereunder by or on behalf of the Contractor belong to the Contractor until Mechanical Completion, or are paid for, whichever is earlier. On Mechanial Completion or payment, the title to the goods, materials, Plant or Equipment is transferred to the Employer. Temporary Works and Contractor’s Equipment remain the property of the Contractor. This Article 30.1 does not affect the passing of risk.

30.2 The Contractor warrants good title to all goods, materials, Plant and Equipment provided by it hereunder, and Contractor warrants that title and ownership thereto shall pass and vest in Employer as described in Article 30.1 free and clear of any and all liens, claims, charges, security interests, encumbrances and rights of third parties. The Contractor shall indemnify the Employer against all claims resulting from any Breach of Warranty under this Article. In such case, Articles 34.7 through 34.10 shall apply accordingly, with the necessary changes being made.

30.3 Each Party warrants that prior to termination or the end of the Contract, it shall not itself or through its agents in any way prevent the other Party from dealing with the other Party’s own goods, materials, Plant or Equipment or levy execution against, place liens or trust declarations on or otherwise encumber the goods, materials, Plant or Equipment or allow any of their agents to levy execution against, place liens on or otherwise encumber the goods, materials, Plant or Equipment wherever they may be found.

Article 31 Keeping the Site clear

31.1 During the course of the Works, the Contractor shall clear away and remove from the Site any wreckage, rubbish, Temporary Works or material no longer required.

31.2 Upon the issuance of any Taking-Over Certificate, the Contractor shall clear away and remove from that part of the Site to which such Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave these parts of the Site and the Works in a clean and safe condition.

# CHAPTER 4 DESIGN - RESPONSIBILITY AND MANAGEMENT, VARIATIONS

Article 32 General allocation of responsibility of the Parties for the Design

32.1 The Employer shall be responsible for the Employer’s Requirements, all Design, materials or Plant that it specifies or requires, or for which there is no practical alternative, and the Contractor is responsible for the Tender, and all Design, goods, materials, Plant and Equipment it supplies and uses.

32.2 Without limiting the generality of Article 32.1, each Party shall be responsible for the correctness of the data and information provided by (or on behalf of) that Party, including, without limitation:

(a) Definitions of intended purposes of the Works or any Section of them;

(b) Parameters for the testing and performance of the Works;

(c) Measurements, data and information that cannot be reasonably verified by the other Party, having regard to Costs and time; and

(d) Any Design supplied by any Subcontractor of the Party or by the Party itself.

32.3 The Contractor shall carry out, and in accordance with the Contract, be responsible for the development and execution of the Design. The Employer shall have the right to be informed of the Design development.

32.4 The Contractor warrants that it, its designers and design Subcontractors have the experience and capability necessary for the Design. The Contractor undertakes that the designers used for the Works shall be available to attend discussions with the Employer at all reasonable times until the Design phase is completed.

Article 33 The Design review process

33.1 The purpose of these Design elaboration and review provisions is to ensure that Design development is orderly, and that the Parties’ rights and responsibilities are clearly set out. The Employer has an interest in seeing the Works performed at the initially agreed Contract Price, and the Contractor has an interest in performing the Works in an efficient fashion at a budget within the range originally intended. The following provisions are to be interpreted with these objectives in mind. They shall apply unless it has been expressly stated in the Contract or otherwise agreed that they are not to apply.

Documents the Contractor is to prepare

33.2 The Contractor shall prepare all Contractor’s Documents. Unless otherwise stated in the Contract or allowed on a case-by-case basis, the Contractor’s Documents shall be written in the ruling language. The Contractor’s Documents shall comprise the technical documents specified in the Contract, documents required to satisfy all regulatory approvals, and the documents described below in Articles 33.12 to 33.16.

33.3 The Contractor shall also prepare any other documents necessary to instruct the Contractor’s Personnel.

Submission of specified Design documents

33.4 If the Contract describes the Contractor’s Documents that are to be submitted to the Employer for review, they shall be submitted accordingly. The Contractor is required to submit only those Documents that are specified as requiring review.

Review period

33.5 Unless otherwise stated in the Contract, each review period shall not exceed twenty-one (21) Days or such other period as the Parties shall have agreed in the Special Conditions, calculated from the Date on which the Employer receives Contractor’s Documents stated to be ready for review in accordance with this Article 33. If the Contractor is not notified of a Contractor's Document's review status within the review period, such document is deemed to have been reviewed by the Employer and approved. Approval of design documents by the Employer shall not transfer design liability from the Contractor to the Employer.

Employer Notices in respect of alleged non-compliant Design

33.6 If the Contractor’s Documents are acceptable to the Employer, they shall be returned marked “Reviewed by the Employer” with the Date noted. The Employer may, within the review period, give Notice to the Contractor that a Contractor’s Document fails (to the extent stated and as exactly identified) to comply with the Contract. If the Contractor receives such Notice the document shall be rectified and resubmitted for review again in accordance with this Article 33.

Variations to compliant Design

33.7 The Employer may instruct material changes to the Contractor’s Documents even if the Contractor’s Document complies with the Contract. Such change shall be notified by the Contractor to the Employer and the Variation provisions of Article 35 shall apply.

Work before review

33.8 In principle and unless otherwise agreed between the Parties or instructed by the Employer, no work shall commence before the end of the relevant review period for each and every Contractor’s Document to which the work applies. If the Contractor chooses to commence work in respect of matters described in Contractor’s Documents without review, or prior to the end of the review period, such work is done at the Contractor’s own risk.

Contractor changes to Design

33.9If the Contractor wishes to modify any Contractor’s Document that has previously been submitted for review, the Contractor shall immediately give Notice to the Employer. Thereafter, if the Employer approves such a change, the Contractor shall submit revised Contractor’s Documents to the Employer in accordance with the review procedure pursuant to this Article 33.

Design errors

33.10If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor’s Documents at any time by any party, the Contractor’s Documents and the Works shall be corrected by the Contractor at the Contractor’s expense, notwithstanding any review under this Article 33.

Samples

33.11 If agreed between the Parties or instructed by the Employer as a Variation, the Contractor shall submit samples and relevant information to the Employer for pre-construction review. Each sample should be labelled with its origin and intended use in the Works.

As-built drawings

33.12 The Contractor shall prepare, and keep up-to-date, a complete set of as-built drawings recording the execution of the Works, showing the exact as-built locations, sizes and details of the Works as executed.

33.13 In addition, the Contractor shall supply to the Employer on a Date as set out in the Special Conditions (or to be agreed between the Parties) the final as-built drawings of the Works, if they are different from the documents described in Article 33.12, showing all Works as executed.

Training, operation and maintenance manuals

33.14The Contractor shall carry out the training of Employer’s Personnel in the operation and maintenance of the Works to the extent specified in the Contract.

33.15 Any training in addition to training specified in the Contract requested or needed by the Employer shall be considered to be a Variation.

33.16 At the time of Taking-Over, the Contractor shall supply to the Employer operation and maintenance manuals in sufficient detail for the Employer to operate and maintain the Works.

Article 34 Intellectual property rights

34.1 As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor’s Documents and other Design documents made by (or on behalf of) the Contractor.

34.2 Subject to the confidentiality obligations of Article 57, the Contractor grants to the Employer a non-terminable, transferable, non-exclusive and royalty-free right to copy, use and communicate the Contractor’s Documents for the exclusive purpose of the operation, maintenance and repair of the Works, but not for any other purpose. The Employer shall make the limitations of such right clear and effective in any contract which he may enter into for the operation, maintenance and repair of the Works. The value of the fee for this right is included in the Contract Price.

34.3 This right shall:

(a) Apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works;

(b) Entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor’s Documents for the purposes of completing, operating, maintaining, adjusting, repairing or demolishing the Works; and

(c) In the case of Contractor’s Documents that are in the form of computer programs and other software, permit their use in object code on any computer on the Site and other places as envisaged by the Contract, up to the maximum number of computers stated in the Contract, including replacements of any computers. The Employer is entitled to make one copy of such software for back-up purposes.

34.4 The Contractor’s Documents and other Design documents made by (or on behalf of) the Contractor shall not, without the Contractor’s consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Article 34.

34.5 The Works may contain freeware, shareware or open source software for the use of which no licence fee is charged to Employer (collectively “**OSS**”). With respect to OSS, the Employer hereby accepts the specific licence conditions either being part of the software documentation for the OSS or accompanying the hardware on which the OSS is pre-installed. Upon request of the Employer, the Contractor shall provide a copy of the source code of any part of the OSS, if required by the specific licence conditions applicable to that OSS. To the extent there is a conflict between this Contract and the specific licence conditions for any particular OSS, the terms of the specific licence conditions shall prevail over the terms and conditions of this Contract with regard to that particular OSS.

34.6 As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Employer’s Requirements and other documents made by (or on behalf of) the Employer. The Contractor may, at its expense, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Employer’s consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

Intellectual property infringement indemnity by the Parties

34.7 The Contractor shall indemnify the Employer against all claims of infringement of any patent, registered design, copyright, trade mark or trade name, or other intellectual property right, if the right was protected at the Reference Date in the Country and if the claim or proceedings arose out of the Design, construction, manufacture or use of the Works, unless the infringement (or allegation of infringement):

(a) Was the result of part (or all) of the Works being used by or used on behalf of the Employer for a purpose other than that indicated by, or reasonably to be inferred from, the Contract;

(b) Was the result of part (or all) of the Works being used by or used on behalf of the Employer in association or combination with anything not supplied by the Contractor; and/or

(c) Was the direct result of the Contractor’s compliance with the Design or Instructions of the Employer.

34.8 Where a claim of infringement of intellectual property rights as referred to in Article 34.7 is made against either Party and the Contractor is not liable to indemnify the Employer under that Article, then the Employer shall indemnify the Contractor against such claim and the provisions of Article 34.11 shall apply with the necessary changes being made.

34.9 The obligation to indemnify set out in Articles 34.7 and 34.8 shall be subject to the indemnifying Party’s right to mitigate the potential loss by acquiring directly or indirectly the right to use the relevant intellectual property rights, or by modifying the Works so they no longer infringe such rights or otherwise.

34.10 The Parties’ remedies under this Article 34 shall be in place of and to the exclusion of any other remedies in relation to any infringement of any intellectual property rights as described in this Article, except that the indemnified Party may also terminate the Contract if the infringement is a material Breach of Contract.

Notification and handling of claims for infringement

34.11 Each Party shall promptly notify the other Party of any Contract-related claim of infringement of intellectual property rights made against itself or the other Party by a third party. The indemnifying Party may, at its expense, conduct negotiations for the settlement of such claim, and any litigation or arbitration that may arise from it. The other Party or its representatives shall not make any admission that might be prejudicial to the indemnifying Party, unless the indemnifying Party has failed to take over the conduct of the negotiations, litigation or arbitration within a reasonable time after having been requested so to do.

Article 35 Variations and changes to the Works

Variations – general principles

35.1 The Employer shall have the right to request and subsequently order Variations to the Works from time to time during the performance of the Contract until Taking-Over Certificate(s) has/have been issued with respect to all parts of the Works, or if the Variation is agreed by the Contractor, until the end of the last Defect Correction Period.

35.2 Except to the extent that the Variation was necessitated by the Contractor’s Negligence, the fair and reasonable Cost plus Profit of all Variations shall be taken into account in ascertaining the Contract Price. Variations that arise from the Negligence of the Contractor are to be paid for by the Contractor.

35.3 Other than where it is negligent, the Contractor has no obligation to make a change that is not instructed as a Variation. Irrespective of how a change comes about, the Contractor, is obliged to treat it as a Variation and shall ask for the Employer’s approval of the Variation proposal comprising the elements listed in Article 35.8 and in accordance with the the procedure specified in Articles 35.7 to 35.13. Each Variation, and the combined effect of all Variations, shall be taken into consideration in the assessment of the Time to Taking-Over.

Employer’s right to vary the Works

35.4 Variations may not, without the agreement of the Contractor, consist of the omission of any part of the Works in order to have that work executed by parties other than the Contractor. Where there is a Variation resulting in an omission of a part of the Works, the value of the Variation shall include compensation for under-recovered Overheads and Profit of the Contractor.

Contractor’s right to refuse a Variation

35.5 The Contractor may refuse to carry out any Variation that:

(a) Is unrelated to the Works;

(b) Is not technically practicable;

(c) Has in the reasonable opinion of the Contractor not been the subject of adequate assurances under Article 14.2;

(d) Adversely affects in a material way the Contractor’s ability to fulfil any Contract obligation, including performance guarantees, warranties or Defect obligations; or

(e) Will reduce the safety of the Works.

The Contractor shall have the right to refuse to carry out any Variation of which the aggregate value exceeds the percentage of the Contract Price or the Time to Taking-Over by the number of Days stated in the Special Conditions until such time that the Employer and the Contractor have agreed on all aspects of such Variation.

Contractor-proposed Variations

35.6 The Contractor may at any time propose to the Employer any Variation, including any Variation that, in the Contractor’s opinion, will improve the Works, including, without limitation, the quality, efficiency or safety of the Works, or should reduce the expense to the Employer of executing, maintaining or operating the Works. The Contractor shall outline the foreseen benefits of any proposed Variation, including the financial aspects. Any value of the benefits, unless otherwise agreed, shall be shared equally.

Procedure for Variations

35.7 If the Employer requests a Variation, whether or not the Variation was first suggested by the Contractor, the Employer shall send to the Contractor a Notice describing the Variation. If the Employer so requests, the Contractor shall first give a reasonable estimate of the Cost of preparing a Contractor’s Variation Proposal and the time required.

35.8 After receipt of the Employer’s request for a Variation and unless otherwise agreed, the Contractor shall within twenty-eight (28) Days prepare and submit a proposal (“a Contractor’s Variation Proposal”) comprising the following information:

(a) A description of the proposed Design and work to be executed;

(b) A program for the execution of the Variation;

(c) A proposal for any necessary modifications to the Time Schedule and the Time to Taking-Over;

(d) A price for the Variation which shall either be lump sum or a price estimate comprising quantities and either a list of all-in unit prices or a list of prices per unit subject to the application of a mark-up for Overheads and Profit if such list is determined in the Special Conditions. The Employer may audit the application of indexes (if any) to the adjustments of the prices of such units; and

(e) if the Variation is proposed by the Contractor with reference to Article 35.6: a description of the improvements the Contractor expects the Variation to result in, including where applicable estimates of the reduced expenses and proposed allocation of the value between the Employer and the Contractor, and

(f) Other elements of the Contract likely to be affected by the Variation.

If, however, the Contractor objects to the Variation with reference to its right to refuse under Article 35.5, the Contractor shall, within the same period, instead of a Contractor’s Variation Proposal, submit a Notice to the Employer clearly describing the reasons for this refusal and, if possible, proposing an alternative.

35.9 The Employer shall make its decision on whether or not to proceed with the Variation within twenty-eight (28) Days from receipt of the Contractor’s Variation Proposal or Notice under Article 35.6 and notify the Contractor of that decision forthwith. If the Employer instructs the Contractor to proceed with the Variation, but does not accept the Contractor’s Variation Proposal, the Employer shall state how the Contractor’s Variation Proposal shall be amended and the reasons for and Cost and Time Schedule consequences of the changes to the Contractor’s Variation Proposal. The Contractor shall then be obliged to carry out the Variation, but may refer the dispute over its consequences to be settled in accordance with Chapter 13.

35.10 If the Employer decides not to implement the Variation or if it fails to order the Variation within twenty-eight (28) Days after receipt of the Contractor’s Variation Proposal, then, unless the Variation was proposed by the Contractor, the Employer shall be obligated to pay the Contractor the Cost of preparing the Contractor’s Variation Proposal.

35.11 If the Contractor has objected to a Variation under Article 35.5, the Employer shall not have the right to instruct the Contractor to carry out the Variation, but may refer the dispute to be settled in accordance with Chapter 13.

Disputed Variations

35.12 If the Parties disagree as to whether certain work or delivery of supplies or materials, which the Employer requires or required to be performed, is already included in the Contractor’s obligations, and consequently whether such work or deliveries constitutes a Variation or not, then the following procedure shall be followed:

(a) The Employer shall in a Notice to the Contractor describe the work or delivery in question and give the reasons why, in the Employer’s opinion, it is included in the Contractor’s obligations. Alternatively, the Contractor may produce a Notice stating why the work or delivery in question is not within the scope of the Contract.

(b) Unless otherwise agreed, the Contractor shall within twenty-one (21) Days of a Notice under 35.12(a) prepare a Contractor’s Variation Proposal and, if it has not already done so, shall give the reasons why, in the Contractor’s opinion, the requested work or supplies constitute a Variation.

(c) The Employer may then instruct the Contractor to perform the work or supplies in question. Such work or supply shall be regarded as a disputed Variation.

(d) Either Party may then require the dispute to be settled in accordance with Chapter 13.

(e) If the Contractor refuses to perform the work or supplies with reference to its right under Article 35.5, the Employer shall not be entitled to instruct the work or supplies to be performed, unless there has been a decision of the CDB to that effect.

35.13 Any and all claims to additional payment, however they may arise, shall be dealt with under the provisions of Chapter 13.

Records

35.14 The Contractor shall establish and maintain a reasonable accounting system that enables the Employer to readily identify the Contractor’s expenses, costs of goods, and use of funds and assets in respect of the Variations.

35.15 With respect to Variations, the Employer shall have the right to audit the Contractor’s expenses, costs of supplies and use of funds. Contractor shall enable Employer to analyse and to make copies of or extracts from all financials or records related to Variations kept by the Contractor.

# CHAPTER 5 START DATE, THE TIME TO TAKING-OVER, SCHEDULING AND PROGRESS

Article 36 Start Date, Time to Taking-Over and extensions of time

The purpose of the time provisions

36.1The purpose of the time provisions is to ensure that the Contractor is afforded adequate time to complete the Works, given the time in which it originally agreed to complete the original scope of work, and that the Employer is assured both of a predictable completion Date and retains the right to impose Delay Damages if the Contractor completes the Works or any Section of them after the Time to Taking-Over as adjusted under the Contract.

Start Date

36.2 Unless otherwise agreed in the Special Conditions, the Start Date shall be determined as follows:

(a) It is a pre-condition to the commencement of the Works on the Start Date that the Contractor has received (i) the advance payment (if any); (ii) the evidence under Article 14.2, if requested by Contractor before the Employer has issued the Notice to Proceed; (iii) access to such Sections of the Site which are required to enable design works by the Contractor; and (iv) the Notice to Proceed.

(b) The Employer shall issue to Contractor a Notice to proceed (“**Notice to Proceed**”) in the form set out in the Special Conditions or in a letter identifiable as the Notice to Proceed, once it has received (if applicable) (i) the Contractor’s advance payment bank guarantee; and (ii) the Contractor’s performance bank guarantee.

(c) The Day after which the requirements of Articles 36.2(a) and 36.2(b) have been met shall be referred to herein as the "**Start Date**".

(d) If the conditions of Articles 36.2(a) and/or 36.2(b) have not been satisfied six (6) months after the Contract Date, each Party shall have the right to terminate this Contract at any time by thirty (30) Days’ Notice to the other Party and the conditions of termination for convenience under Article 55.18 shall apply.

Extension of the Time to Taking-Over and additional Costs

36.3 The Contractor shall be entitled to an extension of the Time to Taking-Over and, where applicable, additional payment subject to Article 36.4 for the whole of the Works or for any Section of them if the Contractor is or will be delayed either before or after the Time to Taking-Over by any of the following causes:

(a) A cause of delay giving an entitlement to extension of the Time to Taking-Over, including an event of Force Majeure, and, where applicable, additional Costs under any Article. Except as stated in Article 35, additional Cost shall only be augmented with Profit if the reason for incurring the additional cost is attributable largely to the Employer;

(b) Any suspension by the Contractor, to which it is entitled under the Contract, or any suspension, delay, impediment not attributable to the Contractor, Breach of the Contract by the Employer or its agents or any activity, act or omission of any other contractors employed by the Employer preventing the Contractor from proceeding efficiently with the Works; or

(c) Any action or inaction of third parties (including, without limitation, public authorities but excluding entities within the Contractor’s Group) that the Contractor has not caused nor has reasonably been able to prevent, which has the effect of delaying the Taking-Over of the Works.

36.4 If the Contractor intends to assert an entitlement to an extension of the Time to Taking-Over under this Article 36, the Contractor shall give a Notice to the Employer of such intention as soon as reasonably possible after the Contractor has become aware or should reasonably have become aware of the event giving rise to the delay and/or any other likely additional payment claim(s). In any case, the Contractor has the duty to mitigate the impact of the event.

36.5 The Contractor shall keep such contemporary records as may be necessary to substantiate any assertion of entitlement to an extension of Time to Taking-Over. The Contractor shall permit the Employer to inspect all such records, and shall provide the Employer with copies as required.

36.6 Within a reasonable time of the Contractor giving Notice as set out above (or such other period as may be agreed with the Employer), the Contractor shall on regular and continuous basis submit such further details of its application (if any) it considers necessary to demonstrate its entitlement.

36.7 The Employer has an obligation to assess or agree, if applicable, appropriate extensions of time as soon as Contractor’s full substantiation of his entitlement has been received and, in any event, not later than the timeframe as referred to in Article 36.6 (unless a different period of time is agreed). If the Employer decides that in fairness no extension should be granted, it must immediately inform the Contractor at the time the decision is made. In all cases, the Employer must consult with the Contractor about the right to, and/or length of, the extension. In all cases, the Parties should attempt to agree on the result of the Notice.

36.8 Unless otherwise agreed with the Parties, if, notwithstanding Article 36.7, no determination of entitlement has been made under that Article within sixty (60) Days of the Date of the Notice, the full extension applied for shall be deemed to be granted. Unless otherwise agreed by the Parties, a late determination by the Employer shall not affect the full extension deemed to be granted.

36.9

36.10 The right to an extension of time relates to the Works as a whole or to Sections. The fact that a particular Section is not on or alleged not to be on the critical path for the Works as a whole, is not a valid reason to deny an extension for that Section.

36.11 The Contractor's entitlement to compensation (if any) for Costs arising from any extension of time shall be negotiated at the same time as the extension of the Time to Taking-Over.

Direction to reschedule

36.12 Where, in the assessment of the Employer, the Contractor’s rate of progress on the Works is too slow to ensure Taking-Over of the whole of the Works within the Time to Taking-Over and there are no circumstances that would indicate that the Contractor is or may be entitled to an extension of the Time to Taking-Over, the Employer may order the Contractor to revise its Time Schedule or Method Statement to show accelerated activity and/or resources leading to completion within the Time to Taking-Over as it then stands. If the Employer is later shown to have been incorrect in its assessment of Contractor’s rate of progress, the additional Costs incurred by the Contractor (if any) shall be payable as a Variation.

Agreement to earlier Taking-Over

36.13 The Parties may agree at any time to an earlier Taking-Over Date than that foreseen, and the Contractor shall upon agreement to the earlier Date, confirm, if it has not already been agreed, what compensation it claims (if any) for the earlier Taking-Over.

Obligatory reassessment of extensions of time at the end of the Time to Taking-Over

36.14 One hundred eighty (180) Days, or any other agreed timeframe, prior to the expiry of the Time to Taking-Over, as adjusted under the Contract, the Employer shall, within seven (7) Days and in consultation with the Contractor, review the Works and shall determine whether or not, the Contractor is entitled to any further extension(s) of time.

36.15 For the purposes of these obligatory reassessments the Employer may take into account any failings or alleged failings of the Contractor to submit supporting details or claims in sufficient detail or in the contractual timeframe. Twenty-one (21) Days after starting the review, the Employer shall send its fully reasoned decision on whether or not the Contractor is entitled to an extension of time to the Contractor with a copy to the CDB, if the Parties have appointed one.

36.16 Extensions of time can be agreed or determined before or after the Time to Taking-Over.

Article 37 Delay Damages or Bonus

Delay Damages

37.1 Delay Damages are payable by the Contractor if the Taking-Over occurs after the Time to Taking-Over.

37.2 If the Contractor fails to complete the Works or any Section within the Time to Taking-Over of the Works or the Section thereof as adjusted under the Contract, then the Contractor shall pay to the Employer the relevant sum (if any) calculated in the Contract as Delay Damages for such Breach of Contract and not as a penalty (which sum shall be the only monies due from the Contractor for such Breach of Contract and any other consequences of the delay) for every complete Week that shall elapse between the Time to Taking-Over of the Works or the Section thereof as adjusted and the Date specified in the relevant Taking-Over Certificate(s), subject to the limit stated in the Special Conditions. The Parties agree and acknowledge that the value of the Delay Damages so to be paid is estimated here by the Parties because of the difficulty of ascertaining accurately the exact amount of damage prior to the occurrence of any delay.

37.3 If no rate of Delay Damages is stated in the Special Conditions, the rate of Delay Damages9 shall be one half of one percent (0.5%) of the Contract Price or if there is a delay to a Section or some Sections only, one half of one percent (0.5%) of the value that the Section or Sections delayed bears in proportion to the value of the whole of the Works for each complete Week of delay and for an incomplete Week seven hundreds of a percent (0.07%) of the Contract Price per Day up to a maximum of ten percent (10%) of the Contract Price.

37.4 The payment of such Delay Damages shall not relieve the Contractor from its obligation to complete the Works or from any other of its obligations under the Contract, but shall be in full discharge of the Contractor's liability for delay in Taking-Over and any other losses related to that delay. Such Delay Damages shall be the sole and exclusive remedy for late Taking-Over, other than in the event of termination for material Breach of Contract by the Contractor. The limitation on Contractor’s liability for Delay Damages not apply in case of fraud, wilful misconduct and/or Gross Negligence by the senior management of the Contractor or any of it’s subcontractors (to the extent such qualifications are valid under applicable law).

37.5 If the Employer takes over, uses or occupies (whether or not acknowledged as Taking-Over) Sections of the Works, then Delay Damages, if payable, shall be reduced in the proportion that the value of the Section so taken over, used or occupied bears to the value of the whole of the Works. Similarly, a proportional bonus shall be payable for partial occupation by the Employer prior to the Time to Taking-Over.

Bonus

37.6 If so specified in the Special Conditions, a bonus is payable to the Contractor for Taking-Over earlier than the end of the Time to Taking-Over. If the Contractor achieves Taking-Over prior to the Time to Taking-Over, the Employer shall pay to the Contractor a sum as a bonus in addition to the Contract Price calculated at the rate as stated in the Special Conditions for every week between the Date specified in the Taking-Over Certificate and the Time to Taking-Over up to the limit set out in the Special Conditions.

37.7 If the Special Conditions state that the Contractor is entitled to a bonus for early Taking-Over, but no rate of bonus is stated, the rate shall be one half of one percent (0.5%) of the Contract Price agreed upon signature of the Contract payable for each complete week Taking-Over was early, up to a maximum of ten percent (10%) of the Contract Price agreed upon at signature of the Contract. If the bonus applies only to certain Sections of the Works, it shall be calculated by reference to the value of the Section(s) so taken over in proportion to the value of the whole of the Works.

Article 38 Schedule of Contractual Dates, time schedule and reporting progress

38.1 The Contractor shall perform the Design and the Works in accordance with the Contract and also the Schedule of Contractual Dates as set out in the Special Conditions.

38.2 The Schedule of Contractual Dates shall contain:

(a) a reference to the Start Date;

(b) the Dates by which the Contractor is obliged to submit to the Employer each stage of the Design and the Dates by which the Employer's review is required;

(c) the Dates by which each of the permits set out in an Appendix (if any) shall be provided by the Party responsible for it;

(d) the Date(s) on which the Contractor shall be given possession of the Site or Sections thereof;

(e) Milestone Dates (if any);

(f) The Date(s) of Completion of the Works, or Sections of the Works, including the Dates of any Performance Tests; and

(g) The Date(s) of Taking-Over of Sections of the Works in respect of which a separate Time to Taking-Over has been provided in the Contract (or otherwise agreed) and the Date of Taking-Over of the whole of the Works.

38.3 The Dates set out in the Schedule of Contractual Dates may be amended by agreement of the Parties or by application of the extension of Time to Taking-Over provisions of this Contract.

38.4 The Contractor shall normally, unless the circumstances do not require it, prepare a detailed program for performance of the Works and their interrelationship by using the "critical path method" or such other method/schedule as agreed (the “**Time Schedule**”). The Contractor shall submit the Time Schedule detailed as per the Employer’s Requirementsto the Employer not later than two (2) months after the Start Date. If the Contractor is late in submitting the Time Schedule, Delay Damages shall accrue in accordance with the same principles as those stated in Article 37.

The Time Schedule shall be updated monthly thereafter as part of a monthly progress report to reflect any changes to the Time Schedule. The Employer shall be entitled to comment on the Time Schedule and any update thereof and the Contractor agrees to consider in good faith any and all comments made by the Employer.

Article 39 Progress reports

39.1 Unless otherwise agreed, monthly progress reports shall be prepared by the Contractor and submitted to the Employer. The first report shall cover the period up to the end of the first month following the Start Date. Reports shall be submitted monthly thereafter, each within ten (10) Days after the last Day of the period to which it relates.

39.2 Reporting shall continue until the issue of the last Taking-Over Certificate for the Works.

39.3 The progress reports should be suitable for monitoring the progress of the Works. Unless otherwise agreed each report shall include:

(a) Charts and adequately detailed descriptions of progress, including each stage of Design, Contractor’s Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation;

(b) Photographs and/or videos showing the status of manufacture and of progress on the Site;

(c) The details of the deployment of Contractor’s Personnel and Equipment;

(d) Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;

(e) Comparisons of actual and planned progress, with details of any events or circumstances that may jeopardize Taking-Over in accordance with the Contract, and the measures being (or to be) adopted (if any) to overcome delays and updated Time Schedule; and

(f) Updated risk matrix.

39.4 The progress reports shall be prepared and understood as evidence of the Contractor’s position on the state of actual completion of the Works at the time the report is made. The Employer shall give a Notice to the Contractor of any concerns or disagreements with any of the contents of a report as soon as reasonably possible after having received it.

# CHAPTER 6 CONTRACT PRICE AND PAYMENT

Article 40 Contract Price

40.1 **“Contract Price”** shall be the price set out in the Main Contract Form for the provision, on a Turnkey basis, of the Works, including the supply of all the goods and services that are indicated in this Contract, subject to such additions thereto or deductions therefrom as may be made in accordance with the provisions of the Contract.

Article 41 Payment of the Contract Price

41.1 As payment to the Contractor for the full and complete performance of the Works the Employer shall pay and the Contractor shall accept the Contract Price as varied in accordance with the Contract.

41.2 The Parties recognise and agree that the Contract Price is payable in instalments according to the progress of the Works in an Invoice Period and/or milestones as set out in an Appendix (if any) and otherwise in accordance with the provisions of this Contract.

41.3 The Contract Price may be varied only in accordance with the Contract. The value of each payment shall be established by the rules set out in this Chapter 6.

Article 42 Applications and procedure for payment

Invoice Periods

42.1 With respect to any Invoice Period, the Contractor shall be entitled to apply for the payment of the amount corresponding to progress on the Works and/or milestone if it has achieved such milestone within that Invoice Period.

Applications for payment

42.2 The Contractor shall submit applications for payment in the currency(ies) of the Contract for the amounts that are associated with the progress of the Works (including claims agreed upon by the Parties) and/or milestones achieved in an Invoice Period after the last Day in that Invoice Period.

42.3 Applications for payment shall be submitted in the form set out in an Appendix (if any), or, if there is no such Appendix, in a form established by the Contractor and agreed by the Employer.

Approval of payment

42.4 The Employer shall approve the amount due and payable to the Contractor with respect to each Contractor’s invoice by marking a copy of the invoice as “accepted and approved for payment”. Such accepted and approved statement shall be referred to as a “Payment Certificate”. The Employer shall approve the entirety of the amount stated in the Contractor’s application for payment subject to the following exceptions:

(a) An amount is included in the Contractor’s invoice that has been included in error or fraudulently; and

(b) With respect to any payment; when the Contractor has failed to submit documentation relevant to, and required to be submitted for, such payment.

(c) Unless otherwise specified in the Special Conditions, the Employer shall approve payments to the Contractor at monthly intervals as they arise, unless the Employer has referred the claims to the CDB, if the Parties have appointed one before the application for payment was made. In that case, the CDB shall also approve any sums it determines to be due to the Contractor, on a monthly basis, unless such sums have been already approved by the Employer.

Notification of the approved amount

42.5 The Employer shall certify the amount to which the Contractor is entitled in a Payment Certificate on or before the tenth (10th) Business Day after the Employer’s receipt of the Contractor’s application for payment. The amount stated in that Notice shall be the “approved amount”. If the Employer does not approve the entire amount claimed in the Contractor’s application for payment, the Employer shall give a reasoned explanation for not approving the difference at the same time as it approves the amount acknowledged as due. If the Employer does not provide the Contractor with reasons for non-approval of all or part of the Contractor’s application for payment, on or before the aforementioned tenth (10th) Business Day then the entire amount of the Contractor’s application for payment shall be deemed approved and the Employer shall be obliged to issue the Payment Certificate for the full amount of the relevant Contractor’s invoice.

Submission of the invoice

42.6 The amount approved or deemed approved shall be a sum due and payable, and the Contractor shall be entitled to issue the corresponding invoice. Unless otherwise specified in the Special Conditions, the invoice shall be payable by the Employer twenty (20) Days after the Day on which the Employer receives the Contractor’s invoice (and if such Day is not a Business Day, then on the immediately following Business Day).

42.7 If the Employer does not approve the entire amount claimed in the Contractor’s application for payment, invoicing by the Contractor for a lesser amount does not signify that the Contractor accepts that the Employer is discharged from the payment of the amount not approved. Such sums shall be considered to be notified as sums claimed under Chapter 13, which may eventually be dealt with by the dispute procedure in that Chapter.

No withholding

42.8 The Employer shall not be entitled to unilaterally withhold or deduct from any payment of an approved amount, any amounts other than;

(a) Any amount to be paid by the Contractor to the Employer in respect of Articles 27.2, 37, 46.10 through 46.13, or otherwise is overdue;

(b) any amounts paid by the Employer in order to discharge, or reserved for the purposes of discharging, any lien, encumbrance or third-party right created on or in respect of the Works or any work, materials, supplies or Plant under Articles 30 and 34 unless, if necessary, the Contractor has provided adequate security for such amounts to the Employer in form and amount reasonably satisfactory to the Employer; and

(c) Any amount that the CDB, if the Parties have appointed one has decided that the Employer may withhold or deduct.

If the Parties have a CDB, it may be called upon at any time to determine the validity of the Employer’s withholding of any kind.

42.9 All payments made under this Contract shall be made by the method set out in an Appendix (if any), and otherwise by bank transfer to an account or accounts nominated by the Contractor.

42.10 Any payment that the Employer is not obliged to make under Article 42.8 shall be made, without interest, together with the next payment applied for, that falls due, after satisfaction by the Contractor of the conditions described in that Article and/or the correction of any Defect necessary to enable certification of such amount. Unless otherwise agreed, there is no right to keep retention money (in the sense of a percentage of a sum otherwise due for the performance of the Works).

Payment does not constitute acceptance of the Works

42.11 No payment to the Contractor by the Employershall constitute an acceptance of any of the Works to be performed or furnished by the Contractor or shall relieve the Contractor of any of its obligations or liabilities with respect thereto.

Article 43 VAT/GST or equivalent consumption taxes

43.1 If under this Contract any payment is due to one Party from the other (including Delay Damages or bonuses due under Article 37), they shall be paid as they fall due, along with accrued financing charges at the rate described in Article 44. Each invoice shall be a VAT/GST (Value Added Tax/Goods and Services Tax) invoice where such tax is due on such payment, and, to the extent required by law, each Party shall pay VAT/GST in addition to the net amount invoiced.

Article 44 Financing charges for late recognition of rights between the Parties

44.1 Without prejudice to any other right or remedy, any payment that becomes due, or should become due, to either Party under the Contract (including claims that have to be established under Chapter 13) shall bear simple (uncompounded) financing charges (i.e. interest) from the Date that the payment becomes due or should become due in the case of late approval of payment, until the Date of payment at the rate agreed by the Parties, or, if there has been no such agreement, at three percentage points above the basic lending rate for immediate money of the central bank of the country or countries of the currency or currencies of payment.

44.2 The purpose of this payment is to compensate the Party affected for the delay in receipt of money otherwise due to it. The right to this payment is established automatically on the occurrence of a non-payment for whatever reason and is due and payable on demand.

# CHAPTER 7 COMPLETION AND TAKING OVER OF THE WORKS BY THE EMPLOYER

Article 45 Completion

45.1 The Contractor shall notify the Employer when it considers that it has achieved Completion of the Works. Where the Works are to be completed by Sections, this Article 45 refers to Completion of each Section as appropriate.

45.2 The Employer shall, as soon as practicable within the period stated in the Special Conditions following receipt of the Notice referred to in Article 45.1, inspect (as and if necessary) all work, and either:

(a) Deliver to the Contractor a Certificate of Completion for the Works or any Section of them; or

(b) If reasonable cause exists for doing so, give the Contractor Notice that Completion has not been achieved, stating the reasons therefor and the (additional) work that it considers is still to be done to achieve Completion.

45.3 In the event that the Employer determines that Completion has not been achieved, the Contractor shall promptly take such action or perform such (additional) work as will achieve Completion and shall issue to the Employer another Notice pursuant to Article 45.1. To the extent that the Contractor deems any action or additional work described by the Employer in its Notice under Article 45.2 to be a Variation, the Contractor shall notify the Employer in accordance with the provisions of Article 35. The procedure described in this Article 45.3 shall be repeated as necessary until Completion is achieved.

45.4 Unless otherwise agreed in the Special Conditions, the Employer shall issue the Certificate of Completion or the Notice under Article 45.2(b) no later than five (5) Business Days following receipt of the Notice under Article 45.1. The Employer shall inform the Contractor of the details of the reasons provided in the Notice under Article 45.2(b) within a reasonable time.

45.5 If the Employer fails to issue a Certificate of Completion or a Notice under Article 45.2(b), then the Employer shall be deemed to have, and be treated for all purposes as having, issued a Certificate of Completion, whether it is actually issued or not, no later than the time period set in 45.4, as amended by the Special Conditions as the case may be, after the receipt of the Notice under Article 45.1. The CDB, if the Parties have appointed one, may on application from a Party confirm such Completion, but such confirmation is not a precondition to the effectiveness of any such Completion.

Article 46 Commissioning and Performance Tests and Retest

46.1 Where the Works are to be taken over by Sections, the provisions in this Article shall be read as applying to each Section separately.

46.2 Any commissioning activities shall be set out in the Special Conditions and/or an Appendix thereto as the case may be, or otherwise agreed by the Parties.

46.3 Performance Tests are those tests required to demonstrate the achievement of the Guaranteed Performance as defined in the Special Conditions. Unless otherwise agreed by the Parties, all Performance Tests shall be performed and completed prior to Taking-Over. Unless fully set out in the Contract, the Contractor shall provide the Employer with the Contractor’s methodology for conducting the Performance Test(s) no later than the time set out in the Special Conditions, or if there is no such time set out, the methodology shall be provided at least ninety (90) Days before the tests are to begin. Such methodology shall be in accordance with Good Practice and the relevant requirements of the Contract.

46.4 When the Contractor determines that there are no impediments to conducting the Performance Tests, the Contractor shall give the Employer Notice that it is ready to commence with the Performance Tests.

46.5 The Contractor shall give the Employer Notice specifying the Date, location and nature of the Performance Test to be conducted:

(a) in the case of the first of such Performance Tests, no fewer than ten (10) Business Days in advance; and

(b) in the case of subsequent stages of the Performance Tests, no fewer than five (5) Business Days in advance.

46.6 Unless otherwise agreed, the Contractor shall afford the Employer all reasonable opportunity to attend all stages of the Performance Test at the Employer’s own expense. Provided that the Contractor has given proper Notice and not prevented the Employer from attending, the Employer’s failure to attend any stage of the Performance Test shall in no way invalidate the results of the Performance Test or permit the Employer to allege that the Taking-Over Conditions have not been fulfilled solely on the basis that a Performance Test the Employer failed to attend was not validly conducted.

46.7 Each Performance Test shall be conducted under the authority and direction of the Contractor. If this Contract specifies that any stage of the Performance Test should be performed by the Employer or a third party appointed by and responsible to the Employer, then the personnel of the Employer or third party shall act under the supervision and instruction of the Contractor.

46.8 If the Employer is under this Contract or otherwise obliged to fulfil any obligation in order to enable the Contractor to perform a Performance Test, and the Contractor has notified to the Employer the timing, nature, quality and extent of the Employer’s obligation in accordance with the Contractor any subsequently agreed or reasonable schedule, then the Employer’s material failure to comply with its obligation shall be treated as a Variation. If the Employer fails on more than one occasion to fulfil any obligation in order to enable the Contractor to perform a Performance Test, without prejudice to any other right it may have, the Contractor may give Notice to the Employer of a final time period of not less than seven (7) Days in which the obligation shall be fulfilled. If the Employer fails to fulfil the said obligation within such time then, unless otherwise agreed, the particular Performance Test shall be deemed, to have been passed and certified, unless otherwise agreed or otherwise required by the laws of the Country,

46.9 The Performance Tests shall demonstrate the performance levels of the Works and whether the Works fulfil the Minimum Performance, if any. In the event that the Works do not achieve the Guaranteed Performance and the Contractor executes remedial Works, the Employer may claim a retest (the “**Retest**”) to establish that the Works achieve the Guaranteed Performance. Such a Retest shall be subject to the provisions of this Article 46.

Performance-related liquidated damages or bonus for performance

46.10 If the Works fail to achieve the Guaranteed Performance during the Performance Test, and/or the Retest, but do exceed the Minimum Performance, then Performance-related liquidated damages (if any) as set out in the Contract shall be payable.

46.11 The Parties agree and acknowledge that the amounts of liquidated damages (if any) specified in the Contract are agreed upon and fixed by the Parties because of the difficulty of ascertaining on the Contract Date the exact amount of damage to the Employer in such event. The Parties hereby agree that the liquidated damages agreed upon in this Contract shall be applicable regardless of the amount of such damage.

46.12 The payment of any such liquidated damages shall not affect the Employer’s rights to terminate this Contract pursuant to Article 55, should such right exist.

46.13 So long as the performance of the Works is equal to or better than the Minimum Performance, the agreed liquidated damages shall in respect of the relevant performance parameters be the Employer’s sole and exclusive remedy for the Works' failure to achieve the Guaranteed Performance.

46.14 If so stated in the Special Conditions, the Contractor shall be entitled to a bonus to the extent the performance of the Works is better than the Guaranteed Performance. The performance bonus shall then be calculated in accordance with what is stated in Appendix 46.14 (if any).

Article 47 Taking-Over/Provisional Acceptance

47.1 The Taking-Over/Provisional Acceptance Date shall be:

(a) The Date on which the Taking-Over Conditions have been met; or

(b) The Date on which the Employer, its agent or designee takes possession and control of the Works or any Section of them.

47.2 **Taking-Over Conditions**

Unless the Parties have specified otherwise, the following conditions shall be the Taking-Over Conditions:

(a) The Works have been completed in accordance with the Contract, except for minor work which does not affect the safety, operation and operability of the Works and is set out in the Punch List;

(b) The Works are fit for the purpose specifically defined in the Contract and, if applicable, are capable of being put into operation;

(c) The Performance Tests have been performed and passed in accordance with Article 46, testing Equipment has been removed and the Plant has been set to the settings specified in the Contract or, if no settings are specified, to the settings typically used for operation in accordance with Good Practice; and

(d) The consumables, spare parts and special tools required by the Contract (if any) are present at the Site and are stored in accordance with applicable laws and Good Practice.

47.3 On the Taking-Over Date, the Employer shall take and shall be deemed to have taken possession and control of the entire Works or Section of them and shall thereafter be solely responsible for the operation and maintenance thereof and shall have the complete risk of loss or damage thereto. This shall not relieve the Contractor of its obligations under Chapter 8, or from its obligation to perform such other work as remains to be performed after Taking-Over pursuant to this Contract.

47.4 The Contractor’s access to the Site and the Works after Taking-Over shall be governed by an Appendix (if any) and otherwise shall be permitted as needed to fulfil its remaining obligations (if any).

47.5 If the Works or any Section are to be completed in more than one step or phase, then an Appendix (if any), or such other reasonable stepped or phased schedules as established by agreement, shall apply.

47.6 When the Contractor believes that it has met the Taking-Over Conditions of the Works or any Section in accordance with Articles 47.1 and 47.2, it shall deliver to the Employer a Notice thereof in the form set out in an Appendix (if any), and otherwise any other reasonable form if none is set out.

47.7 The Employer shall, as soon as practicable and in any event within the period agreed in the Special Conditions following receipt of the Notice under Article 47.6, inspect (as and if necessary) all Works and the results of the Performance Tests and, within the time period stipulated in Article 47.9, either:

(a) Deliver to the Contractor a Taking-Over Certificate for the Works; or

(b) Deliver to the Contractor a Taking-Over Certificate for a Section or Sections of the Works; or

(c) If reasonable cause exists for doing so, notify the Contractor that the Taking-Over Conditions of a Section or Sections have not been achieved, stating in detail the reasons therefore and the work that it considers still to be done to achieve Taking-Over.

47.8 In the event that the Employer determines that the Taking-Over Conditions have not been achieved, the Contractor shall promptly take such action or perform such work as will achieve Taking-Over and shall issue to the Employer another Notice pursuant to Article 47.6. To the extent that the action or work requires a Variation, it shall be valued under Article 35. The procedure described in this Article 47 shall be repeated as necessary until Taking-Over is achieved, unless otherwise agreed.

47.9 The Employer shall issue the Taking-Over Certificate or the Notice under Article 47.7 within a reasonable time following receipt of the Notice under Article 47.6. The Taking-Over Certificate shall be retroactive to the Taking-Over Date under Article 47.1. If the Employer fails to issue a Taking-Over Certificate or a Notice under Article 47.7, then the Employer shall be deemed to have, and be treated for all purposes as having, issued a Taking-Over Certificate, whether it is actually issued or not as of the Taking-Over Date. The Employer shall not be entitled to withhold payments claimed by the Contractor on the basis that the Taking-Over Certificate was not issued or properly issued due to a failure by the Employer.

47.10 The Taking-Over Certificate, whether deemed to be issued or actually issued, shall operate as an acknowledgement by the Employer that the Contractor has fulfilled its obligations under this Contract to the extent that this Contract called for such obligations to be performed prior to Taking-Over, except for such work (whether minor or not) as is mutually acknowledged to remain outstanding, whether under a punch list, snag list or other check list of outstanding work to correct Defects (the “**Punch List**”).

47.11 If the Taking-Over Certificate was deemed to have been issued by the Employer, then the Employer shall be entitled to require the Contractor to fulfil any Contractor obligations left unfulfilled at Taking-Over. Such work and the work required under Article 47.10 shall be performed at the Contractor’s expense.

Article 48 Assessment procedures after Taking-Over

48.1 To the extent the Parties have agreed in the Special Conditions that certain assessment procedures are to be or permitted to be conducted after Taking-Over, the provisions agreed between the Parties with respect to such procedures shall apply. Where no agreement has been made on how the assessment procedures after Taking Over shall be conducted, they shall be conducted according to Good Practice.

48.2 If there are no such procedures set out the Special Conditions, then Article 47.4 shall apply.

48.3 If for reasons not attributable to the Contractor, any tests after Taking-Over cannot be completed during the Defect Correction Period (or any other period agreed upon by both Parties) then the Works shall be deemed to have passed the tests after Taking-Over.

# CHAPTER 8 DEFECT CORRECTION PERIOD

Article 49 The Contractor’s obligation to finish the Works and correct Defects

Defect Correction Period

49.1 The Defect Correction Period is the period after the Taking-Over Date during which the Employer shall notify the Contractor of a Defect in Design, materials or workmanship of the Works attributable to the Contractor and the Contractor is obliged to correct such Defects at no additional cost for the Employer. In the absence of an agreement to the contrary in the Special Conditions, this period is one (1) year in length. If there is sectional Taking-Over, the Defect Correction Period of one (1) year for such section starts with the Date of the sectional Taking-Over. If individual items of the Plant are repaired or completed during the Defect Correction Period, a new Defect Correction Period of the same duration as the initial Defect Correction Period for those items shall start on the Date of repair or completion of the Plant in question. In no event, unless otherwise agreed, will the Defect Correction Period for any part of the Works continue for more than two (2) years after the Date of the last Taking-Over Date.

49.2 The Employer shall notify the Contractor of any Defects during the Defect Correction Period as soon as reasonably possible upon such Defects becoming apparent. Similarly, the Contractor shall as soon as reasonably possible notify the Employer upon becoming aware of Defects. During the Defect Correction Period the Contractor is obliged to maintain such goods, materials, Equipment and manpower on the Site only as is necessary to correct known Defects. The Contractor is not obliged to correct Design errors, material choices or workmanship Defects attributable to third parties (other than its Subcontractors or suppliers) or the Employer, nor is the Contractor obliged, without a Variation, to vary or improve Works that comply with the Contract.

49.3 The Employer shall provide the Contractor every opportunity and access to complete any outstanding work and correct any Defects specified in the Punch List or any Defects in the Works not so specified but which have been notified by the Employer to the Contractor or its Representative during the Defect Correction Period.

Normal wear and tear not included

49.4 Normal wear or tear or damage to the Works caused by the Employer’s occupation and/or use of the Works or any part thereof and/or non-compliance by the Employer or third parties with the operation or maintenance manuals supplied (if any) shall not be the responsibility of the Contractor, nor shall the Contractor be obliged to repair such wear, tear or damage.

Consultation

49.5 The Parties shall consult with each other and shall agree the time or times when the Punch List items and/or Defects are to be completed and/or remedied. The Parties shall consult on the best method for remedying any Defect, which can include, at the Contractor’s option, repairing the Defect, replacing defective items, or reperforming defective work.

Software issues

49.6 In the case of a software Defect, the remedy may consist of a software patch, update, upgrade or new software version. If the Cost of remedying the Defect is disproportionate to the nature of the Defect or its magnitude, the Contractor shall have the option of offering a reduction of the Contract Price. The Employer however is not obliged to accept such an offer, but may instead terminate the Contract in accordance with Article 55.10 if the Defect is of material importance to the Employer.

49.7 The Contractor shall not be liable for Defects in software (i) in case of insignificant deviation of the software from the agreed characteristics; (ii) if the Defect cannot be reproduced by the Employer in the presence of the Contractor; or (iii) if the Defect is in OSS.

Joint inspection

49.8 The Employer and the Contractor shall carry out a joint inspection of the Works at least fourteen (14) Days prior to the expiry of the relevant Defect Correction Period, or such other period as the Parties may have agreed in the Special Conditions, to confirm the condition of the Works, and the Employer shall immediately notify the Contractor of any outstanding Defects required to be made good or work required to be executed by the Contractor in accordance with the Contract.

Searches for Defects

49.9 If instructed to do so by the Employer before or during the Defect Correction Period for the Section of the Works being considered, the Contractor shall search for Defects as instructed by the Employer. If a Defect is found as a result of the search and the Defect is the liability of the Contractor under the Contract, the Cost of the work to remedy such Defect shall be borne by the Contractor, including the Cost of any searches, tests or trials necessary to determine the existence or extent of the Defect. In all other cases, the Cost plus Profit of such work, including any searches, tests or trials, shall be ascertained and paid to the Contractor as if it were additional work and instructed as a Variation.

Reduction of the Contract Price

49.10 In lieu of remedial work, the Contractor may in all cases offer a reduction of the Contract Price. The Employer however is not obliged to accept such an offer.

Failure to remedy Defects

49.11 If the Contractor unreasonably fails, neglects or refuses to remedy Defects for which it is responsible, the Employer may upon giving the Contractor fourteen (14) Days Notice, engage another contractor to remedy such Defects. Subject to the limitations and exclusions of liability in this Contract, the Contractor is responsible for the reasonable Cost of such remedial work.

Final Acceptance

49.13 Final Acceptance shall occur when:

(a) The Works and Punch List items, (if any) have been completed in accordance with the Contract;

(b) The Defect Correction Period has expired and the Contractor’s obligation under Article 49 has been carried out;

(c) The final as-built drawings and manuals (if any) have been delivered; and

(d) The conditions for Final Acceptance, as set out in the Special Conditions are met.

49.14 The Contractor shall be entitled to a Certificate of Final Acceptance when the conditions under Article 49.13 are met.

49.15 In the event that the Employer determines that the conditions for Final Acceptance have not been achieved, it shall notify the Contractor giving the detailed reason(s) why the Employer believes the conditions for Final Acceptance have not been met.

# CHAPTER 9 ALLOCATION OF RISK AND RESPONSIBILITY AND EXCLUSIONS FROM LIABILITY

Article 50 General principles of risk allocation and responsibility

Passing of responsibility for the Works

50.1 The Contractor shall take full responsibility for the care of the Works or any Section of them from the Start Date until the Taking-Over Date, at which time responsibility for the care of the Works and the risk for loss or damage to the Works shall pass to the Employer.

50.2 If Taking-Over occurs for any Section of the Works, responsibility for the care of the Section shall then pass to the Employer.

Article 51 Liabilities of the Parties and their reciprocal limitations and exclusions

Exclusions from liability

51.1 Notwithstanding any law or practice to the contrary, in no circumstances shall either Party be responsible to the other for treble, exemplary, moral or punitive damages, or any type of non-compensatory damages no matter how they are described.

51.2 Except as provided in Article 35 (Variations), Article 37 (Delay Damages), Article 42.7 (Failure to approve), Article 44.1 (Delayed Payment) or Articles 46.10 through 46.13 (Performance-related liquidated damages), neither Party shall be liable to the other Party for loss of profit, loss of income, loss of production or wasted expenditure, or for indirect or consequential damages or losses however described, including (without limiting the generality of the foregoing) loss of use, loss of revenue, loss of interest, loss of data or information or similar losses.

Overall limitation of liability

51.3 Except as provided in Article 35 (Variations), Article 37 (Delay Damages), Article 42.7 (Failure to approve), Article 44.1 (Delayed Payment) or Articles 46.10 through 46.13 (Performance-related liquidated damages) and notwithstanding any other provision of this Contract, neither Party can claim that the other Party must pay it, by way of damages or any other form of compensation for Breach of Contract, under or in connection with the Contract (including obligations to indemnify and/or hold harmless), in tort, or for negligence (or any or all of them) sums that when aggregated with other sums paid under the Contract for damages or compensation for Breach of Contract or otherwise, amount to more than the percentage as indicated in the Special Conditions (excluding interest) of the Contract Price as varied in accordance with the Contract.

Indemnities

51.4 Contractor shall hold harmless and indemnify Employer’s Group against all liabilities, claims, judgments, demands, damages, losses, costs and expenses arising directly or indirectly out of:

1) Injury to (including sickness) and death of Contractor’s Group comprising its employees, agents, representatives, including the employees, agents, representatives of its suppliers, contractors, consultants, Subcontractors, co-owners and Affiliate Companies;

2) Loss of or damage to Contractor’s Group own property and to the property of its own employees, agents, or representatives, including loss or damage to the property of its suppliers, contractors, consultants, Subcontractors, co-owners and Affiliate Companies; or

3) Pollution by Contractor’s Group originating and/or emanating from its property, equipment and spread;

whether or not caused or contributed to by the negligence or other breach of duty of any of the Employer’s Group. Contractor consequently waives, and shall cause their insurers to waive, all right of recourse against Employer’s Group in respect thereof and shall save and hold Employer’s Group harmless from and against any such liabilities, claims, judgements, demands, damages, losses, costs and expenses in connection therewith, arising thereof and/or relating thereto.

51.5 Employer shall hold harmless and indemnify Contractor’s Group against all liabilities, claims, judgments, demands, damages, losses, costs and expenses arising directly or indirectly out of:

1) Injury to (including sickness) and death of Employer’s Group own employees, agents, representatives, including injury to (including sickness) and death of the employees, agents, representatives of its suppliers, contractors, consultants, Subcontractors, co-owners and Affiliate Companies;

2) Loss or damage to Employer’s Group property and to the property of its own employees, agents, or representatives, including loss or damage to the property of its suppliers, contractors, consultants, Subcontractors, co-owners and Affiliate Companies;

3) Pollution by Employer’s Group originating and/or emanating from its property, equipment and spread,

whether or not caused or contributed to by the negligence or other breach of duty of any of Contractor’s Group. Employer consequently waives, and shall cause their insurers to waive, all right of recourse against Contractor’s Group in respect thereof and shall save and hold Contractor’s Group harmless from and against any such liabilities, claims, judgements, demands, damages, losses, costs and expenses in connection therewith, arising thereof and/or relating thereto.

51.6Third party indemnification

51.6.1 Contractor shall hold harmless and indemnify Employer’s Group against any claim, loss or liability for injury and/or death of persons or damage and/or loss of property of third parties to the extent incurred by reason of any Negligence by Contractor, under the Contract.

51.6.2 Employer shall hold harmless and indemnify Contractor’s Group against any claim, loss or liability for injury and/or death of persons or damage and/or loss of property of third parties to the extent incurred by reason of any Negligence by Employer, under the Contract.

Article 52 Fraud, wilful misconduct or Gross Negligence

52.1 Nothing in this Contract excludes or limits liability for either Party’s fraud, wilful misconduct and/or Gross Negligence.

Article 53 Warranty for future purchasers or operators

53.1 The Employer warrants that any future purchasers or operators of the Plant or Works shall be bound by the exclusions and limitations of liability in this Contract, and shall, if necessary to maintain this warranty, assign or novate this Contract to any such future purchasers or operators, or otherwise obtain their agreement to its terms and conditions.

The Employer shall indemnify and hold harmless the Contractor against any claims of future purchasers or operators asserted against Contractor conflicting with said exclusions and limitations.

# CHAPTER 10 FORCE MAJEURE, SUSPENSION AND TERMINATION OF THE CONTRACT, REMEDIES

Article 54 Force Majeure

Force Majeure and a Non-Force Majeure Event of Equal Effect

54.1 “**Force Majeure**” means the occurrence of an exceptional event or circumstance that prevents a Party from performing one or more of its contractual duties under the Contract, and such occurrence:

(a) Is beyond a Party’s reasonable control, and

(b) Is not substantially attributable to the other Party, and

(c) Cannot be reasonably overcome or avoided by the affected Party, and

(d) The affected Party could not reasonably have foreseen.

54.2 .Events comprising Force Majeure, provided the definition and the conditions (a) through (d) of the first paragraph are all satisfied, may include, but are not limited to:

(a) War, hostilities (whether war is declared or not), invasion, act of foreign enemies;

(b) Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, sabotage or piracy;

(c) Riot, commotion disorder, strike or lockout by persons other than the Party’s own Personnel;

(d) Discovery of: munitions of war, explosive materials, ionising radiation or contamination by radio-activity, to be immediately removed, except as may be attributable to a Party's use of such munitions, explosives, radiation or radio-activity, and

(e) Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity, inclement weather beyond the number of unworkable Days agreed in the Special Conditions, and

(f) Currency and export prohibitions, embargo, legislative or regulatory prohibitions to perform the contractual obligations.

54.3 When Force Majeure prevents, or will prevent, a Party from performing any of its duties under the Contract, such affected Party shall give Notice thereof to the other Party and in such Notice the affected Party shall substantiate the event or circumstance that prevents it, or will prevent it, from performing one or more obligations under the Contract. Such Notice shall be sent within three (3) Days, or such other term as the Parties may agree, of the moment the affected Party became or should have become aware of the relevant event or circumstance. The affected Party shall use all reasonable efforts to minimize the impact of Force Majeure upon, including delay in the performance of its contractual obligations and the Parties shall consult with each other to develop and implement, if practicable, a plan of remedial and/or reasonable alternative measures to deal with the Force Majeure and to minimise the losses of each Party resulting from it.

54.4 The legal effect of Force Majeure as set in Article 54.5 shall continue until such moment the affected Party is no longer prevented from performing its obligations under the Contract. The affected Party is under the obligation to notify the other party as soon as the event or circumstance ceases to impede performance of its contractual obligations and shall forthwith resume performing its obligations under the Contract.

54.5 The affected Party successfully invoking this Force Majeure provision is exempt from liability and any other contractual remedy for Breach of Contract for the period during which the impediment exists if it gives Notice of Force Majeure in accordance with Article 54.3. Otherwise, the affected Party is liable for damages related to a delayed Notice or to the absence of Notice. Any time period specified in this Contract for the performance of an obligation shall, upon request of the affected Party, be appropriately extended by reference to the effect of the Force Majeure event. If the Works suffer loss or damage prior to transfer of risk and such loss or damage is due to an event of Force Majeure and the Contractor is not entitled to receive insurance proceeds under the Marine Cargo or the Construction/Erection All Risk Insurance, then the Employer shall fully compensate the Contractor for such loss of or damage to the Works.

54.6 If the Force Majeure of the affected Party is due to the Force Majeure of a third person that the affected Party has engaged to perform the whole or a part of its obligations under the Contract, the affected Party is exempt from liability only if it proves that the third person it has engaged, and as a consequence the affected Party, are in a situation of Force Majeure as described under Article 54.1.

54.7 If Force Majeure has the effect of substantially depriving either or both of the contracting Parties of what they were reasonably entitled to expect under the Contract for a period of ninety (90) Days, or such other period as the Parties may have agreed, or for multiple periods with an aggregate of one hundred and fifty (150) Days, or such other period as the Parties may have agreed, due to the same event or circumstance which has been notified to the other Party, then either Party has the right to terminate the Contract by notification within a reasonable period to the other Party. Such termination shall take effect seven (7) Days after the date the Notice was given.

54.8 If the Contract is terminated under Article 54.7, the provisions of Chapter 6 shall apply and the Employer in consultation with the Contractor shall determine the relevant portion of the Contract Price for the Works done, based upon:

(a) The value of any part of the Works that has been carried out and for which the Contractor has not been paid;

(b) The Cost of Plant and materials ordered for the Works that have been delivered to the Contractor, or of which the Contractor is liable to accept delivery; such goods, materials and Plant shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;

(c) Any other Cost or liability that in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;

(d) The reasonable Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of such items to the Contractor's works in its country (or to any other destination at no greater Cost); and

(e) The reasonable Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the Date of such termination, issue a Payment Certificate in accordance with Article 42, and pay the Contractor accordingly.

Non-Force Majeure Event of equal effect

54.9 Notwithstanding any other provision of this Article, if any event or circumstance outside the control of the Parties arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon Notice by either Party to the other Party of such event or circumstance:

(a) The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and

(b) The sum payable under the Contract to the affected Party shall be the same as would have been payable under Article 54.8.

Article 55 Suspension, termination and/or rescission of the Contract

Suspension of the Works or a Section of the Works by the Employer

55.1 The Employer may at any time instruct the Contractor to suspend progress of a Section or all of the Works. During suspension, the Contractor shall take all reasonable steps in the circumstances to protect, store and secure such part or the Works against any deterioration, loss or damage.

Suspension by the Contractor

55.2 If suspension is necessary for the protection of the Works or human safety, the Contractor may with Notice to the Employer also suspend all or a Section of the Works. During suspension, the Contractor shall take all reasonable steps in the circumstances to protect, store and secure such part or the Works against any deterioration, loss or damage.

Consequences of suspension

55.3 If the Contractor suffers delay and/or incurs Cost as a result of suspension under Articles 55.1 or 55.2, the Contractor shall give Notice to the Employer and shall be entitled to 1) extension of Time to Taking-Over including demobilisation and remobilisation if any and 2) reimbursement of the actual Costs incurred, including, without limitation, storage expenses resulting from the suspension. It shall also be entitled to payment for goods and/or materials and/or Plant that have not been delivered to Site, if the work on Plant or delivery of Plant and/or materials has been suspended. This entitlement shall be to payment of the value as at the Date of Notice to the Employer of such Costs of labour, Subcontractors, demobilisation, Plant and/or materials, if:

(a) The Contractor has indicated the Plant and/or materials are the Employer's property, by marking or otherwise; and

(b) The suspension is not due to a cause attributable to the Contractor.

The Employer shall thereafter, if requested by the Contractor, take over the responsibility for protection, storage, security and insurance of such Plant and/or materials, and the risk of loss or damage.

Prolonged suspension

55.4 If suspension under Article 55.1 has lasted for a continuous period of more than one hundred twenty (120) Days or, if the period is not continuous, for a total of more than one hundred eighty (180) Days in the aggregate and the suspension is not due primarily to a cause attributable to the Contractor, the Contractor may by Notice to the Employer require agreement to proceed from the Employer within twenty-eight (28) Days. If agreement is not given within that time, the Contractor may treat the suspension as an omission by Variation under Article 35 of the affected part of the Works. If such suspension affects the whole of the Works, the Contractor may terminate the Contract under the termination provisions of Article 55.15.

55.5 If the suspension is due to reasons for which the Contractor is responsible, the provisions of Articles 55.3 through 55.4 do not apply. The Contractor shall not be entitled to any extension of the Time to Taking-Over under Article 36.3 or additional payment under the Contract.

Resumption of work

55.6 After receipt of permission or of an Instruction to proceed, the Contractor shall, after Notice to the Employer and together with the Employer, examine the Works and the Plant and materials affected by the suspension. The Contractor shall remobilise and thereafter make good any deterioration or Defect in or loss of the Works or Plant or materials that has occurred during the suspension. The value of such remobilisation and making good shall be a Variation, unless the suspension was caused by reasons attributable to the Contractor.

55.7 If the Employer has taken over risk and responsibility for the suspended Works under Article 55.3, risk and responsibility shall revert to the Contractor fourteen (14) Days (or such other period as may be agreed) after receipt of the agreement or Instruction to proceed.

Suspension or termination for material Breach of Contract

55.8 Either Party may suspend its performance of the Contract or terminate this Contract upon the occurrence of a material Breach of Contract by the other Party. Notices of suspension under this Article 55 must be given at least fourteen (14) Days prior to the first Day of the suspension. Notice of termination must be given (whether or not there has been a prior Notice of suspension) at least the number of Days specified in the Special Conditions prior to the Date of termination. Any such Notice shall become ineffective if the Breach of Contract complained of has been cured, in accordance with Clause 55.13.

55.9 Material Breach of Contract by the Employer includes, but is not limited to:

(a) Persistent failure or refusal to complete the Employer’s Requirements;

(b) Frequently instructing changes to the Employer’s Requirements or the Works without acknowledging that such change constitutes a Variation under Article 35;

(c) Failing for whatever reason to give possession of the Site or Sections thereof at the agreed time or times of handover and/or failing thereafter to agree to extensions of time;

(d) Failing to have access to the funds necessary to pay sums due under the Contract as they are or become due;or

(e) Persistently or seriously hindering or delaying the Contractor; or.

(f) Exceeding the period to evidence financial arrangements under Article 14.2.

55.10 Material Breach of Contract by the Contractor includes, but is not limited to:

(a) Persistently failing to produce Design documents in accordance with the Schedule of Contractual Dates or any agreed revised Schedule;

(b) A substantial and continuing failure to proceed with the Works in accordance with the Schedule of Contractual Dates and Good Practice despite the warning given thirty (30) Days in advance that it is failing to do so in respect of specified areas of the Works;

(c) Failure to achieve Taking-Over/Provisional Acceptance of the Works after the period when the maximum amount of Delay Damages applies and there has been a continuing failure despite the warning given thirty (30) Days in advance.

(d) Failure to correct any Defects notified by the Employer within thirty (30) Days from the Employer’s Notice thereto;

(e) Failure to comply with labour, health, safety and environmental protection laws and regulations;

(f) Failure to achieve Minimum Performance of the Works and make good such non-fulfilment within thirty (30) Days from the Employer’s Notice theretot;

(g) Subcontract the whole of the Contract in breach of Article 61 or assign the Contract without the express written consent of the Employer as per Article 62.

55.11 Material Breaches of Contract by either Party include, but are not limited to:

(a) Failing without express or implied agreement from the other Party to pay sums due under the Contract on more than two separate occasions or for more than thirty (30) Days from the due Date;

(b) Failing to comply with important elements of decisions of the CDB, if the Parties have appointed one, in particular those set out in Article 64.6, or of the arbitral tribunal or of the Emergency Arbitrator;

(c) Bankruptcy or insolvency resulting in the inability to meet its obligations under the Contract, or a failure to be able to meet its debts as they fall due (unless such a position arises from the other Party’s failure to pay sums due);

(d) Failing to produce the guarantees, bonds or other securities required by the Contract within the time specified in the Contract or a reasonable time thereafter.

55.12 In addition to service by any other method, all Notices under this Article must be served by courier or hand delivery with signed acknowledgement of delivery or receipt, unless such acknowledgement is refused.

Consequences of termination

55.14 In all cases of termination of the Contract by any method, including under this Article 55, the limitation-and exclusion-of-liability provisions of this Contract shall continue to apply.

55.15 If the Contractor terminates for material Breach of Contract pursuant to Article 55.8, it shall be entitled to the valuation set out in Article 54.8, plus lost Profit (if any) on the Costs of the whole Contract as damages.

55.16 If the Employer terminates for material Breach of Contract pursuant to Article 55.8, the Contractor shall stop performance of the Works incomplete at date of termination, shall immediately order and commence demobilization with regard to such Works, and shall deliver to the Employer all equipment, materials, lands, and the technical documentation, semi-completed and completed Works to the Employer. In the event of a partial termination, Contractor shall continue the part of the Works not terminated. The Contractor shall further deliver to the Employer all completed work and work in progress.

The Contractor shall be entitled to the compensation set out in Articles 54.8 (a) and (b), but not to that set out in Articles 54.8 (c), (d) or (e). In addition to transfer of title and risk in all goods, materials, and Plant, the Employer has paid for, the Employer shall be entitled to recover the reasonable additional Costs incurred in completing the Works.

55.17 Further, if the Employer terminates for material Breach of Contract pursuant to Article 55.8 it shall be entitled to use all the Contractor’s Equipment on Site at the Date of termination, and is considered by the fact of termination pursuant to this Article 55, to have been granted by the Contractor a transferable royalty-and fee-free licence to use such Equipment until the Works are complete. The Employer is entitled to free use of consumables and perishable items left on Site and shall not be responsible for fair wear or tear or depreciation/deterioration to Contractor’s Equipment of which it has thus temporarily taken use. On completion of the Works, all such Contractor’s Equipment and remaining consumables shall be placed at the disposal of the Contractor. The Employer shall further have the right to take possession of, and the Contractor shall have the obligation to release, all documents, records, progress reports, Design, Contractor’s Documents, specifications, databases, computer software and any other proprietary property and information and other items necessary to continue the work following termination. To this effect, the Employer shall be granted a royalty-free, perpetual, transferable, irrevocable right and licence under rights to use the Contractor’s intellectual property and any other information.

Termination for Convenience

55.18 Employer may terminate the Contract for convenience without material Breach of Contract on the part of Contractor, subject to at least thirty (30) Days prior written Notice. In such a case, Employer shall:

(1)Pay Contractor for the Work performed and/or started up to the effective date of termination, and;

(2)Indemnify Contractor for Costs incurred by Contractor in connection with the close-out of the Works and the termination of the Contract, and;

(3)Pay Contractor a termination fee corresponding to ten percent (10%) of the part of the Contract Price attributable to the unexecuted parts of the Works.

Chapters surviving termination

55.19 Without affecting the enduring nature of any other term of this Contract and notwithstanding any other provision of this Contract or the applicable laws, it is agreed and understood that Chapters 9, 10, 12 and 13 of the Contract survive any termination or alleged termination or avoidance of this Contract on the ground that it was void from the beginning, however such circumstances may come about.

55.20 The provisions of this Article 55 shall (to the extent permitted by the mandatory provisions of the applicable law) be to the exclusion of any suspension and/or termination (including rescission) rights that would otherwise be available under the applicable law.

Return of the documentation and delivery of all completed work and work in progress

55.21 The Employer shall at all times (including after any work termination or termination of this Contract, excluding termination for convenience) have the right to take possession, retain and use copies of Contractor’s standard drawing details, designs, specifications, databases, computer software and any other proprietary property and information as it relates to the Project, and Employer is hereby granted a fully paid, royalty-free, perpetual, transferable, irrevocable right and licence under Contractor’s intellectual property rights to use Contractor’s standard proprietary property and any other information of Contractor prepared for or incorporated into the Project.

55.22 After termination, Contractor shall deliver to Employer all completed work and work in process, including all designs, drawings, specifications, other documentation and material required or produced in connection with such work. The Employer is hereby granted a fully paid, royalty-free, perpetual, transferable, irrevocable right and licence under Contractor’s intellectual property rights to use Contractor’s standard proprietary property and any other information.

# CHAPTER 11 INSURANCE

Article 56 Insurance

Works insurance

56.1 The Contractor shall effect and maintain at its own expense the insurance cover as specified in Articles 56.2 through 56.5. It shall provide terms and conditions as are reasonably available in the insurance market and that are customarily purchased by contractors on similar projects with regard to size, technology and location and the insurance cover shall be effected with financially responsible insurers or re-insurers reasonably acceptable to the Employer. The Employer shall be named in the relevant insurance policy as co-insured or additional insured, as the case may be.

56.2 Unless otherwise agreed in the Special Conditions, Marine Cargo Insurance shall be maintained for not less than one hundred ten percent (110 %) of the Incoterms® 2020 rule CIF value to cover loss or damage to the Works during transportation with conveyances of whatsoever kind from any warehouse worldwide until and including unloading at the Site. This cover shall not be less than the internationally known Institute Cargo Clauses (A) of the Institute of London Underwriters, provided war risks are available at base rate and the deductible shall not be higher than the amount per occurrence specified (if any) in the Special Conditions.

56.3 Construction/Erection All Risk Insurance shall cover loss or damage to the Works on all-risks basis for not less than the full reinstatement cost, subject to sub-limits as are reasonably commercially available and with exclusions customarily required by the insurance market, such as the exclusion of the terrorism risk. This insurance shall cover any Site activity after unloading of the Works at the Site, including storage on or near the Site, construction, erection, assembly, cold and hot commissioning and testing until the Taking-Over Certificate is issued or deemed to be issued.

56.4 The policy conditions shall comply with good international standards and shall contain all terms and conditions and endorsements as are customarily available in the insurance market. Loss or damage to the Works arising from the consequences of Negligence in respect of Design, material or workmanship shall also be covered (in accordance with the internationally known Design Clauses LEG 2/96 or Munich Re Endorsement 200). The general deductible in such policy shall not exceed the amount per occurrence specified (if any) in the Special Conditions.

56.5 The Contractor shall maintain the Construction/Erection All Risk Insurance to provide cover during the Defect Correction Period for loss or damage for which the Contractor is liable arising from a cause occurring through Site activities prior to the Date the Taking-Over Certificate is issued or deemed to be issued, and for loss or damage caused by the Contractor or Subcontractors in the course of any other operations in connection with their Defect liability obligations under the Contract (“extended-maintenance cover”).

General requirements for Articles 56.2 through 56.5 - Works Insurance

56.6 Unless otherwise agreed, the Contractor shall effect and maintain the insurance cover as set out in Articles 56.2 through 56.5 in the joint names of the Employer and the Contractor and shall provide for a waiver of recourse from the insurers against all insured parties.

Proof of Contractor’s Works insurance

56.7 On request of the Employer, the Contractor shall provide certificates of insurance or, if requested, copies of the policies and evidence that all premiums are paid by the Contractor at the latest thirty (30) Days before any risks with respect to which the Contractor is obliged to effect and maintain insurance in accordance with Articles 56.2 through 56.6 are likely to occur.

Application of insurance proceeds

56.8 Any insurance proceeds under the Works Insurance under Articles 56.2 through 56.5 shall be paid from the insurers directly to the Party having the risk at the time of the loss or damage and shall be applied for the repair or rectification of any damage that has occurred.

Other Insurance

56.9 The Contractor shall, further to the Works Insurance as set out in Articles 56.2 through 56.5, effect and maintain at its own expense, or shall cause its Subcontractors to effect and maintain at their own expense, the following insurance cover with reputable insurance carriers authorised to do business in the Country:

(a) Employer’s liability and workman’s compensation insurance in accordance with any applicable law(s). If the law does not provide for any obligations in this respect or requires only some minimum limits, then the Contractor shall arrange this insurance in a manner and with limits as a prudent and reasonable Contractor in the same circumstances and environment would so do. This insurance shall be maintained in full force and effect during the whole time that Contractor’s Personnel are assisting in the execution of the Works on Site.

(b) Automobile liability insurance in the Country in accordance with any applicable law(s). If the law does not provide for any obligations in this respect or requires only some minimum limits, then the Contractor shall arrange this insurance in a manner and with limits as a prudent and reasonable Contractor in the same circumstances and environment would so do.

(c) Comprehensive third-party liability insurance to cover Contractor’s legal liability with a limit, unless otherwise agreed, of indemnity of not less than 1,000,000 (one million) EUR (or equivalent in other currency) per occurrence and 2,000,000 (two million) EUR (or equivalent in other currency) in the aggregate.

(d) Contractor’s Equipment insurance to cover loss or damage to Contractor's Equipment on an all risks basis for not less than the full replacement value, during any activity on the Site and including delivery to Site.

Proof of Contractor’s Other Insurance

56.10 On request of the Employer, the Contractor shall provide evidence to the Employer that the Contractor’s insurance under Article 56.9 is in place and all premiums are paid by the Contractor at the latest within thirty (30) Days after such a request from the Employer.

Subcontractor’s Insurance

56.11 Subcontractors may themselves effect and maintain any type of insurance requested by the Contractor under Articles 56.9 (a) through 56.9 (d) with terms and conditions and limits as are reasonable for such Subcontractors with respect to their engagement in the Works. The Contractor shall however be responsible for the Subcontractor’s compliance with these provisions.

Employer’s Insurance

56.12 The Employer shall maintain in full force and effect a Property All Risk Insurance, including machinery breakdown coverage, covering all real and personal property of the Employer and - starting on the Date the Taking-Over Certificate is issued or deemed to be issued - also covering the Works. It shall provide terms and conditions as are reasonably available in the insurance market and that are customarily purchased by owners of similar projects with regard to size, technology and location and shall be effected with financially responsible insurers or re-insurers reasonably acceptable to the other Party.

56.13 The Employer shall secure that the insurance under Article 56.12 shall name the Contractor and its Subcontractors as co-insureds and provide for insurer’s waiver of subrogation whereby Contractor's insurance specified in Article 56.5 shall be primary to Employer's insurance specified in Article 56.12. In cases covered by Employer’s insurance under Article 56.12 where Contractor is liable under or in connection with this Contract for the repair of loss of or damage to the Plant and such loss or damage is not covered by the insurance under Article 56.5 Contractor shall be responsible for the cost of such repair up to the amount specified in the Special Conditions; Contractor and its Subcontractors shall only be co-insured in Employer's insurance under Article 56.12 to the extent the amount specified in the Special Conditions is exceeded.

56.14 The Employer shall provide to Contractor a certificate in respect of the Property All Risk And Machinery Breakdown Insurance upon request.

General provisions - compliance with policy conditions

56.15 For all insurance policies that either Party is obliged to effect and maintain, the insuring Party is responsible for proper and complete disclosure of all information required by insurers and shall comply with all requirements and policy conditions of such insurance policies.

Change of policy conditions

56.16 Neither Party shall make any changes or alterations in the policy conditions of the insurance that the Party is obliged to effect and maintain without having earlier notified the other Party of such changes or alterations and without having the approval of the other Party where the other Party’s rights and interests could be affected by any such changes or alterations. The insuring Party shall promptly notify the other Party if any of the insurers of the insuring Party’s insurance policies are cancelling or altering any of the insurance policies whereby any rights or interests of the other Party could be affected.

Insurance cover no effect on liabilities

56.17 Nothing in this Article 56 limits the obligations, liabilities or responsibilities of the Contractor or the Employer under the other terms of the Contract and nothing in this Article shall be construed to increase the limitations on liability in 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 their obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance that is available and that it is required to effect and maintain under the Contract and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys that should have been recoverable under this insurance shall be paid by the insuring Party.

Damage mitigation

56.18 The Employer and Contractor acknowledge that in the event of damage, both Parties shall exert all reasonable efforts to mitigate the damage accruing from such event. In the event that the Works sustain damage, notwithstanding the foregoing obligation to mitigate, Contractor shall:

1. Promptly notify Employer;
2. Take all necessary steps to preserve any damaged items, and not clean, destroy, discard or attempt to modify or unnecessarily move or remove any parts that are directly a part of the damage (except as is reasonably necessary to mitigate the damage and/or to ensure the safety of personnel); and
3. Co-operate with, and assist in relation to, any survey carried out by any insurance loss adjustor as soon as is practically possible following the occurrence of the damage.

Policy terms take precedence over descriptions

56.19 The coverage referred to in this Article 56 is set forth in full in the respective insurance policies. The descriptions of such policies in this Contract are not intended to be complete, nor to alter or amend any provisions of the actual policies. In the event of a conflict between the insurance policies and this Contract, the provisions of the insurance policies shall prevail.

Insurance deductible

56.20 In case of damage to or loss of the Works caused by any of the following risks, the Employer shall bear the deductibles of the Marine Cargo or Construction/Erection All Risk Insurance:

(a) All risks resulting from ground, sub-soil or climatic conditions, including, without limitation, pre-existing pollution at the Site and/or unusual climatic conditions;

(b) All risk resulting from the actions of the Employer’s employees and/or agents;

(c) All risks resulting from the Employer’s Design, materials or specifications; and

(d) All risks that the Employer has otherwise accepted as Employer’s risks under this Contract.

In all other cases the Contractor shall bear the deductibles of the aforementioned insurances.

# CHAPTER 12 GENERAL PROVISIONS

Article 57 Confidentiality

57.1 Each Party shall use all business and technical information received from the other Party in connection with this Contract, and which the disclosing Party expressly states to be con­fidential or the confidential nature of which can be assumed on the basis of the circumstances of its disclosure or its contents, solely for the purposes for which it was provided; and shall treat it in the same way as its own business secrets; and not make it available to third parties, unless the business or technical information in question:

(a) Is generally available from public sources or in the public domain;

(b) Is received at any time from any third party without a nondisclosure obligation to the disclosing Party;

(c) Is shown either to have been developed independently by the receiving Party without reliance on the disclosing Party's confidential information or to have been known to the receiving Party prior to its disclosure by the disclosing Party; or

(d) Must be disclosed to third parties for the purpose of performing this Contract, provided such third parties are or become subject to an equivalent confidentiality obligation.

57.2 Notwithstanding the provisions of Article 57.1, any Party may disclose any confidential information if, and to the extent, it is required to do so by the disclosure requirements of any law, rule, or regulation or any order, decree, subpoena, or ruling or other similar process of any court, tribunal, arbitral tribunal or governmental instrumentality or of any regulatory body having jurisdiction. Prior to making or permitting any Party to make such disclosure the disclosing Party shall – to the extent possible – provide the Party that initially provided such information with written Notice of any such requirement so that that Party may seek a protective order or other appropriate remedy. The Party required to make such disclosure shall co-operate with the Party that initially provided the information, in order to minimize and protect against the disclosure of the confidential information and with any efforts by the Party seeking to protect the information from disclosure to obtain proprietary or confidential treatment for such confidential information by the third party to whom the confidential information is disclosed or to seek protective orders limiting the dissemination and use of the confidential information. Nothing herein shall prevent any Party from objecting to the rule, regulation, or order requiring the disclosure.

57.3 The foregoing confidentiality obligation shall also apply to the existence and contents of this Contract.

57.4 The confidentiality obligation created by this Article 57 shall continue for a period of four (4) years after Final Acceptance.

57.5 Publications of any kind on or in any media (including electronic media) by a Party or initiated by a Party referring to the Works shall require the prior written approval of the other Party, which approval shall not unreasonably be withheld.

Article 58 Prohibition of corruption and compliance with applicable laws and standards of ethics

58.1 Each of the Parties hereby undertakes that, at the date of the entering into force of the Contract, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Contract, and that it has taken reasonable measures to prevent Subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

58.2 The Parties agree that, at all times in connection with and throughout the course of the Contract and thereafter, they will comply with and that they will take reasonable measures to ensure that their Subcontractors, agents or other third parties, subject to their control or determining influence, will comply with Part I of the then-current version of the ICC Rules on Combating Corruption, as set out in full in Option II of the ICC Anti-corruption Clause 2012, which is attached as [Appendix I], forming, as a whole, part of this Contract.

58.3 If a Party, as a result of the exercise of a contractually-provided audit right, of Party’s accounting books and financial records, or otherwise, brings evidence that the other Party has been engaging in material or repeated breaches of the provisions of Part I of the then-current version of the ICC Rules on Combating Corruption, it will notify the other Party accordingly and require such Party to take the necessary remedial action in a reasonable time and to inform it about such action. If the other Party fails to take the necessary remedial action, or if such remedial action is not possible, it may invoke a defence by proving that by the time the evidence of breach(es) had arisen, it had put into place adequate anti-corruption preventive measures, as described in Article 10 of the ICC Rules on Combating Corruption 2011, adapted to its particular circumstances and capable of detecting corruption and of promoting a culture of integrity in its organization. If no remedial action is taken or, as the case may be, the defence is not effectively invoked, the first Party may, at its discretion, either suspend the Contract or terminate it, without prejudice to the first Party’s rights to its other rights under the Contract or the applicable law, it being understood that all amounts contractually due at the time of suspension or termination of the Contract will remain payable, as far as permitted by applicable law.

58.4 The contractual consequences of any alleged non-compliance with this ICC Anti-Corruption Article will be determined according to Chapter 13.

58.5. **Compliance with applicable laws and standards of ethics**

Each Party further undertakes that it shall perform its obligations under this Contract in a legal manner, and in line with the applicable international labour standards and, more generally in line with the standards of ethics originating from its self-imposed obligations, from the Employer’s integrity policies to the extent they are part of the Contract or from the applicable international treaties, including the prohibition of fraud, coercion, collusion to achieve an illicit purpose and the violation of human rights.

58.6 For the purpose of permitting quality and compliance audits, based on corrective or preventative action identified with respect to the Contract, applicable law, Good Practice, international labour standards and applicable standards of ethics under Article 58.5, Contractor shall grant to authorised representatives of the Employer, upon reasonable Notice and during regular business hours, rights to access, proceed to on-site inspections and audit the Works and records, technical data, progress reports and Design and Contractor’s Documents including permission to take photographs, photocopies and/or, where necessary, samples of relevant materials. If necessary, the Contractor shall procure that the Employer has access to its Subcontractors’ premises.

**Article 59 Exclusive remedies, entire agreement, severability, amendments to the Contract, Waivers**

Exclusive remedies

59.1 The Parties’ rights, liabilities, responsibilities and remedies with respect to this Contract shall be exclusively those set forth in this Contract. Therefore, all claims for payment or compensation of any kind shall be asserted and established in accordance with the provisions of this Contract. These Contract provisions are a complete system for establishing all and any entitlements as between the Parties, arising out of or in connection with the Contract, its breach, its alleged termination or execution of the Works.

Entire agreement

59.2 The Contract constitutes the entire agreement between the Parties with respect to the subject matter of the Contract and supersedes all communications, representations, negotiations and agreements (whether written or oral) of the Parties with respect thereto made prior to the Date of the Contract which are not incorporated by writing into the Contract.

Modifications to the Contract

59.3 Any changes to this Contract must be evidenced in writing. No written communication or action by either Party shall be effective to modify or amend the Contract, unless the Parties have expressly agreed or implicitly acknowledged in written communications between them that the Contract should be or has been so modified or amended.

59.4 If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provision or condition of the Contract or its performance in a jurisdiction where it is not prohibited or rendered invalid. Further, to the extent possible, the provision or condition shall be replaced through agreement or by the CDB, if the Parties have appointed one, and/or arbitral tribunal, as the case may be, by a valid and enforceable provision or condition with the same or a similar result.

59.5 Neither Party waives any of its rights under this Contract by failing to exercise them. Individual waivers do not amount to a general waiver.

Alleging lack of capacity

59.6 Each Party warrants that, once work has commenced on Site, it will not allege that the person or persons who signed the Contract on behalf of that Party lacked the capacity or authority to execute the Contract, or that there was some other formal invalidity or incapacity that affected the validity or enforceability of the Contract against that Party. In particular, actual or alleged lack of governmental or managing board authorisations or permits shall not excuse non-performance or non-observance of the Contract by a Party.

59.7 If a Party named in the Contract does not have separate legal personality under the laws governing its status, the definition of the Party bound by this Contract includes any organisation of which it is a part that does have separate legal personality.

Waiver of sovereign immunity and similar privileges

59.8 Any sovereign immunity or immunity from execution or attachment is hereby waived by both Parties to this Contract. It is agreed that this Contract is a commercial transaction under international law and that governmental or state bodies entering into this Contract do so with the intention of making the Contract effective in accordance with its terms and so hereby waive any and all sovereign immunity, immunity from attachment or administrative law requirements that otherwise might have applied to them.

Article 60 Joint and several liability

60.1 If either Party constitutes (under applicable laws) a joint venture, consortium, partnership or other unincorporated grouping of two or more persons, however it is described:

(a)Those persons shall be deemed to be jointly and severally liable to the other Party for the performance of the Contract; and

(b) Those persons shall notify the other Party of their leader who shall have authority to bind that Party and each of those persons.

60.2 Neither Party to this Contract nor the members of the unincorporated grouping described in Article 60.1 shall alter its legal status or divest itself of legal responsibility for its obligations under the Contract without the written consent of the other Party.

Article 61 Subcontractor notification and responsibility and assignment of Subcontractor’s obligations

61.1 Neither Party shall subcontract the whole of the Contract without the knowledge and express written agreement of the other Party. Each Party shall be responsible for the acts or defaults of its Subcontractors, agents, officers or employees while performing the Contract as if they were the acts or defaults of the Party.

61.2 The Contractor shall give the Employer not less than twenty-eight (28) Days’ Notice of:

(a) The intended appointment of a Subcontractor, with reasonably detailed particulars of the category of work, which shall include its relevant experience; and

(b) The intended commencement of the Subcontractor’s work on the Site.

61.3 Except where otherwise agreed in this Contract, neither Party has any other rights in relation to the appointment, terms of engagement, scope of work or any other aspects of a Subcontractor’s work.

61.4 If a Subcontractor has undertaken a continuing and assignable obligation to the Contractor for the Works designed or executed, or goods, materials or Plant supplied by that Subcontractor, and if the obligation extends beyond the expiry of the last Defect Correction Period, the Contractor shall, upon the expiry of the last Defect Correction Period, and if requested so to do, assign the benefit of such obligation to the Employer for its unexpired duration. Any such assignment shall be at the expense of the Employer.

Article 62 Assignment of the Contract by either Party

62.1 Unless otherwise provided in the Special Conditions, neither Party shall, without the express written consent of the other Party, assign to any third party the Contract or a part thereof or any right, benefit, obligation or interest therein, except that each of the Parties shall be able to assign either absolutely or by way of charge any money payable to it, which may become payable under the Contract.

Article 63 Communications, including Notices and consents

63.1Wherever the Conditions of Contract provide for the giving or issuing of approvals, certificates, consents, decisions, notices, notifications and/or requests (each a “**Notice**”), these Notices shall be:

(a) In writing and delivered by hand (against receipt), sent by mail or courier, or transmitted by facsimile, electronic mail with confirmation of receipt, or any other system of electronic transmission or storage of information used by the Parties; and

(b) Delivered, sent or transmitted to the address for the recipient’s communications as stated in the Special Conditions or otherwise normally used. However, if the recipient:

(i) Gives Notice of another address, communication shall thereafter be delivered accordingly; and

(ii) Has not stated otherwise when requesting an approval or consent, it may also be sent to the address from which the request was issued.

63.2 Approvals, certificates, consents, decisions, requests, Notices and/or notifications shall not be unreasonably withheld or delayed by either Party.

63.3 Any Notice or other communication served by hand, fax, e-mail or post shall be deemed to have been received:

(a) In the case of delivery by hand or by courier, when delivered against an acknowledgement of receipt;

(b) In the case of fax or e-mail (with confirmation of receipt requested) sent to the correct delivery address, the next local Business Day following the Day of successful transmission; or

(c) In the case of registered mail with a return receipt, at 11:00. on the Date of actual receipt,

provided that in each case where delivery by hand, courier or by fax occurs after 18:00. on a Business Day, or on a Day that is not a Business Day, delivery shall be deemed to occur at 9:00. on the next following Business Day. References to time in this Article 63 are to local time and Business Days in the country of the intended recipient.

63.4In the Contract, except where the context requires otherwise:

(a) The Contract and language are neutral in relation to gender;

(b) Words indicating the singular also include the plural and words indicating the plural also include the singular;

(c) All provisions including the word “agree”, “agreed” or “agreement” require the agreement to be either in writing or recorded in writing (before or after the agreement) even if the provision does not contain an explicit requirements to that effect;

(d) “Written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a record with an electronic signature or confirmation of receipt;

(e) In understanding this Contract, the Chapter, Article and other headings are intended to be included in the Contract and its interpretation; and

(f) All Notices, notifications, certificates, consents, approvals, decisions and requests under this Contract should indicate the Article(s) of this Contract under which they are given or made.

# CHAPTER 13 CLAIMS, DISPUTE RESOLUTION AND ARBITRATION

Article 64 Exclusive claim and dispute resolution procedures - All claims and disputes of all types are to be determined by these provisions

Claims by either Party

64.1 All claims, differences or disputes (“**Disputes**”) arising out of or in connection with the Contract and which have not been resolved by a good faith attempt by the Parties to resolve such amicably, shall be resolved solely by the procedures set out in this Contract.

64.2 Unless otherwise agreed in the Special Conditions, the Parties hereby agree to establish a Combined Dispute Board (“**CDB**”) at the time of entering into the Contract, in accordance with the ICC Dispute Board Rules in force at the Contract Date (the “**Rules**”), which are incorporated herein by reference. The CDB is therefore empowered and expected to decide all Disputes, including any question or issue regarding its existence, jurisdiction, validity or termination. Terms used in this Article 64 shall have the meanings given to them in the Rules. The CDB shall have one or three member(s) appointed in this Contract or appointed pursuant to the Rules. Where the Parties have not otherwise agreed, there shall be a CDB of three members. Unless the Contract has been affected by Force Majeure, otherwise suspended or terminated, the Parties shall continue to perform their obligations according to the Contract during the submission of a Dispute to the CDB.

64.3 All Disputes shall be submitted, in the first instance, to the CDB in accordance with the Rules. For any given Dispute, the CDB shall issue a recommendation unless this Contract requires a decision or the Parties agree that it shall render a decision or it decides to do so upon the request of a Party and in accordance with the Rules.

64.4 If any Party fails to comply with a recommendation or a decision when required to do so pursuant to the Rules, the other Party may refer the failure itself, without having to refer it to the CDB first, to arbitration under the Rules of Arbitration of the ICC by one or more arbitrators appointed in accordance with the said Rules of Arbitration for summary or other expedited relief, as may be appropriate. A Party that has failed to comply with a recommendation or a decision, when required to do so pursuant to the Rules, shall not raise any issue as to the merits of the recommendation or the decision as a defence to its failure to comply without delay with the recommendation or the decision in such arbitration proceedings for summary or other expedited relief.

64.5 If any Party sends a Notice to the other Party and the CDB, expressing its dissatisfaction with a recommendation or a decision as provided for in the Rules, or if the CDB does not issue the recommendation or decision within the time limit provided for in the Rules, or if the CDB has not been established or is disbanded pursuant to the Rules, the dispute shall be finally settled under the Rules of Arbitration of the ICC by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

64.6 Until the dispute is finally settled by arbitration or by agreement of the Parties, they shall remain bound by any decision of the CDB, whether or not dissatisfaction has been expressed, unless the Parties themselves agree otherwise. All sums of money agreed or ordered to be paid by the CDB shall be paid immediately and not held back pending resolution of the Dispute or for any other reason.

64.7 Each Party hereby indemnifies the other Party for any and all Costs or losses caused by breach of Articles 64.1 through 64.6.

64.8 The language of the CDB proceeding and the arbitral proceeding shall be the ruling language of the Contract unless otherwise provided for.

64.9 The seat of the CDB shall be the place where the Site is located, the seat of the arbitration shall be the place as set out in the Special Conditions.

Article 65 Supplemental provisions relating to arbitration

65.1 The arbitral tribunal can open up review or revise any decision of the CDB which has become final and binding in accordance with the Rules. In addition, the arbitral tribunal may, if considered appropriate by the arbitral tribunal and permitted under applicable law, as provided hereafter, make interim awards for the purpose of enforcement of the CDB Decision.

65.2 Any Notice of dissatisfaction shall be specific as to what part of a decision or recommendation it refers to and disputes (if there are identifiable elements to the decision) and what parts of any decision or recommendation are not disputed. Once the time period for serving Notices of dissatisfaction has passed, neither Party may subsequently argue that a decision or part of a decision is not binding, if neither Party served a Notice of dissatisfaction in respect of the decision or any part of it.

Res judicata, sequential arbitrations and the contractual effects of the CDB

65.3 The dispositive provisions of earlier decisions (if any) of a CDB constituted under this Contract shall be binding on a later CDB and arbitral tribunals if and to the extent that they have become final and binding.

65.4 Neither Party shall be limited in arbitration to views, evidence or arguments put to the CDB or to the reasons for dissatisfaction given in its Notice of dissatisfaction with a CDB decision, if there was such a Notice. Any determination of a CDB on a technical (rather than a legal) issue shall be admissible in evidence in the arbitration.

65.5 If an arbitral tribunal has been appointed and the arbitral tribunal has not declared the proceedings closed, subject to the rules governing the conduct of the arbitral tribunal, any further disputes in respect of which a CDB decision has not been rendered in time or has not become final and binding, as the case may be, may be referred to the arbitral tribunal.

65.6 Following Taking-Over of the Works, the Parties may, entirely in their own discretion, refer Disputes directly to arbitration under the Rules of Arbitration of the ICC by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

**END OF GENERAL CONDITIONS OF CONTRACT**

1. 1 Sometimes the Contract Price may be set out in an Appendix to assist in keeping it confidential. [↑](#footnote-ref-1)
2. It would generally be good practice to have a witness of the Parties witness all signatures, and examine the ID documents, business cards or powers of attorney of those signing as duly authorized representatives. If appropriate, a chop, stamp or seal for each of the Parties should be attached. [↑](#footnote-ref-2)
3. See Guidance Note 2 [↑](#footnote-ref-3)
4. Sample forms of guarantees are given in Guidance Note 2 [↑](#footnote-ref-4)
5. Please strike through the non-preferred option. [↑](#footnote-ref-5)
6. Please strike through the non-preferred option. [↑](#footnote-ref-6)
7. Please strike through the non-preferred option. [↑](#footnote-ref-7)