



EPC AGREEMENT

FOR

Habshan 3 Stabilizer Feed Capacity Enhancement & Other Mechanical Works

(FOR ONSHORE WORKS)

REFERENCE NUMBER [●]

FORM OF AGREEMENT

This AGREEMENT is made on the date of the later of the two signatures below, by and between:

- (1) [ADNOC Gas], a company established under the laws of ABU DHABI, and having its registered office address at [insert registered address], Abu Dhabi, United Arab Emirates (the “COMPANY”); and
- (2) [INSERT LEGAL NAME OF THE CONTRACTOR], a company organised and existing under the laws of [insert jurisdiction], with commercial licence no. [●] / company number [●] and having its registered office address at [insert registered address] (the “CONTRACTOR”).¹

The COMPANY and the CONTRACTOR will be referred to herein either individually as a “PARTY” or collectively as the “PARTIES”.

WHEREAS:

- (A) The COMPANY intends to develop a modification to existing brownfield facilities as outlined in the EPC Scope of Works for FOUR PACKAGS under (the “PROJECT”) at Habshan and Habshan Sulphur Granulation plants.].
- (B) The COMPANY has selected the CONTRACTOR to execute and complete the WORKS on a turnkey basis, including with respect to the engineering, procurement, construction, installation, testing and commissioning works in relation to the PROJECT.
- (C) On [insert date] (the “EFFECTIVE DATE”) the PARTIES entered into the LETTER OF AWARD in relation to the WORKS.

NOW, THEREFORE, in consideration of the promises and mutual agreements and covenants hereinafter set forth, the PARTIES hereby agree as follows:

- 1. AGREEMENT DOCUMENTS AND INTERPRETATION
 - 1.1 The AGREEMENT sets out the terms and conditions upon which the CONTRACTOR shall perform the WORKS and the terms, conditions and AGREEMENT PRICE that will apply to the performance of such WORKS.
 - 1.2 In the AGREEMENT, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS.
 - 1.3 The following documents (each an “AGREEMENT DOCUMENT”) shall together form the AGREEMENT and shall be read and construed as one agreement:
 - (a) this FORM OF AGREEMENT; and
 - (b) the following ANNEXURES:
 - (i) 42.12 1 – SPECIAL CONDITIONS;
 - (ii) ANNEXURE 2 – GENERAL TERMS AND CONDITIONS;
 - (iii) ANNEXURE 3 – SCOPE OF WORK;
 - (iv) ANNEXURE 4 – COMPLETION SCHEDULE;
 - (v) ANNEXURE 5 – PRICING SCHEDULE;

¹ If the CONTRACTOR is a joint venture or a consortium, please approach ADNOC Legal for appropriate wording to address this.

- (vi) ANNEXURE 6 – COMPANY PROVIDED FACILITIES;
- (vii) ANNEXURE 7 – INSURANCE REQUIREMENTS;
- (viii) ANNEXURE 8 – SECURITIES AND FORMS;
- (ix) ANNEXURE 9 – CONTRACTOR’S SUBMISSIONS;
- (x) ANNEXURE 10 – PROJECT EXECUTION REQUIREMENTS;
- (xi) ANNEXURE 11 – COMPLETION AND ACCEPTANCE REQUIREMENTS;
- (xii) ANNEXURE 12 – HSE REQUIREMENTS; and
- (xiii) ANNEXURE 13 – ICV IMPROVEMENT PLAN.

1.4 Subject to Clause 1.5 of this FORM OF AGREEMENT and Article 1.3 of the GENERAL TERMS AND CONDITIONS, and notwithstanding the subdivisions of the AGREEMENT DOCUMENTS into the separate parts listed above, every part of each AGREEMENT DOCUMENT shall be deemed to be supplementary to and complementary to every other part and shall be read with and into the AGREEMENT so far as it may be practicable to do so.

1.5 This FORM OF AGREEMENT and the ANNEXURES shall constitute the agreement between the PARTIES (the “**AGREEMENT**”), and each shall be read and construed as an integral part of the AGREEMENT.

1.6 In the event that there is a conflict or ambiguity between the terms of this FORM OF AGREEMENT and the ANNEXURES or among the ANNEXURES, the order of precedence below shall prevail and shall guide the construction of any part of the AGREEMENT:

- (a) this FORM OF AGREEMENT;
- (b) ANNEXURE 1 – SPECIAL CONDITIONS;
- (c) ANNEXURE 2 – GENERAL TERMS AND CONDITIONS;
- (d) ANNEXURE 7 – INSURANCE REQUIREMENTS;
- (e) ANNEXURE 13 – ICV IMPROVEMENT PLAN;
- (f) ANNEXURE 12 – HSE REQUIREMENTS;
- (g) ANNEXURE 3 – SCOPE OF WORK;
- (h) ANNEXURE 5 – PRICING SCHEDULE;
- (i) ANNEXURE 4 – COMPLETION SCHEDULE;
- (j) ANNEXURE 10 – PROJECT EXECUTION REQUIREMENTS;
- (k) ANNEXURE 11 – COMPLETION AND ACCEPTANCE REQUIREMENTS;
- (l) ANNEXURE 9 – CONTRACTOR’S SUBMISSIONS;
- (m) ANNEXURE 6 – COMPANY PROVIDED FACILITIES; and
- (n) ANNEXURE 8 – SECURITIES AND FORMS.

With respect to any ANNEXURE(S) listed in Clause 1.3 which are not otherwise listed in this Clause 1.6, in the event that there is a conflict or ambiguity, then such ANNEXURE(S) shall take the order of precedence in which they appear in Clause 1.3.

2. The PARTIES have agreed that the key provisions set out below shall apply to the AGREEMENT.

1.	COMMENCEMENT DATE:				
2.	VALIDATION PERIOD for GROUND DATA:	Three (3) months starting on the COMMENCEMENT DATE.			
3.	FINAL COMMERCIAL BID SUBMISSION DATE:				
4.	KEY MILESTONE DATES:	No.	KEY MILESTONES:	KEY MILESTONE DATES	
		1.	MECHANICAL COMPLETION (of the FACILITIES as a whole):	a. Hab-1 Shutdown works completion – Package 3 - October-2024 shutdown (10 maintenance days) b. Hab-1 shutdown works completion - Package 4 - October-2024 shutdown (10 maintenance days) c. Hab-2 Shutdown works completion – Package 4 - November-2025 shutdown (10 maintenance days) d. Hab-3 Shutdown works completion – Package 3 - February-2026 shutdown (10 maintenance days]	
		2.	READY FOR START-UP (of the FACILITIES as a whole):	a. Hab-1 Shutdown works completion – Package 3 – ONE DAY prior to final day of October-2024 shutdown b. Hab-1 shutdown works completion - Package 4 - ONE DAY prior to final day of October-2024 shutdown c. Hab-2 Shutdown works completion – Package 4 - ONE DAY prior to final day of November-2024 shutdown d. Hab-3 Shutdown works completion – Package 3 - ONE DAY prior to final day of February-2026 shutdown	
		3.	PROVISIONAL ACCEPTANCE:	Package-1: 4 weeks from RFSU Package-2: 4 weeks from RFSU Package-3: March 2026 Package-4: December 2025]	
5.	DELAY LIQUIDATED DAMAGES:	No.	KEY MILESTONES:	Rate per week (percentage of AGREEMENT PRICE)	Overall Maximum Amount (percentage of AGREEMENT PRICE)
		1.	MECHANICAL COMPLETION (of	a. Package 3 Shutdown works: completion –: 1% per day	4% per package

			the FACILITIES as a whole):	exceeding contractual shutdown window (10 maintenance days) b. Package 4 Shutdown works: completion –: 1% per day exceeding contractual shutdown window (10 maintenance days)]	
		2.	READY FOR START-UP (of the FACILITIES as a whole):	a. Package-3: 1% per day exceeding contractual shutdown window (10 maintenance days) b. Package-4: 1% per day exceeding contractual shutdown window (10 maintenance days)]	2% per package.
		3.	PROVISIONAL ACCEPTANCE:	a.Package-1: 0.5% per week b.Package-2: 0.5% per week c.Package-3: 2.5% per week d.Package-4: 0.5% per week	4% per Package
		4.	Overall maximum amount of DELAY LIQUIDATED DAMAGES	10% of the AGREEMENT PRICE.	
6.	Expiry of WARRANTY PERIOD:	Twelve (12) months from the date of issue of an EARLY TAKING OVER CERTIFICATE, a PARTIAL PROVISIONAL ACCEPTANCE CERTIFICATE or the PROVISIONAL ACCEPTANCE CERTIFICATE			
7.	INITIAL AGREEMENT PRICE:	[●].			
8.	Invoicing:				
9.	ADVANCE PAYMENT:	No Nil% of the INITIAL AGREEMENT PRICE.			

10.	PERFORMANCE BANK GUARANTEE amount:	<i>10% of the INITIAL AGREEMENT PRICE.]</i>
11.	PARENT COMPANY GUARANTEE:	As Applicable
12.	Additional CONTRACTOR insurance requirements (in addition to those stated in Articles 41.1 to 41.15):	NO
13.	Total liability cap:	100% of the AGREEMENT PRICE.
14.	REPRESENTATIVES:	<p>COMPANY REPRESENTATIVE, as defined in Article 2.1(b), shall mean:</p> <p>Name:</p> <p>Title:</p> <p>Tel.: +971</p> <p>Email:</p> <p>Fax: [●]</p> <p>CONTRACTOR REPRESENTATIVE, as defined in Article 2.1(a), shall mean:</p> <p>Name: [●]</p> <p>Title: [●]</p> <p>Tel.: [●]</p> <p>Email: [●]</p> <p>Fax: [●]</p>
15.	Notice details:	<p>Notices to the COMPANY:</p> <p>Attention:</p> <p>Address:</p> <p>Tel: +971</p> <p>Email:</p> <p>Fax: [insert]</p> <p>Notices to the CONTRACTOR:</p> <p>Attention: [insert name of CONTRACTOR REPRESENTATIVE]</p> <p>Address: [insert]</p> <p>Tel: [insert]</p> <p>Email: [insert]</p> <p>Fax: [insert]</p>

For the avoidance of doubt, the governing law and dispute resolution provisions of Article 46 of ANNEXURE 2

(GENERAL TERMS AND CONDITIONS) apply to the AGREEMENT, including this FORM OF AGREEMENT.

[Signature page follows]

IN WITNESS WHEREOF, the AGREEMENT has been executed by duly authorised representatives of the PARTIES.

For and on behalf of:

ADNOC Gas

By: _____

Name: -----

Title: -----

Date: -----

For and on behalf of:

[INSERT CONTRACTOR NAME]

By: _____

Name: -----

Title: -----

Date: -----

ANNEXURE 1

SPECIAL CONDITIONS

The following SPECIAL CONDITIONS supplement and/or amend the AGREEMENT DOCUMENTS, other than the FORM OF AGREEMENT.

[Not applicable.]

ANNEXURE 2**GENERAL TERMS AND CONDITIONS****Table of Contents**

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The provisions of these general terms and conditions, as may be amended from time to time, (“**GENERAL TERMS AND CONDITIONS**”) shall apply as part of the AGREEMENT in accordance with Clause 2 of the FORM OF AGREEMENT.

1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In these GENERAL TERMS AND CONDITIONS, unless otherwise defined, capitalised words and expressions shall have the following meanings:

“**ABANDONMENT**” means:

- (a) a deliberate abandonment of the WORKS (except where the WORKS are suspended under the AGREEMENT or due to a FORCE MAJEURE EVENT); or
- (b) any material failure to perform the WORKS provided that: (i) the CONTRACTOR is unable to provide to the COMPANY, within fifteen (15) DAYS of being requested to do so, a written confirmation, together with supporting evidence, demonstrating that there is a reasonable prospect of the CONTRACTOR achieving PROVISIONAL ACCEPTANCE within one hundred and eighty (180) DAYS of the PROVISIONAL ACCEPTANCE DATE and (ii) the COMPANY is not in breach of its obligations set out in Articles 7.1, 23, 24, 37, 41 and 42.

“**ABU DHABI**” means the Emirate of Abu Dhabi (including its territorial waters).

“**ADNOC**” means Abu Dhabi National Oil Company (ADNOC) P.J.S.C..

“**ADNOC GROUP**” means ADNOC and each PERSON directly or indirectly CONTROLLED by ADNOC.

“**ADNOC GROUP SUPPLIER & PARTNER CODE OF ETHICS**” means the conduct policy for suppliers and partners of the ADNOC GROUP, as amended from time to time, which is available at www.adnoc.ae.

“**ADVANCE PAYMENT**” means the advance payment to be made by the COMPANY to the CONTRACTOR in accordance with Article 23.1.

“**ADVANCE PAYMENT GUARANTEE**” has the meaning given to that term in Article 30.1(a).

“**ADVANCE PAYMENT GUARANTEE RETURN DATE**” has the meaning given to that term in Article 30.1(c).

“**ADVANCE PAYMENT INVOICE**” has the meaning given to that term in Article 23.5(b).

“**AED**” means the lawful currency of the UAE, as may be modified from time to time.

“**AFFILIATE**” means:

- (a) in relation to any PERSON (other than the ADNOC GROUP), any other PERSON that at the relevant time, directly or indirectly, CONTROLS, is CONTROLLED by or is under common CONTROL with, such PERSON; and
- (b) in relation to the ADNOC GROUP, each other member of the ADNOC GROUP.

“**AGREEMENT**” has the meaning given to that term in the FORM OF AGREEMENT.

“**AGREEMENT DOCUMENT**” has the meaning given to that term in the FORM OF AGREEMENT.

“**AGREEMENT PRICE**” means the total price to be paid to the CONTRACTOR under the

AGREEMENT, based on the INITIAL AGREEMENT PRICE and any adjustments thereto made in accordance with the AGREEMENT.

“AMENDMENT” has the meaning given to that term in Article 50.2.

“ANNEXURE” means one of the annexures set out in Clause 1.3(b) of the FORM OF AGREEMENT.

“ANNUAL ICV TARGET” has the meaning given to that term in Article 4.5(b).

“ANTI-BRIBERY LAWS” means any law, rule, regulation, or other legally binding measure of any jurisdiction that relates to bribery or corruption.

“ANTI-MONEY LAUNDERING LAWS” means applicable laws, including common or civil law, regulations, rules and guidance having the force of law criminalizing or imposing administrative or regulatory obligations and/or liability in respect of money laundering. ‘Money laundering’ means the acquisition, possession, use, conversion, transfer or concealment of the true nature of property of any description, and legal documents or instruments evidencing title to, or interest in, such property, knowing that such property is an economic advantage from criminal offences, for the purpose of:

- (a) concealing or disguising the illicit origin of the property (i.e., any criminal origin, including without limitation, corruption, drug trafficking, organized crime, terrorism, money laundering or fraud); or
- (b) assisting any person who is involved in the commission of the criminal offence as a result of which such property is generated, to evade the legal consequences of such actions.

“ASSOCIATED WORKS” means any works and/or services necessary or supplemental for the PROJECT or performed in connection therewith (other than the WORKS).

“ASSOCIATED WORKS CONTRACTOR” means any contractor, vendor, consultant or service provider, engaged by or on behalf of the COMPANY, the ADNOC GROUP and/or a GOVERNMENTAL AUTHORITY, to carry out ASSOCIATED WORKS, and includes any subcontractors and vendors (of any tier) of the same.

“AUDIT REPORT” has the meaning given to that term in Article 4.5(d).

“BUSINESS VENTURE” has the meaning given to that term in Article 47.1.

“CIVIL CODE” means the UAE Federal Law No. (5) of 1985 in respect of Civil Transactions as may be amended and/or supplemented from time to time.

“CLAIMS RELEASE LETTER” means the letter required to be issued by the CONTRACTOR pursuant to Article 17.1(d)(i), in the form attached at ANNEXURE 11.

“COMMENCEMENT DATE” means the date on which the CONTRACTOR shall commence the performance of the WORKS, as specified in the FORM OF AGREEMENT.

“COMMISSIONING” means the commissioning activities to be carried out by the CONTRACTOR in respect of each SYSTEM and the FACILITIES commencing after MECHANICAL COMPLETION and continuing until such SYSTEM or FACILITIES, as applicable, have achieved READY FOR START-UP, as more particularly described in ANNEXURE 10D.

“COMPANY” has the meaning given to that term in the FORM OF AGREEMENT.

“COMPANY CONSENTS” means the CONSENTS listed in ANNEXURE 6.

“COMPANY CONSTRUCTION EQUIPMENT” means the CONSTRUCTION EQUIPMENT (if any) made available by the COMPANY for use by the CONTRACTOR or any SUBCONTRACTOR in the execution of the WORKS.

“COMPANY INDEMNIFIED PARTIES” means the COMPANY, its AFFILIATES, its CO-VENTURERS, its OTHER CONTRACTORS, and the COMPANY PERSONNEL, but shall exclude the CONTRACTOR INDEMNIFIED PARTIES.

“COMPANY INFORMATION” means the data, text, specifications, drawings, designs, reports, studies, calculations, machine-readable or computer generated information, diagrams, images or sounds, procedures process technology, or any other information (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, which:

- (a) are disclosed or supplied to the CONTRACTOR by or on behalf of the COMPANY, including without limitation any FEED documentation and RELY UPON INFORMATION; or
- (b) the COMPANY or COMPANY PERSONNEL create, generate, collect, process, store or transmit in connection with the AGREEMENT and/or the performance of the WORKS; or
- (c) the CONTRACTOR or CONTRACTOR PERSONNEL create, generate, collect, process, store or transmit for the COMPANY in connection with the AGREEMENT and/or the performance of the WORKS.

“COMPANY INFORMATION DEFICIENCY” has the meaning given to that term in Article 5.1(b)(i).

“COMPANY REPRESENTATIVE” has the meaning given to that term in Article 2.1(b).

“COMPANY STANDARDS” means the rules, policies and procedures issued to the CONTRACTOR from time to time, and shall include the ADNOC GROUP SUPPLIER & PARTNER CODE OF ETHICS and any other applicable conduct standards, but excludes the HSE REQUIREMENTS.

“COMPANY VARIATION REQUEST” has the meaning given to that term in Article 24.2.

“CONCURRENCY” means the effects of two or more events of delay are felt, in whole or in part, at the same time (whether or not those events have arisen at the same time), where at least one of the relevant events is a DELAY EVENT and at least one of the other relevant events is an event for which the CONTRACTOR has agreed to bear the risk or responsibility under the terms of the AGREEMENT. For the avoidance of doubt, a CONCURRENCY can exist only where, and for the period in which, the effects of such events are overlapping.

“CONFIDENTIAL ARBITRATION INFORMATION” has the meaning given to that term in Article 46.2(f).

“CONFIDENTIAL INFORMATION” has the meaning given to that term in Article 37.1.

“CONSENT” means any permit, consent, approval, authorisation, agreement, no objection certificate, waiver, license or security and/or access pass which is to be obtained from any PERSON in connection with the WORKS.

“CONSEQUENTIAL LOSS” has the meaning given to that term in Article 42.11(a).

“CONSTRUCTION EQUIPMENT” means apparatus, machinery, vehicles and other things required for the execution and completion of the WORKS, including, without limitation, the remedying of any DEFECTS, but excluding MATERIALS and TEMPORARY WORKS.

“CONTRACTOR” has the meaning given to that term in the FORM OF AGREEMENT.

“CONTRACTOR CONSENT” means any CONSENT that is not a COMPANY CONSENT.

“CONTRACTOR CONSTRUCTION EQUIPMENT” means any CONSTRUCTION EQUIPMENT that is not COMPANY CONSTRUCTION EQUIPMENT.

“CONTRACTOR INDEMNIFIED PARTIES” means the CONTRACTOR, the SUBCONTRACTORS and the CONTRACTOR PERSONNEL.

“CONTRACTOR MEMBER” has the meaning given to that term in Article 2.3(a).

“CONTRACTOR REPRESENTATIVE” has the meaning given to that term in Article 2.1(a).

“CONTRACTOR SITE” means any location, other than the SITE, where the CONTRACTOR or any SUBCONTRACTOR or VENDOR is performing any WORKS or otherwise utilising such location in relation to the AGREEMENT.

“CONTRACTOR VARIATION REQUEST” has the meaning given to that term in Article 24.4.

“CONTROL” means, in relation to a PERSON:

- (a) the possession, directly or indirectly, of the power to vote fifty percent (50%) or more of the voting stock (other than directors’ qualifying shares or other *de minimis* holdings required by LAW to be held by other PERSON(S)) of such PERSON;
- (b) ownership, directly or indirectly, of fifty percent (50%) or more of the equity interests (other than directors’ qualifying shares or other *de minimis* holdings required by LAW to be held by other PERSON(S)) in such PERSON; or
- (c) having, directly or indirectly, the ability to direct or procure the direction of the management and policies of such PERSON, whether through the ownership of shares, by contract or otherwise,

and **“CONTROLS”** and **“CONTROLLED”** have corresponding meanings.

“COST TO COMPLETE” means the cost(s) to the COMPANY of completing any WORKS that remain outstanding as at the date of termination of all or any part of the AGREEMENT and/or correcting any DEFECT following termination of all or any part of the AGREEMENT to the extent that such costs exceed the unpaid balance (as at the date of termination) of the AGREEMENT PRICE that would have been payable by the COMPANY to the CONTRACTOR under the AGREEMENT for completing the WORKS if the AGREEMENT was not terminated, together with a reasonable charge for tendering and/or administering any contract for such completion.

“COURT” has the meaning given to that term in Article 46.2(b).

“CO-VENTURER” means any co-venturer with the COMPANY from time to time having any interest in an oil and/or gas exploration and/or production area pursuant to a concession agreement, field entry agreement (or other similar agreement) and which (together with the COMPANY) is a direct or indirect beneficiary of the WORKS being performed, together with its assignees and successors in interest (each of which is itself considered to be a CO-VENTURER).

“DAY” means any calendar day.

“DEFECT” means:

- (a) any defect, non-conformity, shrinkage or fault in or omission from the WORKS or the FACILITIES, or otherwise any aspect of the WORKS that is not in accordance with the AGREEMENT (including any corrosion at rates in excess of those prescribed by the AGREEMENT); and/or
- (b) any damage, or loss of, the WORKS or the FACILITIES which is attributable, in part or in full, to any such defect, non-conformity, shrinkage, fault or omission.

“DELAY EVENT” has the meaning given to such term in Article 25.1.

“DELAY LIQUIDATED DAMAGES” means the delay liquidated damages payable in accordance with Article 18.4(e).

“DISPUTE” has the meaning given to that term in Article 46.2(a).

“DRAWINGS” means all drawings which are necessary for the PROJECT or otherwise for the provision of the WORKS, whether or not they are referred to in the SCOPE OF WORK, documentation, including shop drawings and “as built” record drawings or any modifications thereto.

“EAD” means the Environment Agency – Abu Dhabi, established pursuant to Law No. (16) of 2005 pertaining to the Reorganisation of the Abu Dhabi Environment Agency.

“EARLY TAKING OVER CERTIFICATE” means a certificate issued by the COMPANY to the CONTRACTOR pursuant to Article 17.1(e) in the form attached at ANNEXURE 11.

“EFFECTIVE DATE” means the date on which the AGREEMENT becomes legally binding, which is either:

- (a) where there is a LETTER OF AWARD, the effective date specified in the LETTER OF AWARD; or
- (b) where there is no LETTER OF AWARD, the date on which the AGREEMENT has been signed by all of the PARTIES.

“EPC” means engineering, procurement and construction.

“FACILITIES” means the physical and permanent works and any improvements to them to be designed engineered, procured, constructed, erected, installed and/or completed by the CONTRACTOR pursuant to the AGREEMENT.

“FEED” means front-end engineering and design relating to the WORKS.

“FEED ENDORSEMENT” means the AGREEMENT DOCUMENT entitled “FEED ENDORSEMENT” in a form approved by the COMPANY and signed by the CONTRACTOR attached at ANNEXURE 9.

“FEEDSTOCK” means, where applicable, the hydrocarbons provided by or on behalf of the COMPANY in relation to the PROJECT.

“FINAL ACCEPTANCE” has the meaning given to this term in Article 17.2(a).

“FINAL ACCEPTANCE CERTIFICATE” means the certificate issued by the COMPANY to the CONTRACTOR pursuant to Article 17.2(b)(i), in the form attached at ANNEXURE 11.

“FINAL COMMERCIAL BID SUBMISSION DATE” has the meaning given to that term in the FORM OF AGREEMENT.

“FINAL RELEASE LETTER” means the letter required to be issued by the CONTRACTOR pursuant to Article 17.2(c), in the form attached at ANNEXURE 11.

“FORCE MAJEURE EVENT” means any event or circumstance or combination thereof occurring after the EFFECTIVE DATE:

- (a) the occurrence of which is not reasonably foreseeable as of the EFFECTIVE DATE; and
- (b) which is beyond the reasonable control of the PARTY affected by such event or circumstance and which such affected PARTY is unable to prevent or overcome (notwithstanding the reasonable care of the PARTY affected),

and shall include:

- (i) flood, lightning, storm, typhoon, tornado, earthquake, landslide, soil erosion, subsidence, washout, radioactive contamination (other than that caused by the use of radioactive sources by the CONTRACTOR, the COMPANY, SUBCONTRACTORS and/or OTHER CONTRACTORS in connection with the performance of either PARTY's obligations under this AGREEMENT), or epidemic;
- (ii) war (whether declared or undeclared), blockade, insurrection, military uprising, or act of public enemies;
- (iii) revolution, rebellion, civil war, riot, civil disturbance, civil commotion, terrorist acts, seizure or act of sabotage, imposition by a GOVERNMENTAL AUTHORITY of sanctions, embargo or breaking off of diplomatic relations by a GOVERNMENTAL AUTHORITY; and
- (iv) trade or labour dispute, strike, lockout, industrial disturbance, except where limited to the CONTRACTOR PERSONNEL,

other than, in each case, to the extent caused by the PARTY seeking to rely on Article 38.1, or its AFFILIATES, SUBCONTRACTORS or PERSONNEL, and provided, in each case, that the event or circumstance in question satisfies the requirements of paragraphs (a) and (b) above.

The following events or circumstances shall not be or be deemed to be a FORCE MAJEURE EVENT even where they satisfy the requirements of paragraphs (a) and (b) above:

- (A) the unavailability of funds or non-payment of a sum of money by a PARTY or a THIRD PARTY;
- (B) financial hardship or the inability of the affected PARTY to make a profit or achieve a satisfactory rate of return in relation to or in connection with any activities undertaken pursuant to the AGREEMENT or otherwise;
- (C) SITE conditions, including extraordinary GROUND CONDITIONS;
- (D) the occurrence of any shortage of CONTRACTOR PERSONNEL, CONTRACTOR CONSTRUCTION EQUIPMENT, materials or other resources, unless due to the events listed in subparagraphs (i) to (iv);
- (E) the occurrence of any inclement weather condition, other than as provided in paragraph (i) above;
- (F) failure to obtain or maintain any permit, license or consent, where such failure is due to the act or omission of the affected PARTY; and
- (G) failure or inability to perform where such failure is attributable to market prices or currency devaluation.

“FORM OF AGREEMENT” means the AGREEMENT DOCUMENT entitled FORM OF AGREEMENT executed between the PARTIES in connection with the WORKS.

“GENERAL TERMS AND CONDITIONS” means these general terms and conditions.

“GOOD INDUSTRY PRACTICE” means, in relation to any undertaking or any circumstances, the exercise of the skill, care, diligence, prudence, foresight and judgement which would be expected from a suitably skilled, trained and experienced international engineering, procurement and construction contractor operating to the standard that would be expected of an internationally renowned and leading provider of works or services similar to the WORKS.

“GOVERNMENTAL AUTHORITY” means any political subdivision, agency, department, commission, board, bureau, court or other authority of ABU DHABI or the UAE, or any quasi-

governmental or private body exercising, or purporting to exercise, any executive, legislative, judicial, administrative, police, regulatory or taxing authority or power of any nature in ABU DHABI or the UAE, or any company or instrumentality owned or controlled by any GOVERNMENTAL AUTHORITY.

“GOVERNMENT OFFICIAL” means any official, agent or employee of any GOVERNMENTAL AUTHORITY, political party or public international organisation, any candidate for political office, or any immediate relative (spouse, son, daughter, or parent) of any of the foregoing, including, without limiting the generality of the foregoing, any official, agent or employee of any company in which any GOVERNMENTAL AUTHORITY holds a majority or controlling equity interest (directly or indirectly), any official, agent or employee of any company which is in the process of being privatised in whole or in part, and any PERSON who is purporting to act in a private capacity, but who otherwise is a **“GOVERNMENT OFFICIAL”** within the meaning of this definition.

“GROSS NEGLIGENCE / WILFUL MISCONDUCT” means, with respect to a PERSON, any act or failure to act (whether sole, joint or concurrent) which was intended to cause, or which was in reckless disregard of, or wanton indifference to, harmful consequences which such PERSON knew, or should have known, such act or failure to act would have on the safety or property of another PERSON or on the environment.

“GROUND CONDITIONS” means geological, hydrological, hydrographic, seabed subsurface and/or sub-seabed conditions at the SITE, including existing services and utilities.

“GROUND DATA” means the data relating to some or all GROUND CONDITIONS at the SITE, as set out in the GROUND DATA section of ANNEXURE 3D.

“GST” means Gulf Standard Time.

“HAZARDOUS SUBSTANCE” means any flammable, explosive, radioactive, toxic or otherwise hazardous substance or material, including, without limitation, any substances identified as being hazardous in any applicable LAW and any substance or source (including any form of organic or chemical matter whether solid, liquid, gas, odour, heat, vibration or radiation) that makes or has the capacity to make the environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in its capacity to support plant life;
- (c) contaminated;
- (d) otherwise degraded; or
- (e) non-compliant with any environmental requirements specified by any GOVERNMENTAL AUTHORITY, including the EAD.

“HSE” means health, safety and environment.

“HSE REQUIREMENTS” means the COMPANY’s requirements for HSE, as set out in ANNEXURE 12.

“ICV CERTIFICATE” means the certificate issued by a COMPANY approved certifying body which details the in-country value score of the CONTRACTOR.

“ICV IMPROVEMENT PLAN” means the plan attached in ANNEXURE 13 detailing the in-country value to be achieved by the CONTRACTOR during the performance of the AGREEMENT.

“ICV PAYMENT” means the amount payable to the CONTRACTOR for achievement of the annual targets set out in the ICV IMPROVEMENT PLAN.

“INDEMNIFIED CLAIM” has the meaning given to such term in Article 42.7(a).

“INDEMNIFIED PARTY” means any PERSON seeking indemnity under the AGREEMENT.

“INDEMNIFYING PARTY” means any PERSON from whom an indemnity is sought under the AGREEMENT.

“INITIAL AGREEMENT PRICE” means the price to be paid to the CONTRACTOR in respect of the WORKS in accordance with the AGREEMENT, as set out in the FORM OF AGREEMENT, excluding any OPTIONAL ITEMS (if applicable) or other adjustments made in accordance with the AGREEMENT.

“INSOLVENCY EVENT” means, in respect of a PERSON, any of the following events:

- (a) any general assignment, settlement, or composition with or for the benefit of its creditors being entered into, by or in relation to, such PERSON;
- (b) a supervisor, trustee, receiver, interim receiver, receiver and manager, custodian, administrator, administrative receiver (or other PERSON with similar powers) taking possession of or being appointed over or any distress, execution, garnishment, attachment or other process being levied or enforced (and not being discharged within twenty-one (21) DAYS) upon the whole or any material part of the assets of such PERSON;
- (c) such PERSON ceasing to carry on business or being or becoming insolvent or unable to pay its debts as they fall due;
- (d) a petition being presented (and not being discharged or adjourned for later hearing within twenty-one (21) DAYS or not being discharged on the first adjourned hearing) or a resolution being passed, or an order being made for the administration or the receivership, winding-up, bankruptcy, liquidation, or dissolution of such PERSON;
- (e) any order or judgement being made by a tribunal of competent jurisdiction, restraining such PERSON's ability to deal with all or a substantial portion of its assets and property; or
- (f) such PERSON suffering any similar event or act with similar effect under the LAW of any competent jurisdiction.

“INSTRUCTION TO PROCEED” has the meaning given to this term in Article 24.3.

“INSURANCE DECLARATION” means the insurance declaration form to be issued by the CONTRACTOR to the COMPANY pursuant to Article 17.1(a)(vi), in the form set out in ANNEXURE 7-C.

“INTELLECTUAL PROPERTY RIGHTS” means:

- (a) patents, trademarks, service marks, rights in design, trade names, trade secrets, copyrights and topography rights, database rights, rights in trade names and domain names, know-how, goodwill and the right to sue for passing off, secret formulae and processes, rights protecting goodwill and reputation, rights in and to confidential information and to disclose and use and protect the confidentiality of, confidential information (including know-how and trade secrets and rights in and to INVENTIONS, COMPANY INFORMATION and CONFIDENTIAL INFORMATION howsoever arising) and all other intellectual property rights in each case whether registered or not;
- (b) applications for registration of any of them, together with any and all such registrations and other rights as may be granted pursuant to same;
- (c) rights under licences and consents in relation to any of them; and/or
- (d) all forms of protection of a similar nature, or having equivalent, or similar effect to any of them which subsist or will subsist now or in the future anywhere in the world.

“INVENTION” means any invention, idea, discovery, development, improvement or innovation, whether or not patentable or capable of registration or of being maintained as a trade secret, or protectable as or by any form of INTELLECTUAL PROPERTY RIGHT, and whether or not recorded in any medium.

“INVOICE” means a periodic invoice issued by the CONTRACTOR to the COMPANY pursuant to Article 23.2.

“JOINT VENTURE” has the meaning given to that term in Article 2.3.

“KEY MILESTONE” means MECHANICAL COMPLETION, READY FOR START-UP, PROVISIONAL ACCEPTANCE and any other MILESTONE identified as a KEY MILESTONE in the FORM OF AGREEMENT.

“KEY MILESTONE DATE” means the date, stated in the FORM OF AGREEMENT, by which a KEY MILESTONE is to be achieved, as may be adjusted in accordance with the AGREEMENT.

“KEY PERSONNEL” means the key CONTRACTOR PERSONNEL as identified in ANNEXURE 9.

“LAW” means all applicable laws including, but not limited to, treaties, statutes, decrees, edicts, codes, orders, instructions, judgements, rules, ordinances and regulations of any GOVERNMENTAL AUTHORITY.

“LETTER OF AWARD” means, where applicable, the letter of award executed by the PARTIES in connection with the WORKS and referenced in the Recitals to the FORM OF AGREEMENT.

“LLI” means the MATERIALS or CONSTRUCTION EQUIPMENT identified as long lead items in ANNEXURE 3C.

“LLI NOVIATION AGREEMENT” means the agreement to be entered into between the COMPANY, the VENDOR(S) and the CONTRACTOR in respect of the novation to the CONTRACTOR of the LLI SUPPLY AGREEMENTS.

“LLI SUPPLY AGREEMENTS” means the purchase orders for LLIs set out in ANNEXURE 3C.

“MATERIALS” means materials of any kind (including spare parts and LLIs) intended to form part of, or forming part of, the WORKS.

“MECHANICAL COMPLETION” means, in relation to a SYSTEM or the FACILITIES (as the case may be), the stage when all of the following conditions have been met:

- (a) to the extent required in ANNEXURE 10D, any pre-commissioning activities for a SYSTEM and/or the FACILITIES (as the case may be) have been completed;
- (b) the SYSTEM and/or the FACILITIES (as applicable) have been constructed and completed mechanically and structurally;
- (c) all PUNCH LIST ITEMS required by the SCOPE OF WORK to have been rectified as a condition to MECHANICAL COMPLETION have been rectified;
- (d) in respect of the FACILITIES, the FACILITIES are ready for the safe introduction of FEEDSTOCK; and
- (e) all other requirements of MECHANICAL COMPLETION set out in ANNEXURE 10D have been satisfied,

in each case in accordance with the AGREEMENT, LAW and applicable CONSENTS.

“MECHANICAL COMPLETION CERTIFICATE” means a certificate issued by the COMPANY to

the CONTRACTOR pursuant to Article 15.1(b) in the form attached in ANNEXURE 11.

“MILESTONE” means a part or parts of the WORKS identified in the WORK PROGRAM as a milestone to be achieved by the CONTRACTOR by the associated MILESTONE DATE.

“MILESTONE DATE” means the date, stated in the WORK PROGRAM, by which a MILESTONE is to be achieved, as may be amended from time to time in accordance with this AGREEMENT.

“OPTIONAL ITEMS” means any optional items required by the COMPANY in connection with the execution of any part of the WORKS that are specified in the PRICING SCHEDULE.

“OTHER CONTRACTORS” means the contractors and subcontractors who perform work or services for the COMPANY other than the CONTRACTOR and the SUBCONTRACTORS.

“PARENT COMPANY GUARANTEE” means the guarantee to be given by the parent company of the CONTRACTOR to the COMPANY with respect to all of the CONTRACTOR’s obligations and liabilities under the AGREEMENT, in accordance with, and complying with the requirements set out in Article 30.3.

“PARTIAL PROVISIONAL ACCEPTANCE CERTIFICATE” means the certificate issued by the COMPANY to the CONTRACTOR pursuant to Article 17.1(c) in the form attached at ANNEXURE 11.

“PARTIAL READY FOR START-UP CERTIFICATE” means the certificate issued by the COMPANY to the CONTRACTOR pursuant to Article 15.3(c) in the form attached at ANNEXURE 11.

“PARTY” and **“PARTIES”** have the meaning given to those terms in the FORM OF AGREEMENT.

“PERFORMANCE BANK GUARANTEE” has the meaning given to that term in Article 30.2(a).

“PERFORMANCE BANK GUARANTEE RETURN DATE” has the meaning given to that term in Article 30.2(b).

“PERFORMANCE GUARANTEE” has the meaning given to that term in ANNEXURE 11.

“PERFORMANCE TESTS” means the tests to be performed to ascertain whether the FACILITIES or a specified part thereof are able, among other things, to attain the PERFORMANCE GUARANTEES, as described in ANNEXURE 10D.

“PERSON” means any individual, corporation, joint stock company, limited liability company, partnership, joint venture, association, trust, unincorporated organisation, GOVERNMENTAL AUTHORITY or other entity.

“PERSONNEL” means:

- (a) with respect to the COMPANY, the natural persons who perform work on behalf of the COMPANY, who may be employees (including agency personnel) of the COMPANY or otherwise supplied by its AFFILIATES, its CO-VENTURERS or its OTHER CONTRACTORS, and the respective officers, directors and invitees of any of the foregoing (**“COMPANY PERSONNEL”**); and
- (b) with respect to the CONTRACTOR, the natural persons who perform the WORKS on behalf of the CONTRACTOR, who may be employees (including agency personnel) of the CONTRACTOR or otherwise supplied by the CONTRACTOR, or supplied by a SUBCONTRACTOR, and the respective officers, directors and invitees of any of the foregoing (**“CONTRACTOR PERSONNEL”**).

“PMC” means, where applicable, the project management consultant appointed by the COMPANY in relation to the PROJECT.

“PREMISES” means any of the COMPANY INDEMNIFIED PARTIES or CONTRACTOR INDEMNIFIED PARTIES’ headquarters, offices, sites, facilities or other premises, excluding the SITE and any CONTRACTOR SITE.

“PRE-EXISTING INTELLECTUAL PROPERTY” means any INTELLECTUAL PROPERTY RIGHTS which:

- (a) is owned by or licensed to the PARTY concerned prior to the COMMENCEMENT DATE, or which exists prior to the COMMENCEMENT DATE but is owned by or licensed to the PARTY concerned (otherwise than by or pursuant to the terms of this AGREEMENT) after the COMMENCEMENT DATE, or which is created or developed after the COMMENCEMENT DATE and is owned by or licensed to the PARTY concerned (otherwise than by or pursuant to the terms of this AGREEMENT) after the COMMENCEMENT DATE; and
- (b) in the case of the CONTRACTOR, is identified in writing as being owned by or licensed to the CONTRACTOR on delivery of the same to COMPANY.

“PRESIDENT” has the meaning given to that term in Article 46.2(b).

“PRICING SCHEDULE” means the AGREEMENT DOCUMENT attached as ANNEXURE 5.

“PROGRESS REPORT” has the meaning given to that term in Article 18.3.

“PROJECT” has the meaning given to that term in Recital (A) in the FORM OF AGREEMENT.

“PROPERTY” means:

- (a) in respect of the COMPANY INDEMNIFIED PARTIES, any movable or immovable property that is under the guardianship or control of one or more of the COMPANY INDEMNIFIED PARTIES whether owned, hired, rented, leased, chartered or otherwise;
- (b) in respect of the CONTRACTOR INDEMNIFIED PARTIES, any movable or immovable property that is under the guardianship or control of one or more of the CONTRACTOR INDEMNIFIED PARTIES whether owned, hired, rented, leased, chartered or otherwise; and
- (c) in respect of a THIRD PARTY, any movable or immovable property that is under the guardianship or control of that THIRD PARTY whether owned, hired, rented, leased, chartered or otherwise,

provided that, if a given PROPERTY is under the common guardianship or control of one or more of the COMPANY INDEMNIFIED PARTIES, the CONTRACTOR INDEMNIFIED PARTIES and/or a THIRD PARTY, it shall be deemed to be under the guardianship or control of the PERSON having de facto control over it.

“PROVISIONAL ACCEPTANCE” means the conditions set out in Article 17.1(a) have been satisfied.

“PROVISIONAL ACCEPTANCE CERTIFICATE” means the certificate issued by the COMPANY to the CONTRACTOR pursuant to Article 17.1(b)(i) in the form attached at ANNEXURE 11.

“PROVISIONAL ACCEPTANCE DATE” means the date specified in the FORM OF AGREEMENT for achievement of PROVISIONAL ACCEPTANCE for the whole of the WORKS.

“PUNCH LIST ITEMS” means a list of outstanding work, exceptions and/or defects identified by the COMPANY that the CONTRACTOR is required to address in accordance with the AGREEMENT, as further defined in the SCOPE OF WORK.

“READY FOR START-UP” means the stage when the conditions set out in Article 15.3(a) have been satisfied.

“READY FOR START-UP CERTIFICATE” means a certificate in the form attached at ANNEXURE 11 issued by the COMPANY to the CONTRACTOR pursuant to Article 15.3(b)(i) certifying that COMMISSIONING has been completed and READY FOR START-UP of the FACILITIES as a whole has been achieved.

“READY FOR START-UP DATE” means the date specified in the FORM OF AGREEMENT for achievement of READY FOR START-UP for the FACILITIES as a whole, as may be amended from time to time in accordance with this AGREEMENT.

“REIMBURSABLE ITEMS” means the WORKS, if any, to be compensated on a remeasurable basis in accordance with the PRICING SCHEDULE.

“RELY UPON INFORMATION” means the COMPANY INFORMATION identified as “RELY UPON INFORMATION” and set out in ANNEXURE 3E.

“REPRESENTATIVES” has the meaning given to that term in Article 2.1(c).

“REVISED INVOICE” has the meaning given to that term in Article 23.3(b)(ii).

“RULES” has the meaning given to that term in Article 46.2(b).

“SCOPE OF WORK” means the AGREEMENT DOCUMENT attached as ANNEXURE 3.

“SITE” means the area specified in ANNEXURE 3A on which the FACILITIES are to be constructed and any other areas where the WORKS are to be executed, excluding any CONTRACTOR SITE.

“SPECIAL CONDITIONS” means the AGREEMENT DOCUMENT attached as ANNEXURE 1.

“START-UP” means the activities to be carried out by the COMPANY (with the CONTRACTOR’s assistance, to the extent required under the SCOPE OF WORK) commencing after the issuance of the READY FOR START-UP CERTIFICATE and continuing until the FACILITIES are ready for the PERFORMANCE TESTS, as described in further detail in ANNEXURE 10D.

“SUBCONTRACTOR” means any PERSON approved in writing by the COMPANY to whom execution of any part of the WORKS is subcontracted by the CONTRACTOR and any other subcontractors of any tier of such PERSON, and includes its legal successors and/or permitted assigns.

“SYSTEM” means a discrete part of the FACILITIES that is capable of being operated and tested independently, as more particularly described in the SCOPE OF WORK.

“TEMPORARY WORKS” means all temporary facilities, buildings, stores, hard standings, temporary accesses, bridging works and contents thereof and temporary works of every kind required to be performed, or provided by the CONTRACTOR in accordance with the AGREEMENT, but excludes the MATERIALS.

“THIRD PARTY” means any PERSON other than the COMPANY or the CONTRACTOR. For the purposes of Article 42, COMPANY INDEMNIFIED PARTIES and CONTRACTOR INDEMNIFIED PARTIES shall be excluded from the definition of “THIRD PARTY”.

“UAE” means the United Arab Emirates including, where applicable, its territorial waters.

“UAE VAT” means value added tax or similar charges in respect of transactions involving the sale or provision of goods and/or services and payable to any GOVERNMENTAL AUTHORITY in the UAE in accordance with the VAT LAW.

“UNDISPUTED INVOICE” has the meaning given to that term in Article 23.3(b)(i).

“USD” means the lawful currency of the United States of America, as may be modified from time to time.

“VALIDATION PERIOD” means the period stated in the FORM OF AGREEMENT, starting on the COMMENCEMENT DATE.

“VALUE ENGINEERING PROPOSAL” has the meaning given to that term in Article 24.8.

“VARIATION” means a variation to the WORKS or the requirements for the WORKS, which may include acceleration, deceleration, sequencing, change, modification, substitution, addition to, or reduction or omission thereof.

“VARIATION ORDER” means a written notice issued by the COMPANY to the CONTRACTOR:

- (a) requiring the CONTRACTOR to proceed with a VARIATION; and
- (b) confirming the details of any adjustment to the AGREEMENT PRICE and/or to the WORK PROGRAM and KEY MILESTONE DATES, if applicable.

“VARIATION PROPOSAL” has the meaning given to that term in Article 24.2(b).

“VAT LAW” means applicable LAW of the UAE in relation to VAT, including “Federal Decree – Law No. (8) of 2017 on Value Added Tax”.

“VENDOR” means a supplier of MATERIALS in connection with the WORKS including related documentation and services, where necessary.

“WARRANTY PERIOD” means the warranty period(s) in relation to all or any part of the WORKS, being the period which commences on the earlier of the date of:

- (a) the issue of an EARLY TAKING OVER CERTIFICATE in respect of all or such part of the WORKS; and
- (b) achievement of PROVISIONAL ACCEPTANCE of all or such part of the WORKS (as confirmed by a PROVISIONAL ACCEPTANCE CERTIFICATE or PARTIAL PROVISIONAL ACCEPTANCE CERTIFICATE, as applicable),

and expires at the end of the period specified in the FORM OF AGREEMENT, as may be extended pursuant to Article 4.4(e).

“WORK PROGRAM” means the timetable for the performance of the WORKS, provided and updated by the CONTRACTOR in accordance with Article 18.2.

“WORKS” means any works and services to be performed under the AGREEMENT, as further described in the SCOPE OF WORK, and which includes provision of the WORKS DOCUMENTATION and any other deliverables specified in the AGREEMENT.

“WORKS DOCUMENTATION” means any documents or information, in computer readable or written form, which the CONTRACTOR is required to provide as part of its obligations under the AGREEMENT.

1.2 INTERPRETATION AND CONSTRUCTION

In the AGREEMENT (unless the context otherwise requires or where it is expressly stated to the contrary):

- (a) words denoting the singular number only shall include the plural and vice versa; words denoting the masculine shall include the feminine and vice versa;
- (b) references to Articles shall be construed as references to Articles of these GENERAL TERMS AND CONDITIONS;

- (c) headings shall be for convenience of reference only and shall not affect the interpretation of any provision hereof;
- (d) the terms “**hereof**”, “**herein**”, “**hereby**”, “**hereto**” and similar words refer to the entire AGREEMENT and not to any particular Article or ANNEXURE or any other subdivision of the AGREEMENT;
- (e) the words “**include**” or “**including**” shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases or words of like import;
- (f) references to “AGREEMENT” shall be construed as a reference to the AGREEMENT as amended, novated, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, novates, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;
- (g) references to dates and periods of time shall be construed in accordance with the Gregorian calendar;
- (h) references to laws, decrees, statutes, regulations, ordinances or other public instruments shall be construed as references to the same as they may have been, or may from time to time be, amended or re-enacted or in any other way modified from time to time and all instruments, orders, plans, regulations, by-laws, permissions and directions at any time made thereunder; and
- (i) any capitalised words, terms, phrases and abbreviations used exclusively in any ANNEXURE shall have the meanings set forth in such ANNEXURE.

1.3 CONFLICTS AND INCONSISTENCIES BETWEEN AGREEMENT DOCUMENTS

- (a) If there is any error, fault, conflict, ambiguity or discrepancy arising within the AGREEMENT DOCUMENTS that cannot be resolved by applying the order of precedence in Clause 1.6 of the FORM OF AGREEMENT, the PARTY discovering the same shall notify the other in writing promptly following its discovery and the COMPANY shall thereafter issue an instruction to the CONTRACTOR to resolve the inconsistency.
- (b) Any instructions by the COMPANY issued in accordance with Article 1.3(a):
 - (i) shall be rendered in writing within a reasonable time after the CONTRACTOR’s notice or the COMPANY’s discovery of the error, fault, conflict, ambiguity or discrepancy, as applicable; and
 - (ii) may give precedence to one provision in the AGREEMENT over another, where the two are inconsistent, notwithstanding that the CONTRACTOR has previously proceeded on the basis of a different interpretation of such provisions.
- (c) At all times, the CONTRACTOR shall proceed with the WORKS in accordance with the COMPANY’s instructions issued pursuant to Article 1.3(a) without delay or interruption, including in the event of disagreement between the PARTIES.
- (d) The CONTRACTOR warrants that, prior to entering into the AGREEMENT, it has inspected the AGREEMENT DOCUMENTS (excluding the RELY UPON INFORMATION) and confirmed to its satisfaction that they do not contain any inconsistency requiring the operation of Article 1.3(a). The CONTRACTOR hereby accepts the entire risk that Article 1.3(a) may be required to be operated (irrespective of the AGREEMENT DOCUMENT(S) in which the inconsistency arises, and irrespective of which PARTY was responsible for the preparation of such AGREEMENT DOCUMENTS). Subject to Articles 5.2(a) and 8.4, the CONTRACTOR shall comply with an instruction of the COMPANY issued pursuant to Article 1.3(a) and the CONTRACTOR’s compliance with any such instruction shall not give rise to any circumstances constituting a VARIATION or entitle the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief, and any such entitlement is hereby expressly excluded.

2. COMPANY & CONTRACTOR

2.1 REPRESENTATIVES

- (a) The CONTRACTOR shall designate a representative to be the focal point for all instructions and communications between the PARTIES in respect of the AGREEMENT (the “**CONTRACTOR REPRESENTATIVE**”) as set out in the FORM OF AGREEMENT.
- (b) The COMPANY shall designate a representative to be the focal point for all instructions and communications between the PARTIES in respect of the AGREEMENT (the “**COMPANY REPRESENTATIVE**”) as set out in the FORM OF AGREEMENT.
- (c) Where the COMPANY REPRESENTATIVE or CONTRACTOR REPRESENTATIVE (together, the “**REPRESENTATIVES**”) are not specified in the FORM OF AGREEMENT, the PARTIES shall notify each other of their respective REPRESENTATIVE within seven (7) DAYS of the EFFECTIVE DATE.
- (d) The REPRESENTATIVES shall be the focal points between the PARTIES for the purpose of giving and receiving information, instructions and other reports related to the WORKS, and shall have authority to represent the CONTRACTOR and the COMPANY, respectively, for all matters relating to the day to day performance of the WORKS, provided always that this authority shall not extend to executing AMENDMENTS or any VARIATION (unless such REPRESENTATIVE is an authorised signatory of the applicable PARTY).
- (e) The REPRESENTATIVES may, from time to time, delegate all or any of their responsibilities to a nominated deputy or deputies. The details and terms of such delegation shall be subject to prior written notification to the other PARTY. Information, instructions and decisions issued from such a nominated deputy shall be treated as if from the REPRESENTATIVE that nominated such deputy.
- (f) Each PARTY may replace their respective REPRESENTATIVES at any time upon written notice to the other PARTY.

2.2 COMMUNICATIONS & NOTICES

- (a) All notices and other communications between the PARTIES required or permitted hereunder shall be in writing in the English language. Such notices and other communications may be served by receipted hand delivery, fax transmission, email address or by courier.
- (b) Any notices and other communications between the PARTIES relating to the AGREEMENT shall be sent to the postal address, fax number or email address specified in the FORM OF AGREEMENT.
- (c) All communication related to the day to day conduct of the WORKS may be sent directly between the REPRESENTATIVES, provided always that such communication is not regarding an AMENDMENT.
- (d) All notices and other communications shall be deemed to be effected, and hence effective, at the moment of delivery to the correct postal address, fax number or email address, save that a fax transmission shall be deemed to have been delivered at the time when it was dispatched if such time is prior to 4pm (GST), or the following DAY if such time is after 4pm (GST), provided that a transmission record is retained by the sender to show that the transmission was correctly completed and that all pages were transmitted.
- (e) Each PARTY may change the postal address, fax number or email address referred to in Article 2.2(b) by giving notice served pursuant to this Article 2.2. The change shall take effect for the PARTY notified of the change at 4pm (GST) on the later of:
 - (i) the date, if any, specified in the notice as the effective date for the change; and

- (ii) the date seven (7) DAYS after receipt of the notice of change.

2.3 JOINT AND SEVERAL LIABILITY

If the CONTRACTOR constitutes (under applicable LAW) a joint venture, consortium or other unincorporated grouping of two (2) or more PERSONS (a “**JOINT VENTURE**”):

- (a) each of these PERSONS shall be referred to as a “**CONTRACTOR MEMBER**” and each and all of them shall be jointly and severally liable to the COMPANY in relation to the performance of the WORKS and the CONTRACTOR’s obligations and liabilities under or arising out of the AGREEMENT;
- (b) the COMPANY shall be entitled to enforce any right or claim arising under the AGREEMENT against any CONTRACTOR MEMBER without being required to give any prior notice to, or to enforce the same right or claim against, any other CONTRACTOR MEMBER;
- (c) the CONTRACTOR MEMBERS shall appoint a leader and shall notify the COMPANY of their leader, who shall have authority to bind the CONTRACTOR and each CONTRACTOR MEMBER;
- (d) the CONTRACTOR shall not alter its composition or legal status without the prior written consent of the COMPANY; and
- (e) the CONTRACTOR shall promptly notify the COMPANY in writing if the financial circumstances or standing of any CONTRACTOR MEMBER diminish so as to adversely affect the performance of the WORKS and/or the CONTRACTOR’s obligations under the AGREEMENT.

3. EFFECTIVENESS OF THE AGREEMENT

- 3.1 The AGREEMENT shall be deemed effective as of the EFFECTIVE DATE and, subject to Article 34.1, shall remain in full force and effect until the date of issuance of the FINAL ACCEPTANCE CERTIFICATE unless terminated earlier in accordance with terms of the AGREEMENT.
- 3.2 On and from the date of execution of the FORM OF AGREEMENT, the AGREEMENT shall retroactively supersede, by way of novation, the LETTER OF AWARD and:
 - (a) all notices, work, acts and omissions under the LETTER OF AWARD shall be deemed notices, work, acts and omissions under the AGREEMENT; and
 - (b) all payments made by the COMPANY to the CONTRACTOR under the LETTER OF AWARD shall be deemed payments made by the COMPANY to the CONTRACTOR under the AGREEMENT.
- 3.3 Where the CONTRACTOR has performed activities, including any works or services in furtherance of the WORKS prior to the date of execution of the FORM OF AGREEMENT other than pursuant to the LETTER OF AWARD, the CONTRACTOR warrants to the COMPANY that such works or services have been carried out in accordance with the requirements of the AGREEMENT and confirms that the obligations, warranties and undertakings set out in the AGREEMENT apply to such works or services (without prejudice to the generality of such warranties and undertakings).

4. PERFORMANCE OF THE WORKS

4.1 GENERAL

- (a) The CONTRACTOR shall perform, maintain and complete the WORKS on a turnkey basis in accordance with the LAW, the AGREEMENT, COMPANY STANDARDS, CONSENTS and GOOD INDUSTRY PRACTICE, and for the benefit of the COMPANY. No other provision of the AGREEMENT shall limit the generality of this Article 4.

- (b) Should any works or services be required which are not specifically referenced in the AGREEMENT (either directly or indirectly), but which are necessary:
 - (i) to meet the requirements of the AGREEMENT; or
 - (ii) to conform to GOOD INDUSTRY PRACTICE; or
 - (iii) to meet the requirements of LAW,

then the CONTRACTOR shall perform all such works or services and the CONTRACTOR's performance of such works or services shall not give rise to any circumstances constituting a VARIATION or entitle the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief, and any such entitlement is hereby expressly excluded.

4.2 COMPLIANCE WITH THE COMPANY'S INSTRUCTIONS AND STANDARDS

- (a) Notwithstanding the CONTRACTOR's obligation to perform and deliver the WORKS on a turnkey basis, the CONTRACTOR shall comply with, and adhere strictly to, the COMPANY's instructions and directions on any matter relating to the WORKS.
- (b) The CONTRACTOR shall comply with the COMPANY STANDARDS.

4.3 COMPLIANCE WITH REQUIREMENTS OF LAW

- (a) The CONTRACTOR shall be fully aware of all requirements of LAW which have any impact whatsoever on the performance of the CONTRACTOR's obligations under the AGREEMENT.
- (b) The CONTRACTOR hereby agrees that the cost of its compliance with all such requirements of LAW, including with respect to the technical, commercial and financial effects of the same, is included within, and covered by the AGREEMENT PRICE. For the avoidance of doubt, this Article 4.3(b) shall not reduce or otherwise relieve the CONTRACTOR from performing its obligations under the AGREEMENT in circumstances where the requirements of the AGREEMENT exceed the requirements of LAW.
- (c) If a new or changed LAW affecting the WORKS or the CONTRACTOR's performance of its obligations under the AGREEMENT comes into force in the UAE after the FINAL COMMERCIAL BID SUBMISSION DATE, the CONTRACTOR shall give notice to the COMPANY and submit one or more proposals for compliance. In the event that the COMPANY determines that compliance is required, Article 29 shall apply.
- (d) The CONTRACTOR shall give all required notices and shall provide all bonds, securities or deposits required by any GOVERNMENTAL AUTHORITY in relation to the performance of the WORKS. All costs incurred by the CONTRACTOR in compliance with its obligations as set out in this Article 4.3(d) shall be deemed to be included in, and covered by, the AGREEMENT PRICE.
- (e) The CONTRACTOR shall compensate the COMPANY for all losses, damages and costs arising out of or in connection with any failure by the CONTRACTOR to comply with the LAW in its performance of the WORKS, and shall defend, indemnify and hold the COMPANY harmless from and against all losses, liabilities, damages and costs (including legal costs) arising out of or in connection with any claim by any PERSON in relation to such failure.

4.4 CORRECTION OF DEFECTS

- (a) If, during the period from the COMMENCEMENT DATE until the expiry of the applicable WARRANTY PERIOD, the COMPANY discovers or believes there is a DEFECT, the

COMPANY may give the CONTRACTOR an instruction:

- (i) specifying the DEFECT;
 - (ii) requiring the CONTRACTOR to correct the DEFECT; and
 - (iii) specifying the time within which the DEFECT shall be corrected.
- (b) The CONTRACTOR shall be responsible for all DEFECTS, except if it establishes that a DEFECT arises from:
- (i) a breach of the AGREEMENT or any act of prevention by the COMPANY;
 - (ii) normal wear and tear following the passing of care, custody and control of the WORKS or the relevant part thereof pursuant to Article 33.2(a), to the COMPANY; or
 - (iii) improper operation and maintenance of the FACILITIES by or on behalf of the COMPANY, carried out other than in accordance with the operation and maintenance manuals provided by the CONTRACTOR.
- (c) If an instruction is given pursuant to Article 4.4(a) and the CONTRACTOR reasonably considers that it does not bear responsibility for the relevant DEFECT under Article 4.4(b), the CONTRACTOR shall issue a CONTRACTOR VARIATION REQUEST to the COMPANY pursuant to Article 24.4, requesting that such instruction be treated as a VARIATION.
- (d) Subject to Article 4.4(c), if an instruction is given pursuant to Article 4.4(a), the CONTRACTOR shall correct the DEFECT:
- (i) within the time specified in the COMPANY's instruction; and
 - (ii) at times and in a manner consistent with the COMPANY's security, operational and other business requirements for the FACILITIES.
- (e) If an instruction is given pursuant to Article 4.4(a) and the CONTRACTOR is responsible for the DEFECT in accordance with Article 4.4(b):
- (i) the WARRANTY PERIOD for the part of the WORKS repaired or replaced shall be extended for a period equal to the original WARRANTY PERIOD, commencing on the date of such repair or replacement; and
 - (ii) if the WORKS, part thereof or a SYSTEM cannot be used for the purposes for which they are intended by reason of such DEFECT, the WARRANTY PERIOD for the whole of the WORKS, part thereof or the affected SYSTEM (as the case may be), excluding the part of the WORKS repaired or replaced, shall be extended by a period equal to the period during which the WORKS or SYSTEM could not be used for the purposes for which they are intended,
- provided that no WARRANTY PERIOD (whether in relation to a part of the WORKS or the whole of the WORKS) shall be extended beyond twenty-four (24) months after the date of issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE for the whole of the WORKS.
- (f) If the CONTRACTOR fails to remedy any DEFECT in the WORKS within the time specified in the COMPANY's instruction, the COMPANY may, at its sole discretion and without prejudice to other remedies available to it:
- (i) carry out the work itself or have such work carried out by others, in either case at the CONTRACTOR's cost; or
 - (ii) agree or determine a reasonable reduction in the AGREEMENT PRICE to compensate

the COMPANY for the reduced value of the WORKS.

- (g) Without limiting the generality of Article 7.1, the COMPANY shall afford the CONTRACTOR (subject to the restrictions and other matters set out in ANNEXURE 10D) reasonable access to the FACILITIES and the SITE to enable the CONTRACTOR to perform its obligations under this Article 4.4.
- (h) The COMPANY may recover from the CONTRACTOR any costs or deductions from the AGREEMENT PRICE pursuant to Article 4.4(f) by setting-off such amount against any unpaid portion of the AGREEMENT PRICE or by invoicing the CONTRACTOR for such amount. Any invoice that the COMPANY issues for amounts due pursuant to Article 4.4(f) shall be paid by the CONTRACTOR within thirty (30) DAYS of receipt of such invoice. To the extent relevant, the payment procedures set out in Articles 23.2 to 23.3 shall apply to any such payment by the CONTRACTOR.

4.5 COMPLIANCE WITH THE ICV IMPROVEMENT PLAN

- (a) The CONTRACTOR shall comply with the terms of the ICV IMPROVEMENT PLAN and confirms that the annual targets set out in the ICV IMPROVEMENT PLAN shall be achieved by the dates specified therein.
- (b) Upon the CONTRACTOR's achievement, partially or in full, of the annual target set out in the ICV IMPROVEMENT PLAN for the particular year ("**ANNUAL ICV TARGET**"), the CONTRACTOR shall be entitled to payment of a portion of the ICV PAYMENT for that year calculated pro-rata based on the percentage of the ANNUAL ICV TARGET achieved, provided that the CONTRACTOR shall not be entitled to any ICV PAYMENT for any targets set out in the ICV IMPROVEMENT PLAN that have not been achieved by FINAL ACCEPTANCE.
- (c) In the event that the CONTRACTOR does not comply with the obligations set out in the ICV IMPROVEMENT PLAN then the CONTRACTOR shall notify the COMPANY and shall use its best endeavours to promptly remedy the breach. Any material failure by the CONTRACTOR to meet the targets set out in the ICV IMPROVEMENT PLAN shall be considered a material breach of the AGREEMENT and shall entitle the COMPANY to terminate the AGREEMENT in accordance with Article 35.3(b)(iv).
- (d) If the INITIAL AGREEMENT PRICE exceeds USD 200 million, each year, with the first year starting on the COMMENCEMENT DATE, the CONTRACTOR shall engage an independent audit firm (pre-approved by the COMPANY) to conduct an audit under the AGREEMENT which shall measure achievement against the ANNUAL ICV TARGET. The results of this audit shall be set out in writing in an "**AUDIT REPORT**" to be delivered to the CONTRACTOR each year of the AGREEMENT's term. After obtaining the AUDIT REPORT, the CONTRACTOR shall obtain annually an ICV CERTIFICATE for the AGREEMENT.

5. VERIFICATION OF COMPANY INFORMATION

5.1 VERIFICATION OF COMPANY INFORMATION - GENERAL

- (a) The CONTRACTOR shall review and verify all of the COMPANY INFORMATION disclosed or supplied to the CONTRACTOR by or on behalf of the COMPANY (and review, without being required to verify, the RELY UPON INFORMATION) before using the same to undertake any part of the WORKS.
- (b) Subject to Articles 5.2(a) and 8.4, the CONTRACTOR warrants that, prior to the date of the AGREEMENT, it:
 - (i) has thoroughly examined all such COMPANY INFORMATION provided or made available to it, and is satisfied that there are no errors, omissions, discrepancies, ambiguities, inconsistencies, incompleteness, faults, divergence or design or construction impracticalities or conflicts (each a "**COMPANY INFORMATION DEFICIENCY**") within and between such documents and that such documents are

- adequate, complete, correct and suitable in all respects for the purposes of the AGREEMENT and the WORKS;
- (ii) has obtained for itself all necessary information as to risks, contingencies and all other circumstances which may influence or affect any aspect of the WORKS, and confirmed that it is satisfied with its decision to enter into the AGREEMENT on the terms set out herein; and
 - (iii) without limiting this Article 5.1, hereby endorses and adopts the FEED, including all FEED documentation provided or made available to the CONTRACTOR by or on behalf of the COMPANY in relation to the WORKS, and for which it takes full responsibility as being a suitable design for the WORKS that will satisfy the COMPANY's requirements as set out in the AGREEMENT, with such endorsement and adoption being supported by the FEED ENDORSEMENT which is attached to the AGREEMENT at ANNEXURE 9.
- (c) The CONTRACTOR acknowledges that:
- (i) all of the COMPANY INFORMATION disclosed or supplied to the CONTRACTOR by or on behalf of the COMPANY was and is provided without representations or warranties as to its accuracy, reliability or completeness, and is furnished solely for the convenience of the CONTRACTOR;
 - (ii) the COMPANY may not have verified such data before providing it to the CONTRACTOR and owes the CONTRACTOR no duty of care to do so; and
 - (iii) the COMPANY may issue, or may have issued, updates or changes to the COMPANY INFORMATION, and in such event the CONTRACTOR must thoroughly examine, check and satisfy itself as to the adequacy, completeness, correctness and suitability (for the purposes of the AGREEMENT) of such update or change.
- (d) The CONTRACTOR shall immediately notify the COMPANY in the event that the CONTRACTOR identifies any COMPANY INFORMATION DEFICIENCIES, setting out in such notice:
- (i) the details of the COMPANY INFORMATION DEFICIENCIES identified; and
 - (ii) the CONTRACTOR's proposal for resolving or correcting the COMPANY INFORMATION DEFICIENCIES, which will be at the CONTRACTOR's own cost, save for where the COMPANY INFORMATION is RELY UPON INFORMATION, in which case Article 5.2 applies.
- (e) The COMPANY may thereafter amend such COMPANY INFORMATION or require the CONTRACTOR to amend such documentation based on the CONTRACTOR's findings and suggestions under Article 5.1(d), following which the CONTRACTOR must thoroughly examine, check and satisfy itself as to the adequacy, completeness, correctness and suitability (for the purposes of the AGREEMENT) of such amended information.
- (f) Subject to Articles 5.2(a) and 8.4, the CONTRACTOR acknowledges that the following shall not give rise to any circumstances constituting a VARIATION or entitle the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES or other relief, and the CONTRACTOR releases the COMPANY from all claims and liability arising out of or in connection with:
- (i) any COMPANY INFORMATION DEFICIENCIES; and
 - (ii) the COMPANY's rights pursuant to Articles 5.1(d) and 5.1(e) and the CONTRACTOR's compliance with the same.

5.2 RELY UPON INFORMATION

- (a) If the CONTRACTOR discovers at any time, any COMPANY INFORMATION DEFICIENCIES in the RELY UPON INFORMATION (other than those that a competent international engineering, procurement and construction contractor exercising GOOD INDUSTRY PRACTICE could have been reasonably expected to discover without performing a detailed review), the CONTRACTOR shall, subject to Article 24, be entitled to submit a CONTRACTOR VARIATION REQUEST to address any resulting additional cost of performing and/or delay to the WORKS.
- (b) Except as expressly set out in Article 5.2(a), no COMPANY INFORMATION DEFICIENCIES in the RELY UPON INFORMATION can give rise to:
 - (i) a VARIATION; or
 - (ii) any entitlement by the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or any other relief.
- (c) Except for the CONTRACTOR's entitlement under Article 5.2(a), either PARTY shall have no liability whatsoever to the other PARTY in respect of any claims or liability arising out of or in connection with any COMPANY INFORMATION DEFICIENCIES in the RELY UPON INFORMATION.

6. NOT USED

7. ACCESS TO AND USE OF THE SITE

7.1 The COMPANY shall grant, or shall procure that the relevant THIRD PARTY grants, the CONTRACTOR access to, and non-exclusive possession of, the SITE or a portion of the SITE, as reasonably required by the CONTRACTOR in order to meet its obligations under the AGREEMENT, provided that the COMPANY:

- (a) shall not be obliged to provide the CONTRACTOR with access to the SITE until the CONTRACTOR has:
 - (i) delivered to the COMPANY all insurance policies and certificates required pursuant to Article 41; and
 - (ii) complied with all necessary safety, security and notification requirements;
- (b) shall not be required to provide the CONTRACTOR with sole, continuous or exclusive possession of, or access to, the SITE;
- (c) shall not be required to carry out any work or provide any facilities to the CONTRACTOR which may be necessary to enable the CONTRACTOR to obtain sufficient possession of, and access to, the SITE to perform the WORKS (other than as expressly stated in the AGREEMENT); and
- (d) may engage THIRD PARTIES (including ASSOCIATED WORKS CONTRACTORS) and permit its employees to work upon, or in the vicinity of, the SITE at the same time as the CONTRACTOR.

7.2 While present at the SITE or any of the COMPANY's PREMISES, the CONTRACTOR and the CONTRACTOR PERSONNEL shall comply at all times with:

- (a) all LAW;
- (b) the COMPANY STANDARDS, including, without limitation, with respect to personnel, security, transportation, health and safety and security requirements; and

- (c) any instructions of the COMPANY or its employees and any reasonable conditions applicable to the CONTRACTOR as advised from time to time by the COMPANY.
- 7.3 The COMPANY and its representatives shall be allowed freedom of access at all reasonable times to the SITE, the WORKS and the CONTRACTOR SITE(s) in connection with the WORKS for the purposes of monitoring the timely provision of the WORKS or any WORKS DOCUMENTATION, CONTRACTOR CONSTRUCTION EQUIPMENT, MATERIALS and/or services which are intended for use in or in connection with the WORKS.
- 7.4 The CONTRACTOR shall:
 - (a) from time to time during the progress of the WORKS clear away and remove from the SITE all surplus plant, goods, materials, rubbish and any CONTRACTOR CONSTRUCTION EQUIPMENT no longer required;
 - (b) at all times, leave the SITE and the WORKS clean and in a safe and workmanlike condition;
 - (c) at all times prior to PROVISIONAL ACCEPTANCE, provide and maintain at its own expense, all lighting, fencing and security necessary for the proper execution and protection of the WORKS, or for the safety of the owners and occupiers of adjacent property and the public; and
 - (d) be responsible for keeping unauthorised PERSONS off the SITE.
- 7.5 The CONTRACTOR and the CONTRACTOR PERSONNEL shall comply at all times with all of the COMPANY's rules, policies and procedures issued to the CONTRACTOR, including but not limited to CONTRACTOR PERSONNEL, security and transportation as well as health, safety and security requirements. The CONTRACTOR shall comply with any instructions of the COMPANY or its employees and any reasonable conditions applicable to the CONTRACTOR as advised from time to time by the COMPANY.
- 7.6 The COMPANY and its representatives shall be allowed freedom of access at all reasonable times to the SITE, the WORKS, the CONTRACTOR SITE(s) and those of its SUBCONTRACTORS and VENDORS to monitor the timely provision of the WORKS or any DRAWINGS, CONTRACTOR CONSTRUCTION EQUIPMENT, MATERIALS and services which are intended for use in or in connection with the WORKS.
- 7.7 Not used.
- 7.8 Not used.
- 7.9 CONTRACTOR NOTIFICATION FOR WORKS AFFECTING EXISTING COMPANY PROPERTY:
 - (a) With respect to any WORKS that will or are likely to impact any existing COMPANY PROPERTY within the SITE, the CONTRACTOR shall provide written notice to the COMPANY of the scheduled start date, duration and extent of such WORKS at least six (6) months before the date on which such WORKS are scheduled to commence.
 - (b) The CONTRACTOR shall provide a second written notice to the COMPANY at least three (3) months prior to the planned commencement date for the WORKS and a third written notice at least one (1) month prior to the planned commencement date of the WORKS, in each case updating the scheduled start date, duration and extent of such WORKS.
 - (c) The CONTRACTOR shall identify to the COMPANY in the notifications required under Article 7.9(a) and 7.9(b) any event that may result in hindering the CONTRACTOR from performing any WORKS or services as per the WORK PROGRAM and achieving the KEY MILESTONE DATES.
 - (d) The COMPANY shall, within fourteen (14) DAYS of receiving the CONTRACTOR's notifications regarding the scheduled periods for commencement of the WORKS within areas

of the SITE required pursuant to Articles 7.9(a) and 7.9(b), confirm in writing whether or not the CONTRACTOR shall be allowed to commence the WORKS on the notified dates.

(e) In the event that:

- (i) any of the events identified by the CONTRACTOR in its notices issued pursuant to Articles 7.9(a) and 7.9(b) arise; and/or
- (ii) the COMPANY issues a response pursuant to Article 7.9(d) denying the CONTRACTOR the permission requested pursuant to Article 7.9(a) or 7.9(b),

and such event hinders the CONTRACTOR from performing any WORKS or services to be performed, the CONTRACTOR shall have the right to submit a CONTRACTOR VARIATION REQUEST in relation to the same subject to, and in accordance with, Article 24.

8. SITE CONDITIONS

8.1 For the purposes of Article 23.4(a), and subject to Articles 5.2(a) and 8.4, the CONTRACTOR warrants that, prior to the FINAL COMMERCIAL BID SUBMISSION DATE, it inspected and examined the SITE and its surroundings.

8.2 Subject to Articles 5.2(a), 8.4, 11.10(b) and 11.11(b), the CONTRACTOR shall have the sole responsibility for, assume the risk of, and be deemed to have investigated and satisfied itself of all local, regional and national conditions at the SITE and its surroundings including, without limitation, with respect to the following:

- (a) geological characteristics, hydrological, subsurface, surface and above surface conditions and the presence above or below ground of any physical or artificial obstructions;
- (b) the characteristics and behaviour of any sea, ocean, lake or river, and the beds thereof, in, under or near the SITE;
- (c) shipping and transportation, port facilities, port congestion, access, disposal, handling and storage of MATERIALS or other materials;
- (d) availability and quality of labour, water and electricity;
- (e) the location of existing services utilities and other facilities in and adjacent to the SITE, which may be required for, or which may delay or otherwise hinder, the WORKS;
- (f) the adequacy (including load capacity) and availability of access roads and waterways and all means of transportation and access to the SITE including any locks, docks, sea walls, or other structures;
- (g) weather and climate conditions and seasons;
- (h) CONSTRUCTION EQUIPMENT and facilities needed prior to, and during performance of the WORKS; and
- (i) compliance with LAW and all other matters which can in any way affect performance of the WORKS or the costs associated with such performance,

and any lack of knowledge by the CONTRACTOR as to the nature of the SITE, means of access, local facilities, working conditions or similar matters affecting the performance of the WORKS shall not give rise to any circumstances constituting a VARIATION or entitle the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief, nor shall any such lack of knowledge relieve the CONTRACTOR of any of its obligations under the AGREEMENT.

8.3 The CONTRACTOR shall be solely responsible for all detailed geotechnical and topographical surveys

necessary for the proper design and accurate positioning and setting out of the WORKS and for the correctness of the position, levels, dimensions and alignment of all parts of the WORKS.

8.4 In the event the CONTRACTOR discovers any error or inaccuracy in the GROUND DATA during the VALIDATION PERIOD which causes the CONTRACTOR to suffer additional cost of performing and/or delay to the WORKS, and provided that either:

(a) the CONTRACTOR has not been given reasonable access and/or time, as applicable, prior to the FINAL COMMERCIAL BID SUBMISSION DATE to:

- (i) verify and validate any GROUND DATA provided by the COMPANY; and
- (ii) carry out all reasonable investigation of the SITE in relation to such GROUND DATA, as applicable,

in all cases which would otherwise have allowed the CONTRACTOR to discover or anticipate the relevant error or inaccuracy in the GROUND DATA prior to the FINAL COMMERCIAL BID SUBMISSION DATE, acting in accordance with GOOD INDUSTRY PRACTICE; or

(b) the relevant error or inaccuracy in the GROUND DATA could not have been discovered or anticipated by the CONTRACTOR prior to the FINAL COMMERCIAL BID SUBMISSION DATE, acting in accordance with GOOD INDUSTRY PRACTICE, notwithstanding having been given reasonable access and/or time in accordance with the above,

then the CONTRACTOR shall, subject to Article 24, be entitled to submit a CONTRACTOR VARIATION REQUEST for such additional cost and/or delay, provided that such request shall be valid only if it is submitted prior to the expiration of the VALIDATION PERIOD.

8.5 Subject to Articles 5.2(a), 8.4, 11.10(b) and 11.11(b), any conditions at the SITE or its surroundings (including GROUND CONDITIONS), or any error, inaccuracy, inadequacy or omission in the GROUND DATA, shall not give rise to any circumstances constituting a VARIATION or entitle the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief. The CONTRACTOR releases the COMPANY from all claims and liability arising out of or in connection with the foregoing.

9. DESIGN RESPONSIBILITY, REVIEW & APPROVAL

9.1 CONTRACTOR'S RESPONSIBILITY FOR DESIGN

(a) The CONTRACTOR shall carry out and be fully and exclusively liable and responsible for the design of the WORKS, including:

- (i) the production, development and finalisation of the DRAWINGS and WORKS DOCUMENTATION relating to the design of the WORKS;
- (ii) the accuracy, adequacy and coordination of the design, as well as its consistency with the SCOPE OF WORK; and
- (iii) the preparation and submission of all additional DRAWINGS and WORKS DOCUMENTATION as may reasonably be inferred as required by the AGREEMENT.

(b) The CONTRACTOR warrants and represents that:

- (i) it shall be deemed to be satisfied with, and to have adopted, developed and accepted responsibility for, any designs contained in and reflected by the COMPANY INFORMATION disclosed or supplied to the CONTRACTOR by or on behalf of the COMPANY (including any design criteria or calculations) as though such designs had been carried out by the CONTRACTOR;

- (ii) Without limiting the generality of Article 4.1, the design of the WORKS shall:
 - (A) be carried out in accordance with LAW, COMPANY STANDARDS, CONSENTS and GOOD INDUSTRY PRACTICE;
 - (B) comply with all requirements of, or which are reasonably to be inferred from, the AGREEMENT; and
 - (C) shall include sufficient information to ensure coordination and consistency with the SCOPE OF WORK and fitness for the purposes defined in, or which are reasonably to be inferred from, the AGREEMENT;
- (iii) it will use and specify only proven technology, CONSTRUCTION EQUIPMENT, MATERIALS, methodologies and procedures;
- (iv) the CONTRACTOR's design, DRAWINGS and WORKS DOCUMENTATION shall enable the WORKS, when constructed, to be fit for their intended purposes as specified in or as may reasonably be inferred from the AGREEMENT;
- (v) when complete, the WORKS shall be fit for their intended purposes as specified in or as may reasonably be inferred from the AGREEMENT; and
- (vi) it and its designers are experienced, capable and qualified to design the WORKS and shall be made available to discuss any aspect of the design with the COMPANY at any time prior to FINAL ACCEPTANCE.

9.2 DELIVERY, REVIEW AND APPROVAL OF DRAWINGS AND WORKS DOCUMENTATION

- (a) Unless otherwise provided in the AGREEMENT, the CONTRACTOR shall, during the course of the WORKS, submit for the approval of the COMPANY, all DRAWINGS and WORKS DOCUMENTATION in accordance with ANNEXURE 10F.
- (b) The CONTRACTOR shall ensure that all DRAWINGS, WORKS DOCUMENTATION and any other documentation to be delivered to the COMPANY are delivered in a timely, orderly, logical and consistent manner, so as not to delay or disrupt the progress of the WORKS.
- (c) The COMPANY may review, comment on and approve any DRAWINGS, WORKS DOCUMENTATION or construction and technical data prepared by the CONTRACTOR pursuant to the AGREEMENT as they are developed and, in each case, within twenty-one (21) DAYS of submission to the COMPANY (or such other period as may be agreed between the PARTIES). The CONTRACTOR may consider such submissions to be approved if the COMPANY does not expressly approve, comment on or reject such submissions within such twenty-one (21) DAY period, provided that the CONTRACTOR has notified the COMPANY in writing of its intention to proceed on such basis following the expiry of such twenty-one (21) DAY period.
- (d) Any election by the COMPANY not to exercise its rights under this Article 9.2, as well as any actions by the COMPANY under this Article 9.2, shall not relieve the CONTRACTOR of its responsibility to perform the WORKS in accordance with the AGREEMENT.
- (e) The COMPANY shall notify the CONTRACTOR of any modifications or changes required by the COMPANY in respect of any documentation submitted pursuant to Articles 9.2(a) and 9.2(b), and the CONTRACTOR shall, without delay and in all cases within fourteen (14) DAYS, resubmit the documentation incorporating such modifications or changes, including any previously approved documentation which may be impacted by such modifications or changes. This procedure shall be repeated if necessary until the documentation is in a form acceptable to the COMPANY, based on the requirements set out in the AGREEMENT.
- (f) The COMPANY's review, comment, approval or deemed approval of the DRAWINGS, WORKS DOCUMENTATION, design calculations or data or any other document or item

reviewed pursuant to this Article 9.2 shall not:

- (i) relieve the CONTRACTOR in whole or in part of any duty, obligation or liability undertaken by the CONTRACTOR under the AGREEMENT;
 - (ii) constitute a VARIATION unless the same constitutes a VARIATION in accordance with the requirements of Article 24; or
 - (iii) entitle the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief, regardless of whether the COMPANY's review gives rise to any change or addition to such documents.
- (g) The CONTRACTOR shall notify the COMPANY upon becoming aware that any of the DRAWINGS, WORKS DOCUMENTATION or other data submitted by the CONTRACTOR pursuant to this Article 9.2 are not in compliance with the LAW, AGREEMENT, COMPANY STANDARDS, or GOOD INDUSTRY PRACTICE, and shall, unless otherwise instructed by the COMPANY, correct the same so as to meet these requirements. The CONTRACTOR shall submit any such corrections to the COMPANY in accordance with this Article 9.2 at its own cost and without any entitlement to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief, and without such corrections constituting a VARIATION.
- (h) Notwithstanding anything in this Article 9.2, if any discrepancy, ambiguity, inconsistency, deficiency or omission exists or arises in or between any of the documents approved by the COMPANY under the AGREEMENT, or if the CONTRACTOR fails in any way to submit the documentation to the COMPANY in due time or otherwise in accordance with the requirements of the AGREEMENT, then the CONTRACTOR shall bear the cost of resolving or rectifying the relevant WORKS and the CONTRACTOR shall not be entitled to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief, in respect of the same. For the avoidance of doubt, neither the work or services performed by the CONTRACTOR under this Article 9.2(h) nor any financial or schedule impacts of such work shall constitute a VARIATION or entitle the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES or other relief.

10. PROCUREMENT

10.1 The CONTRACTOR shall:

- (a) supply and be responsible for procuring and transporting all CONTRACTOR CONSTRUCTION EQUIPMENT and MATERIALS required for the performance of the WORKS (whether sourced from within or outside the UAE) to the SITE in an expeditious and orderly manner;
- (b) where applicable, take such steps (including the execution of documents and/or provision of signed execution pages) as the COMPANY requires to complete or give effect to each LLI NOVATION AGREEMENT; and
- (c) where applicable, comply in full with its obligations under each LLI NOVATION AGREEMENT and LLI SUPPLY AGREEMENT, including by ensuring that payments required to be made under the LLI SUPPLY AGREEMENTS are made in a timely manner, consistent with the terms of the LLI SUPPLY AGREEMENTS.

10.2 The CONTRACTOR agrees that all payments made by the COMPANY for invoices under the LLI SUPPLY AGREEMENTS are deemed to be partial payments of the AGREEMENT PRICE.

10.3 Upon dispatch of each shipment of the MATERIALS and the CONTRACTOR CONSTRUCTION EQUIPMENT, the CONTRACTOR shall notify the COMPANY of the description of the MATERIALS and the CONTRACTOR CONSTRUCTION EQUIPMENT, the point and means of dispatch and the estimated time and point of arrival in the UAE and at the SITE.

- 10.4 The CONTRACTOR shall be responsible for ensuring the adequacy of all packing of the MATERIALS and the CONTRACTOR CONSTRUCTION EQUIPMENT to withstand the adverse effects of rough handling at the port of loading and discharge, sea / air freight and transportation to SITE.

11. CONSTRUCTION WORKS

11.1 GENERAL

The CONTRACTOR shall be responsible for the adequacy, quality, stability and safety of all SITE operations and all methods of construction.

11.2 CONTRACTOR CONSTRUCTION EQUIPMENT; TEMPORARY WORKS

- (a) All CONTRACTOR CONSTRUCTION EQUIPMENT and TEMPORARY WORKS brought to the SITE by the CONTRACTOR or SUBCONTRACTORS shall be deemed to be intended for use exclusively for the execution of the WORKS. Until such time as the CONTRACTOR CONSTRUCTION EQUIPMENT or TEMPORARY WORKS is no longer required for the execution of the WORKS, the CONTRACTOR shall not remove, or permit the removal of, any of it from the SITE without the COMPANY's consent (which consent shall not unreasonably be withheld). For the avoidance of doubt, such consent by the COMPANY shall not be required for vehicles engaged in transporting any CONTRACTOR PERSONNEL, CONTRACTOR CONSTRUCTION EQUIPMENT or MATERIALS to or from the SITE.
- (b) All CONTRACTOR CONSTRUCTION EQUIPMENT, TEMPORARY WORKS and other things provided by the CONTRACTOR shall be removed from the SITE by the CONTRACTOR upon achievement of PROVISIONAL ACCEPTANCE, or earlier subject to the COMPANY's written approval.
- (c) The CONTRACTOR shall ensure that each item of CONTRACTOR CONSTRUCTION EQUIPMENT and TEMPORARY WORKS is:
 - (i) of a quality fit for carrying out the WORKS in accordance with the AGREEMENT and is otherwise fit for its intended purpose in connection with the WORKS; and
 - (ii) used solely for the execution of the WORKS, until the parts of the WORKS for which it is intended have been fully completed in accordance with the AGREEMENT.

11.3 COMPANY CONSTRUCTION EQUIPMENT

If the AGREEMENT specifies the provision by the COMPANY of COMPANY CONSTRUCTION EQUIPMENT:

- (a) the COMPANY shall use reasonable endeavours to ensure that all such COMPANY CONSTRUCTION EQUIPMENT meets the specifications required by the AGREEMENT;
- (b) the CONTRACTOR shall be responsible for transporting the COMPANY CONSTRUCTION EQUIPMENT from the COMPANY's designated facility in the UAE to the SITE, and shall assume the risk of damage, partial or total loss and THIRD PARTY liability with respect to each item of COMPANY CONSTRUCTION EQUIPMENT from the date of its collection by or on behalf of the CONTRACTOR; and
- (c) the CONTRACTOR shall return each item of COMPANY CONSTRUCTION EQUIPMENT to the COMPANY following the completion of the parts of the WORKS for which it is intended. All COMPANY CONSTRUCTION EQUIPMENT must be returned in the same condition as it was received by the CONTRACTOR (subject only to fair wear and tear).

11.4 MATERIALS

- (a) Unless otherwise stated in the AGREEMENT, the CONTRACTOR shall, in its performance of the WORKS, use MATERIALS which are new, of good quality, compliant with the LAW, the AGREEMENT and GOOD INDUSTRY PRACTICE, and which are fit for their intended purposes as specified in the AGREEMENT (or, if no specification is included within the AGREEMENT, in accordance with GOOD INDUSTRY PRACTICE), and consistent with the nature and character of the WORKS.
- (b) The CONTRACTOR shall not specify for use, or knowingly permit or approve MATERIALS to be used in connection with the WORKS, which are known to be deleterious to health and safety or to the durability of the WORKS.

11.5 SETTING OUT

The CONTRACTOR shall be responsible for the true and proper setting out of the WORKS in relation to bench marks, reference marks and lines.

11.6 CONTRACTOR'S SUPERVISION

The CONTRACTOR shall provide all necessary superintendence during the execution of the WORKS.

11.7 UTILITIES AND CONSUMABLES

Unless otherwise stated in the AGREEMENT, and subject to Article 16.4, the CONTRACTOR shall be responsible for the provision of all power, water and other services it may require for the WORKS.

11.8 NUISANCE & TRESPASS

- (a) The CONTRACTOR shall not commit any trespass or actionable public or private nuisance or other infringement of the legal rights of THIRD PARTIES potentially affected by the WORKS. The CONTRACTOR shall take all protective measures as may be required to avoid any such trespass, nuisance or infringement, and shall adopt appropriate means for carrying out the WORKS to that end.
- (b) The CONTRACTOR shall take all reasonable steps to prevent or mitigate any interference caused by the WORKS to the convenience of the public, including the public's ability to use public or private roads, footpaths, car parking areas and waterways including locks, docks, sea walls and other structures relating to waterways.
- (c) The CONTRACTOR shall confine its operations to the SITE and any CONTRACTOR SITES.

11.9 WORK AT NIGHT AND ON HOLIDAYS

- (a) Unless otherwise provided in the AGREEMENT, none of the WORKS shall be carried out during the night or on public holidays applicable to the private sector in the UAE without the prior written consent of the COMPANY, except where such work is both (i) permitted by applicable LAW and (ii) necessary or required to ensure the safety of the WORKS, or for the protection of life, or to prevent loss of or damage to property, in which case the CONTRACTOR shall immediately notify the COMPANY in writing.
- (b) Notwithstanding Article 11.9(a), if and when the CONTRACTOR considers it necessary to carry out work at night or on public holidays so as to meet the KEY MILESTONE DATES, and requests the COMPANY's consent thereto, such consent shall not unreasonably be withheld.

11.10 ANTIQUITIES

- (a) The PARTIES agree, and the CONTRACTOR shall procure that its SUBCONTRACTORS and CONTRACTOR PERSONNEL agree that, any fossils, articles of value or antiquity, structures

and other remains or items of geological or archaeological interest found on the SITE shall belong to the COMPANY.

- (b) The CONTRACTOR shall inform the COMPANY immediately upon discovery of any fossils, articles of value or antiquity, structures and other remains or items of geological or archaeological interest on the SITE and shall comply with the COMPANY's instructions regarding the same. To the extent that:
 - (i) such discovery could not have been reasonably foreseeable at the EFFECTIVE DATE to an international engineering, procurement and construction contractor in possession of the COMPANY INFORMATION and the GROUND DATA and acting in accordance with GOOD INDUSTRY PRACTICE; and
 - (ii) the CONTRACTOR suffers delay and/or incurs cost in complying with such instructions,

the CONTRACTOR shall, subject to Article 24, be entitled to submit a CONTRACTOR VARIATION REQUEST to address any resulting cost of performing and/or delay to the WORKS.
- (c) The CONTRACTOR shall take all reasonable precautions to prevent the CONTRACTOR PERSONNEL, SUBCONTRACTORS or other PERSONS from removing, damaging or otherwise interfering with the COMPANY's ownership rights in the items referred to in Article 11.10(a).

11.11 HAZARDOUS SUBSTANCES

- (a) Unless (and only to the extent) (i) permitted by LAW and (ii) expressly authorised by the COMPANY in writing or specified in the AGREEMENT, the CONTRACTOR shall ensure that it does not introduce, create, store or allow the release of any HAZARDOUS SUBSTANCES on, in, over or under the SITE or any other land in connection with the WORKS.
- (b) The CONTRACTOR shall notify the COMPANY immediately after it becomes aware of any HAZARDOUS SUBSTANCES on, in, over or under the SITE and shall comply with the COMPANY's instructions regarding the same. To the extent that:
 - (i) such HAZARDOUS SUBSTANCES were not caused by the CONTRACTOR or the CONTRACTOR INDEMNIFIED PARTIES;
 - (ii) such discovery could not have been reasonably foreseeable at the EFFECTIVE DATE to an international engineering, procurement and construction contractor in possession of the COMPANY INFORMATION and the GROUND DATA and acting in accordance with GOOD INDUSTRY PRACTICE; and
 - (iii) the CONTRACTOR suffers delay and/or incurs cost in complying with such COMPANY instructions,

the CONTRACTOR shall, subject to Article 24, be entitled to submit a CONTRACTOR VARIATION REQUEST to address any resulting additional cost of performing and/or delay to the WORKS.

12. INTERFACE WITH OTHER CONTRACTORS

- 12.1 The CONTRACTOR acknowledges and agrees that ASSOCIATED WORKS may be performed at or near the SITE.
- 12.2 Notwithstanding that the ASSOCIATED WORKS do not form part of the WORKS, the CONTRACTOR

shall:

- (a) allow all ASSOCIATED WORKS (including those to be performed on the SITE) to be performed by ASSOCIATED WORKS CONTRACTORS, and refrain from any act or omission that would prevent, hinder, delay or disrupt the ASSOCIATED WORKS CONTRACTORS' performance of the ASSOCIATED WORKS; and
 - (b) co-ordinate the WORKS with all ASSOCIATED WORKS that are capable of affecting the WORKS in such a manner so as to ensure that such ASSOCIATED WORKS do not delay or disrupt the progress of the WORKS.
- 12.3 The COMPANY may at the request of the CONTRACTOR or on its own initiative from time to time take such steps as the COMPANY considers expedient to facilitate the coordination of the WORKS with any ASSOCIATED WORKS, provided that the CONTRACTOR shall not be relieved of its obligations under Article 12.2 or (subject to the CONTRACTOR's rights under Article 23.7) become entitled to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief, by reason of the COMPANY taking or omitting to take any such steps, and the COMPANY shall in any event not be required to take such steps which would entitle any ASSOCIATED WORKS CONTRACTOR to claim relief or compensation.
- 12.4 To the extent ASSOCIATED WORKS CONTRACTORS need to have access to and use of the SITE to carry out and complete their ASSOCIATED WORKS, the COMPANY shall ensure that the ASSOCIATED WORKS CONTRACTORS agree that such access to and use of the SITE shall be in accordance with any reasonable requirements of the CONTRACTOR regarding health, safety and security at the SITE.
- 12.5 The CONTRACTOR shall provide, as may be required by the COMPANY from time to time, ASSOCIATED WORKS CONTRACTORS with:
- (a) reasonable use of any facilities and/or services on or at the SITE for the purpose of the ASSOCIATED WORKS CONTRACTOR carrying out and completing the ASSOCIATED WORKS; and
 - (b) information that may assist with the timely and/or proper performance of the ASSOCIATED WORKS (in which case Article 37 shall apply where the information is the COMPANY's CONFIDENTIAL INFORMATION).
- 12.6 The CONTRACTOR shall:
- (a) co-operate fully with all ASSOCIATED WORKS CONTRACTORS;
 - (b) co-ordinate the WORKS with all ASSOCIATED WORKS; and
 - (c) accommodate, and make full allowance for, all activities of ASSOCIATED WORKS CONTRACTORS in the CONTRACTOR's method of working.
- 12.7 Without in any way limiting or prejudicing the other provisions of this Article 12, the CONTRACTOR shall provide such attendances for each ASSOCIATED WORKS CONTRACTOR as may be reasonably required by the COMPANY from time to time. Attendances that the COMPANY may require from the CONTRACTOR in this regard include:
- (a) accepting delivery of, unloading and storing materials of each ASSOCIATED WORKS CONTRACTOR at the SITE;
 - (b) making available to each ASSOCIATED WORKS CONTRACTOR an appropriate area at the SITE for use as site offices;
 - (c) enabling each ASSOCIATED WORKS CONTRACTOR to have effective and efficient access to and within the SITE;

- (d) providing appropriate supervision and lighting;
 - (e) providing temporary utilities (including water and electricity) for construction and testing; and
 - (f) providing general cleaning and waste disposal at the SITE for use by each ASSOCIATED WORKS CONTRACTOR.
- 12.8 The CONTRACTOR shall observe and comply with the requirements of each ASSOCIATED WORKS CONTRACTOR regarding the conduct of the WORKS on, over, under or adjacent to any facilities of the ASSOCIATED WORKS CONTRACTORS.
- 12.9 The CONTRACTOR agrees that, apart from the COMPANY REPRESENTATIVE (including any duly appointed delegate of the COMPANY REPRESENTATIVE), no PERSON is authorised to represent and/or act for the COMPANY in respect of the AGREEMENT. Notwithstanding anything to the contrary, and without limitation or prejudice to the immediately preceding sentence, the CONTRACTOR acknowledges and agrees that it shall not, in any circumstances whatsoever:
- (a) be relieved from any of its obligations and/or liabilities under the AGREEMENT as a result of following any comment or instruction of any ASSOCIATED WORKS CONTRACTOR; or
 - (b) become entitled to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief as a result of following any comment or instruction of any ASSOCIATED WORKS CONTRACTOR, nor can any such comment or instruction give rise to a VARIATION.
- 12.10 For the avoidance of doubt, the CONTRACTOR acknowledges that it has made full allowance for complying with its obligations relating to the ASSOCIATED WORKS and ASSOCIATED WORKS CONTRACTORS in the AGREEMENT PRICE and the WORK PROGRAM and its compliance with such obligations shall not give rise to any circumstances constituting a VARIATION or entitle the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief, and any such entitlement is hereby expressly excluded unless:
- (a) such obligations were not known or reasonably foreseeable to the CONTRACTOR on the EFFECTIVE DATE; or
 - (b) such obligations are known or reasonably foreseeable at the EFFECTIVE DATE and there is subsequently a material change to such obligations during the term of the AGREEMENT not attributable to the CONTRACTOR; and
 - (c) where either Article 12.10(a) or 12.10(b) applies, such obligations have had or will have a verifiable adverse impact on the CONTRACTOR's costs and/or its ability to achieve any KEY MILESTONES,
- and the CONTRACTOR provides evidence that it has undertaken or shall undertake reasonable mitigation efforts to minimise the adverse consequences of the same, in which case the CONTRACTOR shall be entitled, subject to Article 24, to submit a CONTRACTOR VARIATION REQUEST to address any resulting cost of performing and/or delay to the WORKS.
- 12.11 Without limiting any other obligations of the CONTRACTOR under the AGREEMENT, the CONTRACTOR shall comply with the interface procedures set out in ANNEXURE 3.

13. INSPECTION & TESTING

- 13.1 The COMPANY shall have the right at all times to supervise the performance of the WORKS by the CONTRACTOR. The supervision of the WORKS by the COMPANY shall not be deemed acceptance by the COMPANY of the WORKS or any applicable MILESTONE, and shall not relieve the CONTRACTOR of any of its obligations under the AGREEMENT or LAW.
- 13.2 The CONTRACTOR shall conduct all tests and inspections in accordance with GOOD INDUSTRY PRACTICE. The detailed obligations of the COMPANY and the CONTRACTOR in relation to tests

and inspections are set out in ANNEXURE 10D.

13.3 The CONTRACTOR shall:

- (a) notify the COMPANY of its intention to undertake tests or inspections:
 - (i) at the SITE or any other location (including any CONTRACTOR SITE) in the UAE, not less than forty-eight (48) hours prior to the scheduled date of the relevant test or inspection; and
 - (ii) at any location outside the UAE, not less than seven (7) DAYS prior to the scheduled date of the relevant test or inspection;
- (b) advise the COMPANY sufficiently in advance of the arrangements to be made for said tests or inspections;
- (c) conduct such testing or inspections in the presence of the COMPANY and, if required by the COMPANY, its representatives and/or any independent inspectors nominated by either or both of the PARTIES;
- (d) supply all necessary MATERIALS and CONTRACTOR CONSTRUCTION EQUIPMENT for any tests or inspections required under the AGREEMENT;
- (e) obtain approval from the COMPANY in advance for all CONTRACTOR CONSTRUCTION EQUIPMENT and MATERIALS to be used for the purpose of performing tests or inspections; and
- (f) obtain approval from the COMPANY in advance for any certificates of calibration.

13.4 If any tests or inspections are required by the COMPANY, which are neither provided for in, nor otherwise intended or required by the AGREEMENT, then the CONTRACTOR shall, subject to Article 24, be entitled to submit a CONTRACTOR VARIATION REQUEST to address any resulting additional cost of performing and/or delay to the WORKS, unless the result of such test or inspection demonstrates that the relevant WORKS fail to comply with the AGREEMENT, in which case the cost and risk of such test or inspection shall be borne by the CONTRACTOR.

13.5 Subject to Article 13.4, the CONTRACTOR shall ensure that any testing that it is required to perform (whether specifically provided for in the AGREEMENT or not), shall not delay the progress of the WORKS. The COMPANY will bear no responsibility, and have no liability for delays that may arise out of or in connection with any such testing.

13.6 The CONTRACTOR shall, where relevant or appropriate, or upon the COMPANY's request, make available the test results for the COMPANY's inspection.

13.7 As soon as practical, but in any event not later than fourteen (14) DAYS after the receipt of the final report of each such test, the COMPANY shall issue a written notification to the CONTRACTOR indicating whether it considers the test results satisfactory or unsatisfactory and, if unsatisfactory, indicating the reasons why. The CONTRACTOR shall promptly, at its own cost, make such adjustments and perform such work as may be necessary, and repeat the tests until they are satisfactory to the COMPANY and in accordance with the requirements set out in the AGREEMENT. The CONTRACTOR shall not be entitled to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief, in respect of any such adjustments, work or repetition of tests, nor shall any such adjustments, work or repetition of the tests constitute a VARIATION.

14. NOT USED

15. MECHANICAL COMPLETION, COMMISSIONING & READY FOR START-UP

15.1 MECHANICAL COMPLETION

- (a) No later than six (6) months prior to the scheduled date of MECHANICAL COMPLETION for the first SYSTEM, the CONTRACTOR shall provide detailed MECHANICAL COMPLETION plans for the COMPANY's review and approval. The MECHANICAL COMPLETION plans shall cover all work required for MECHANICAL COMPLETION including, without limitation, diagrams showing the sequence of construction, inspection, testing, pre-commissioning, COMMISSIONING and training activities, MECHANICAL COMPLETION checklists and MECHANICAL COMPLETION inspection forms. The CONTRACTOR shall comply with the approved MECHANICAL COMPLETION plans thereafter.
- (b) As soon as a SYSTEM or the FACILITIES (as applicable) have, in the opinion of the CONTRACTOR, reached MECHANICAL COMPLETION, the CONTRACTOR shall notify the COMPANY by applying for a MECHANICAL COMPLETION CERTIFICATE for such SYSTEM or the FACILITIES (as applicable) and the COMPANY shall, within fourteen (14) DAYS after receipt of the CONTRACTOR's application hereunder, either:
 - (i) issue a MECHANICAL COMPLETION CERTIFICATE for such SYSTEM or the FACILITIES (as applicable), in which case MECHANICAL COMPLETION of such SYSTEM or FACILITIES (as applicable) shall be deemed to have occurred on the date of the CONTRACTOR's notice; or
 - (ii) reject the CONTRACTOR's application for a MECHANICAL COMPLETION CERTIFICATE for such SYSTEM or the FACILITIES, as applicable, by notifying the CONTRACTOR in writing of any omissions and/or defects, in which case the CONTRACTOR shall correct such omissions and/or defects and the process in this Article 15.1(b) shall be repeated until MECHANICAL COMPLETION of such SYSTEM or the FACILITIES, as applicable, is achieved.
- (c) The CONTRACTOR shall notify the COMPANY upon the COMPANY's issuance of the MECHANICAL COMPLETION CERTIFICATE for the last SYSTEM, following which the process set out in Article 15.1(b) shall apply to the FACILITIES as a whole.

15.2 COMMISSIONING

- (a) No later than six (6) months prior to the first proposed COMMISSIONING activities, the CONTRACTOR shall provide a detailed COMMISSIONING manual for the COMPANY's review and approval as described in ANNEXURE 3, and shall comply with such approved COMMISSIONING manual thereafter.
- (b) Following MECHANICAL COMPLETION of the relevant SYSTEM(S) or FACILITIES (as applicable), the CONTRACTOR shall perform COMMISSIONING in accordance with ANNEXURE 10D and the COMMISSIONING manual approved pursuant to Article 15.2(a).

15.3 READY FOR START-UP

- (a) READY FOR START-UP shall be achieved when all of the following conditions have been met:
 - (i) MECHANICAL COMPLETION and COMMISSIONING of the FACILITIES has been successfully completed;
 - (ii) all PUNCH LIST ITEMS required by the SCOPE OF WORK to have been rectified (or agreed) as a condition to READY FOR START-UP have been rectified (or agreed);
 - (iii) all MATERIALS, manuals and WORKS DOCUMENTATION for the proper operation of the FACILITIES (including, but not limited to, red-lined or "as built" drawings and documentation, and spare parts data) have been provided;

- (iv) all utility and electric power units related to the FACILITIES have been commissioned and are fully operational;
- (v) for each of the process SYSTEM(s), all dynamic tests, operational tests and all of the other commissioning activities which do not require the introduction of FEEDSTOCK have been successfully performed and completed as per ANNEXURE 3;
- (vi) all CONTRACTOR CONSENTS required for testing the FACILITIES have been obtained and are effective;
- (vii) the SITE is in a clean and safe condition, with all surface and subsea construction debris, redundant CONSTRUCTION EQUIPMENT and excess materials removed;
- (viii) the FACILITIES are ready for the introduction of FEEDSTOCK; and
- (ix) any other conditions for achieving READY FOR START-UP as set out in ANNEXURE 11 have been fulfilled,

in each case in accordance with the AGREEMENT, LAW and applicable CONSENTS (“**READY FOR START-UP**”).

- (b) When the CONTRACTOR considers that COMMISSIONING of the FACILITIES has been successfully completed and READY FOR START-UP has been achieved, the CONTRACTOR shall notify the COMPANY and the COMPANY shall, within twenty-one (21) DAYS after receipt of the CONTRACTOR’s notice hereunder, either:
 - (i) issue the READY FOR START-UP CERTIFICATE; or
 - (ii) reject the CONTRACTOR’s notification by notifying the CONTRACTOR in writing of any omissions and/or defects (including any PUNCH LIST ITEMS that must be remedied as a condition to issuance of the READY FOR START-UP CERTIFICATE) that demonstrate that READY FOR START-UP of the FACILITIES as a whole has not been achieved, following which the CONTRACTOR shall correct such omissions and/or defects as required to achieve READY FOR START-UP of the FACILITIES as a whole and the process in this Article 15.3(b) shall be repeated until READY FOR START-UP of the FACILITIES as a whole is achieved.
- (c) The COMPANY may, at its sole discretion (without being obliged to do so) and at any time, issue a PARTIAL READY FOR START-UP CERTIFICATE in respect of any part of the FACILITIES upon thirty (30) DAYS’ prior notice to the CONTRACTOR. Following the issuance of a PARTIAL READY FOR START-UP CERTIFICATE:
 - (i) the CONTRACTOR shall be responsible for the rectification of any PUNCH LIST ITEMS listed in the PARTIAL READY FOR START-UP CERTIFICATE; and
 - (ii) the rates of DELAY LIQUIDATED DAMAGES shall be reduced by the COMPANY’s reasonable estimate of the proportion that the value of the part of the FACILITIES so certified bears to the AGREEMENT PRICE. For the avoidance of doubt, this provision shall apply to the rate of DELAY LIQUIDATED DAMAGES only and shall not affect the agreed overall maximum amount on DELAY LIQUIDATED DAMAGES.

16. START-UP, PERFORMANCE TESTS & PERFORMANCE GUARANTEES

16.1 START-UP

- (a) Following issuance of the READY FOR START-UP CERTIFICATE, the COMPANY may perform START-UP in accordance with ANNEXURE 10D and the documentation approved pursuant to Article 15.3(a). The CONTRACTOR shall provide such support, manpower and assistance as the COMPANY may request for the purposes of START-UP.

- (b) During START-UP, the COMPANY shall notify the CONTRACTOR in writing of any DEFECTS (including any outstanding PUNCH LIST ITEMS) that render the relevant SYSTEM or the FACILITIES (as applicable) unsuitable for the introduction of FEEDSTOCK or for carrying out the PERFORMANCE TESTS or that cause or will cause the FACILITIES to fail to achieve PROVISIONAL ACCEPTANCE, following which the CONTRACTOR shall correct such DEFECTS at its own risk and cost.

16.2 PERFORMANCE TESTS

- (a) No later than six (6) months prior to the first scheduled READY FOR START-UP DATE, the CONTRACTOR shall provide detailed PERFORMANCE TEST procedures for the COMPANY's review and approval, which shall cover all procedures for PERFORMANCE TESTS including those set out in ANNEXURE 3.
- (b) Upon completion of the START-UP, the CONTRACTOR shall carry out the PERFORMANCE TESTS in accordance with the PERFORMANCE TEST procedures approved pursuant to Article 16.2(a) to ascertain, among other things, whether the FACILITIES or any parts thereof can attain the PERFORMANCE GUARANTEES to which such PERFORMANCE TESTS relate.
- (c) The CONTRACTOR shall provide suitably qualified CONTRACTOR PERSONNEL in sufficient numbers to perform the PERFORMANCE TESTS. The COMPANY may, subject to Article 19.3, provide COMPANY PERSONNEL to support the activities of the CONTRACTOR in carrying out the PERFORMANCE TESTS, in such numbers as may be set out in the AGREEMENT or otherwise agreed.

16.3 PERFORMANCE GUARANTEES

- (a) The CONTRACTOR guarantees that during the PERFORMANCE TESTS, the FACILITIES or parts thereof to which the PERFORMANCE TESTS relate shall attain the PERFORMANCE GUARANTEES set out in ANNEXURE 11.
- (b) If a PERFORMANCE GUARANTEE is not attained during any PERFORMANCE TEST (or repetition thereof), the CONTRACTOR shall make all appropriate adjustments, modifications or additions to the SYSTEM(s) or the FACILITIES as may be necessary in order for the PERFORMANCE GUARANTEE to be attained, and the CONTRACTOR shall thereafter repeat the PERFORMANCE TESTS until all of the PERFORMANCE GUARANTEES are attained. The CONTRACTOR shall be responsible for the related cost and expense, except (and to the extent) that the need for such adjustments, modifications or additions was attributable to the COMPANY.
- (c) Where the CONTRACTOR has performed the PERFORMANCE TESTS on three (3) or more occasions (including two (2) PERFORMANCE TEST repetitions) and has not attained the PERFORMANCE GUARANTEES in the most recent PERFORMANCE TEST, then the COMPANY may elect, at its sole discretion, to require the CONTRACTOR either to:
 - (i) continue to make such changes, modifications and/or additions to the FACILITIES or any part thereof pursuant to Article 16.3(b) or which otherwise may be necessary in order to attain the PERFORMANCE GUARANTEES; or
 - (ii) subject to Article 17.1, issue the PROVISIONAL ACCEPTANCE CERTIFICATE.
- (d) Where:
 - (i) the COMPANY is entitled, and elects to invoke Article 16.3(c)(i); and
 - (ii) at least six (6) months have passed since the date of the second repetition of the PERFORMANCE TESTS; and

- (iii) the PERFORMANCE GUARANTEES still have not been achieved in the latest PERFORMANCE TESTS,

then the COMPANY shall elect, at its sole discretion, either to:

- (iv) terminate the AGREEMENT in accordance with Article 35.3(a)(ii); or
 - (v) subject to Articles 16.3(e) and 17.1, issue the PROVISIONAL ACCEPTANCE CERTIFICATE.
- (c) Where Article 16.3(d)(v) applies, the CONTRACTOR shall be required to reimburse such portion of the AGREEMENT PRICE as the COMPANY deems sufficient to compensate it for any losses, costs or expenses that it has suffered or may suffer as a consequence of, or in connection with, the FACILITIES not achieving the PERFORMANCE GUARANTEES, up to the amount of the CONTRACTOR's total liability cap as set out in the FORM OF AGREEMENT.

16.4 SUPPLY OF FUEL / HYDROCARBONS / UTILITIES AND/OR FEEDSTOCK

To the extent that the COMPANY is responsible pursuant to ANNEXURE 6 for supply of fuel / hydrocarbons / utilities and/or FEEDSTOCK:

- (a) the COMPANY shall supply such fuel / hydrocarbons / utilities and/or FEEDSTOCK:
 - (i) to the interconnection points specified in the SCOPE OF WORK; or
 - (ii) to the extent interconnection points are not specified in the SCOPE OF WORK, to interconnection points at the battery limits of the FACILITIES as determined by the COMPANY;
- (b) the CONTRACTOR accepts all responsibility and risk in relation to such fuel / hydrocarbons / utilities and/or FEEDSTOCK within the battery limits of the SITE until the FACILITIES as a whole have achieved READY FOR START-UP, including responsibility for safe and proper handling thereof in accordance with LAW, the AGREEMENT, the COMPANY STANDARDS and GOOD INDUSTRY PRACTICE; and
- (c) title to such fuel / hydrocarbons / utilities and/or FEEDSTOCK shall at all times, as between the PARTIES, remain with the COMPANY.

17. PROVISIONAL ACCEPTANCE & FINAL ACCEPTANCE

17.1 PROVISIONAL ACCEPTANCE

- (a) PROVISIONAL ACCEPTANCE shall occur whenever the following conditions have been met, in relation to a part or the whole of the WORKS, as applicable:
 - (i) MECHANICAL COMPLETION and COMMISSIONING of all SYSTEMS and the FACILITIES has been completed successfully;
 - (ii) START-UP for the SYSTEMS has been successfully completed;
 - (iii) the PERFORMANCE TESTS have been completed and, subject to Article 16.3, the FACILITIES have attained all of the PERFORMANCE GUARANTEES;
 - (iv) all PUNCH LIST ITEMS required by the SCOPE OF WORK to have been rectified as a condition to PROVISIONAL ACCEPTANCE have been rectified and the FACILITIES have otherwise been completed in accordance with the AGREEMENT (save for any PUNCH LIST ITEMS which are not required by the SCOPE OF WORK to have been rectified as a condition to PROVISIONAL ACCEPTANCE);

- (v) all COMPANY CONSTRUCTION EQUIPMENT has been returned to the COMPANY;
- (vi) the CONTRACTOR has provided the COMPANY with an INSURANCE DECLARATION;
- (vii) to the extent requested by the COMPANY, the CONTRACTOR has assigned or transferred any warranties or guarantees that may apply to any LLI SUPPLY AGREEMENTS or other items purchased by the CONTRACTOR which are to be handed over to the COMPANY or incorporated into the WORKS;
- (viii) all MATERIALS, manuals and WORKS DOCUMENTATION for the proper operation of the FACILITIES that was not provided upon the achievement of READY FOR START UP (including, but not limited to red-line and/or “as built” (as applicable) drawings and documentation, and spare parts data) have been provided to the COMPANY; and
- (ix) any other requirements for PROVISIONAL ACCEPTANCE in ANNEXURE 11 have been satisfied,

in each case in accordance with the AGREEMENT, LAW and applicable CONSENTS (“**PROVISIONAL ACCEPTANCE**”).

- (b) When the CONTRACTOR considers that all conditions to PROVISIONAL ACCEPTANCE as set forth in Article 17.1(a) have been met, the CONTRACTOR shall notify the COMPANY by applying for a PROVISIONAL ACCEPTANCE CERTIFICATE and the COMPANY shall, within twenty-one (21) DAYS after receipt of the CONTRACTOR’s notice hereunder, either:
 - (i) issue the PROVISIONAL ACCEPTANCE CERTIFICATE; or
 - (ii) reject the CONTRACTOR’s notification by notifying the CONTRACTOR in writing of any omissions and/or defects (including any PUNCH LIST ITEMS) that must be remedied as a condition to PROVISIONAL ACCEPTANCE, following which the CONTRACTOR shall correct such omissions and/or defects as required to achieve PROVISIONAL ACCEPTANCE and the process in this Article 17.1(b) shall be repeated until PROVISIONAL ACCEPTANCE is achieved.
- (c) If the CONTRACTOR has met all of the applicable conditions to PROVISIONAL ACCEPTANCE set out in Article 17.1(a) in relation to one or more SYSTEM(S), the COMPANY may, at its sole discretion (without being obliged to do so) and at any time, issue a PARTIAL PROVISIONAL ACCEPTANCE CERTIFICATE in respect of such SYSTEM(S) upon thirty (30) DAYS’ prior notice to the CONTRACTOR. Following the issuance of a PARTIAL PROVISIONAL ACCEPTANCE CERTIFICATE:
 - (i) the WARRANTY PERIOD for such SYSTEM(S) covered by the PARTIAL PROVISIONAL ACCEPTANCE CERTIFICATE shall start on the date of issuance of such certificate and shall expire at the end of the period specified in the FORM OF AGREEMENT;
 - (ii) the CONTRACTOR shall be responsible for the rectification of any PUNCH LIST ITEMS listed in the PARTIAL PROVISIONAL ACCEPTANCE CERTIFICATE;
 - (iii) the provisions of Article 33.2 shall apply to the SYSTEM(S) specified in the PARTIAL PROVISIONAL ACCEPTANCE CERTIFICATE, as if the references to “PROVISIONAL ACCEPTANCE CERTIFICATE” in Article 33.2 had been replaced with “PARTIAL PROVISIONAL ACCEPTANCE CERTIFICATE”; and
 - (iv) the rates of DELAY LIQUIDATED DAMAGES shall be reduced by the COMPANY’s reasonable estimate of the proportion that the value of the SYSTEM(S) so certified bears to the AGREEMENT PRICE. For the avoidance of doubt, this

provision shall apply to the rate of DELAY LIQUIDATED DAMAGES only and shall not affect the agreed overall maximum amount of DELAY LIQUIDATED DAMAGES.

(d) CLAIMS RELEASE LETTER

- (i) When submitting its application for the PROVISIONAL ACCEPTANCE CERTIFICATE for the whole of the WORKS pursuant to Article 17.1(b), the CONTRACTOR shall also submit the CLAIMS RELEASE LETTER to the COMPANY in the form set out in ANNEXURE 11, together with such additional information and/or documentation that may be required under ANNEXURE 11.
- (ii) If the CONTRACTOR fails to submit the CLAIMS RELEASE LETTER in accordance with Article 17.1(d)(i):
 - (A) the COMPANY may withhold any further payments which would otherwise be due and payable to the CONTRACTOR following PROVISIONAL ACCEPTANCE; and
 - (B) the PERFORMANCE BANK GUARANTEE shall not be adjusted in accordance with Article 30.2(e),

until such time as the CLAIMS RELEASE LETTER has been provided to the COMPANY in accordance with Article 17.1(d)(i).

(e) EARLY TAKING OVER OF THE WORKS

- (i) At any time prior to the issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE, the COMPANY may, in its sole discretion (without being obliged to do so), elect to take over of all or any part of the WORKS by issuing a taking over certificate in the form set out in ANNEXURE 11, such certificate detailing the part or parts of the WORKS the COMPANY requires to take over and the date or dates on which such taking over is effective (the “**EARLY TAKING OVER CERTIFICATE**”).
- (ii) Where an EARLY TAKING OVER CERTIFICATE is issued by the COMPANY pursuant to Article 17.1(e)(i):
 - (A) the WARRANTY PERIOD for the part of the WORKS covered by the EARLY TAKING OVER CERTIFICATE shall commence on the date of issuance of such certificate and shall expire at the end of the period specified in the FORM OF AGREEMENT;
 - (B) the provisions of Article 33.2 shall apply to the WORKS specified in the EARLY TAKING OVER CERTIFICATE, as if the references to “PROVISIONAL ACCEPTANCE CERTIFICATE” in Article 33.2 had been replaced with “EARLY TAKING OVER CERTIFICATE”; and
 - (C) the COMPANY shall provide the CONTRACTOR with reasonable access to the SITE in accordance with Article 7.1 in order for the CONTRACTOR to complete the WORKS and achieve PROVISIONAL ACCEPTANCE.
- (iii) For any part of the WORKS where the COMPANY does not elect to issue an EARLY TAKING OVER CERTIFICATE pursuant to Article 17.1(e)(i):
 - (A) the WARRANTY PERIOD in respect of the relevant part of the WORKS shall not commence; and
 - (B) responsibility for the care of the relevant WORKS shall not pass,

until such time as a PARTIAL PROVISIONAL ACCEPTANCE CERTIFICATE or the PROVISIONAL ACCEPTANCE CERTIFICATE has been issued by the COMPANY.

17.2 FINAL ACCEPTANCE

- (a) FINAL ACCEPTANCE shall occur whenever the following conditions have been met:
- (i) the WORKS, as a whole, including any DEFECTS, have been rectified and/or completed;
 - (ii) the last WARRANTY PERIOD has expired;
 - (iii) any payment for which the CONTRACTOR is liable to any COMPANY INDEMNIFIED PARTIES under the AGREEMENT has been discharged;
 - (iv) the CONTRACTOR has delivered to the COMPANY all documents, spare parts and tools as required by the AGREEMENT;
 - (v) title to any MATERIALS, equipment or other items specified in the AGREEMENT has been transferred to the COMPANY;
 - (vi) any documentation that is due to be assigned, transferred or novated to the COMPANY by or on behalf of the CONTRACTOR as required by the AGREEMENT has been so assigned, transferred or novated;
 - (vii) the CONTRACTOR has completed any:
 - (A) demobilisation;
 - (B) decommissioning; and
 - (C) clean up and removal of any unused or waste materials and equipment,
 in each case as required by the AGREEMENT;
 - (viii) any ADVANCE PAYMENT has been fully reimbursed to the COMPANY;
 - (ix) the CONTRACTOR has paid to or otherwise settled with the SUBCONTRACTORS and VENDORS all undisputed amounts that are due and payable by the CONTRACTOR to such SUBCONTRACTORS and VENDORS, and, where requested by the COMPANY, the CONTRACTOR has provided written evidence that such payments have been paid, waived or otherwise settled;
 - (x) if and to the extent not already assigned or transferred under Article 17.1(a)(vii), the CONTRACTOR has assigned or transferred all remaining warranties or guarantees that may apply to any LLI SUPPLY AGREEMENT or other items purchased by the CONTRACTOR which are to be handed over to the COMPANY or incorporated into the WORKS; and
 - (xi) any outstanding MATERIALS, manuals and WORKS DOCUMENTATION for the proper operation of the FACILITIES as required by the AGREEMENT (including, but not limited to, red-lined or “as built” drawings and documentation, and spare parts data) have been provided to the COMPANY,
- in accordance with the AGREEMENT, LAW and applicable CONSENTS (“**FINAL ACCEPTANCE**”).
- (b) When the CONTRACTOR considers that all conditions to FINAL ACCEPTANCE as set forth in Article 17.2(a) have been met, the CONTRACTOR shall notify the COMPANY and the

COMPANY shall, within thirty (30) DAYS after receipt of the CONTRACTOR's notice hereunder, either:

- (i) issue the FINAL ACCEPTANCE CERTIFICATE; or
 - (ii) issue a written notification to the CONTRACTOR stating that FINAL ACCEPTANCE has not yet occurred. The COMPANY's notification shall (i) identify the reasons why the COMPANY considers FINAL ACCEPTANCE not to have occurred, and (ii) contain a list of outstanding items requiring correction or completion by the CONTRACTOR. The CONTRACTOR shall immediately proceed to correct or complete the outstanding items, following which the CONTRACTOR shall resubmit the request for a FINAL ACCEPTANCE CERTIFICATE. The procedure set out in this Article 17.2(b)(ii) shall be repeated until the COMPANY issues the FINAL ACCEPTANCE CERTIFICATE.
- (c) FINAL RELEASE LETTER
- (i) When submitting its application for the FINAL ACCEPTANCE CERTIFICATE for the whole of the WORKS pursuant to Article 17.2(b), the CONTRACTOR shall also submit the FINAL RELEASE LETTER to the COMPANY in the form set out in ANNEXURE 11, together with such additional information and/or documentation that may be required under ANNEXURE 11.
 - (ii) If the CONTRACTOR fails to submit the FINAL RELEASE LETTER in accordance with Article 17.2(c)(i):
 - (A) the COMPANY may withhold any further payments which would otherwise be due and payable to the contractor following FINAL ACCEPTANCE; and
 - (B) the PERFORMANCE BANK GUARANTEE shall not be returned in accordance with Article 30.2(b),
 until such time as the FINAL RELEASE LETTER has been provided to the COMPANY in accordance with Article 17.2(c)(i).

18. TIMELY PERFORMANCE, WORK PROGRAM, PROGRESS REPORTING & DELAYS

18.1 TIMELY PERFORMANCE

- (a) The CONTRACTOR shall commence the WORKS on the COMMENCEMENT DATE.
- (b) The CONTRACTOR shall perform and complete the WORKS with due expedition.
- (c) The CONTRACTOR shall comply with the WORK PROGRAM, including by achieving each KEY MILESTONE by its associated KEY MILESTONE DATE. In the event of any conflict or discrepancy between a date in the WORK PROGRAM and a KEY MILESTONE DATE, the KEY MILESTONE DATE shall prevail.

18.2 WORK PROGRAM

- (a) Within thirty (30) DAYS of the COMMENCEMENT DATE, the CONTRACTOR shall prepare and submit to the COMPANY a WORK PROGRAM that is consistent with the schedule set out in ANNEXURE 4 and shows in detail the timing and sequencing (including with logic links) of individual activities by which the CONTRACTOR proposes to carry out the WORKS. If the WORK PROGRAM does not meet the said requirements, the COMPANY may require the CONTRACTOR to correct it at the CONTRACTOR's cost, and without the CONTRACTOR becoming entitled to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief. For the avoidance of doubt, no correction required pursuant to this Article 18.2(a) shall be considered as a VARIATION.

- (b) The CONTRACTOR shall continuously monitor the progress of all activities specified in the WORK PROGRAM and shall submit a detailed PROGRESS REPORT to the COMPANY every month pursuant to Article 18.3, accompanied by an updated WORK PROGRAM consistent with the requirements of Article 18.2(a) and depicting a realistic projection for the future progress of the WORKS (extending to the achievement of PROVISIONAL ACCEPTANCE).
- (c) Nothing stated in the WORK PROGRAM, and no consent or approval given by the COMPANY in respect of the WORK PROGRAM, shall be construed as an extension to any KEY MILESTONE DATE or relieve the CONTRACTOR of any of its obligations under Article 18.1 of the AGREEMENT or otherwise.

18.3 PROGRESS REPORTS

In addition to delivering the reports required under ANNEXURE 10B (at the times and in the manner set out therein), on the fifth (5th) working DAY of each month, the CONTRACTOR shall deliver to the COMPANY (along with an updated WORK PROGRAM pursuant to Article 18.2) a written report showing the progress of the WORKS during the immediately preceding monthly period, in a form satisfactory to the COMPANY (each a “**PROGRESS REPORT**”). A PROGRESS REPORT shall address or contain (as the case may be) the following:

- (a) for each activity, the percentage completion achieved compared with the planned percentage completion as set out in the previous month’s update of the WORK PROGRAM;
- (b) if the progress of any activity is delayed relative to the dates indicated on the previous month’s update of the WORK PROGRAM, an explanation of the reasons for, and likely consequences of, such delay, and stating the corrective action being taken to remedy the delay;
- (c) information on all critical aspects influencing the progress of the WORKS;
- (d) a general report on the status of the WORKS; and
- (e) such other information as the COMPANY reasonably requires from time to time.

18.4 DELAYS IN ATTAINING KEY MILESTONES

- (a) If at any time during the progress of the WORKS, the CONTRACTOR’s progress is inadequate to meet a KEY MILESTONE by its associated KEY MILESTONE DATE, or to otherwise adhere to the WORK PROGRAM, the COMPANY may so notify the CONTRACTOR. The CONTRACTOR shall take such measures as may be necessary to, and demonstrate to the COMPANY that such measures shall, improve progress sufficiently to enable the CONTRACTOR to meet its obligations under the AGREEMENT.
- (b) If within fourteen (14) DAYS from the date of the COMPANY’s notification pursuant to Article 18.4(a), the CONTRACTOR does not demonstrate improved performance sufficient to obtain the timely achievement of the relevant KEY MILESTONE or adherence to the WORK PROGRAM, the COMPANY may require the CONTRACTOR to take such measures as the COMPANY determines are reasonably necessary, including an increase in the CONTRACTOR’s labour force, number of shifts, overtime operations, additional DAYS of work per week, rate of progress (whether measured by reference to percentage completion of the WORKS or otherwise) and/or CONTRACTOR CONSTRUCTION EQUIPMENT needed in order to achieve the KEY MILESTONES on or before the associated KEY MILESTONE DATES.
- (c) The CONTRACTOR shall perform all of its obligations under Articles 18.4(a) and 18.4(b) promptly and, in doing so, shall not become entitled to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief. For the avoidance of doubt, the CONTRACTOR’s performance of its obligations under Articles 18.4(a) and 18.4(b) shall not constitute or give rise to a VARIATION.

- (d) Neither the issuance of a notice by the COMPANY, nor the COMPANY's failure to issue such notice, shall relieve the CONTRACTOR of its obligations to achieve the quality of work and rate of progress required by the AGREEMENT.
- (e) In the event that the CONTRACTOR fails to attain a KEY MILESTONE by its associated KEY MILESTONE DATE, the CONTRACTOR shall (within thirty (30) DAYS of being notified by the COMPANY) pay DELAY LIQUIDATED DAMAGES to the COMPANY in the amount set out in the FORM OF AGREEMENT for each week (or part thereof) of delay, up to the relevant agreed overall maximum amount as set out in the FORM OF AGREEMENT. DELAY LIQUIDATED DAMAGES shall accrue in respect of each week of delay or part thereof and shall be a debt in lieu of the CONTRACTOR's performance of its obligation to timely achieve the corresponding KEY MILESTONES.
- (f) If the CONTRACTOR has paid or the COMPANY has levied DELAY LIQUIDATED DAMAGES for the CONTRACTOR's failure to attain any KEY MILESTONE (other than READY FOR START-UP) by its associated KEY MILESTONE DATE but achieves PROVISIONAL ACCEPTANCE by the scheduled PROVISIONAL ACCEPTANCE DATE, the CONTRACTOR shall be entitled to a reimbursement or re-credit of the DELAY LIQUIDATED DAMAGES previously paid or levied in respect of the same SYSTEM or FACILITIES, as applicable.
- (g) If the agreed overall maximum amount for DELAY LIQUIDATED DAMAGES is reached in respect of delay to PROVISIONAL ACCEPTANCE, the COMPANY may terminate the AGREEMENT in accordance with Article 35.3(a)(iii).
- (h) The COMPANY may, at its sole and absolute discretion, and without prejudice to the COMPANY's other rights and remedies, deduct DELAY LIQUIDATED DAMAGES from:
 - (i) any monies due or which may become due from the COMPANY to the CONTRACTOR under the AGREEMENT or the LAW; or
 - (ii) any security or bank guarantees held by the COMPANY in connection with the AGREEMENT.
- (i) The payment or deduction of DELAY LIQUIDATED DAMAGES pursuant to this Article 18.4 shall not relieve the CONTRACTOR from its obligation to complete the WORKS under the AGREEMENT, or from any of the CONTRACTOR's other obligations and liabilities under the AGREEMENT. Without prejudice to the COMPANY's rights in Articles 34 and 35, the remedies specified in this Article 18.4 shall be the sole and exclusive financial remedies for delays in attaining KEY MILESTONES.
- (j) The PARTIES acknowledge and confirm that any sums provided for under the AGREEMENT shall be payable in the amounts specified in the FORM OF AGREEMENT as an obligation of the CONTRACTOR, which is owed in consideration of the various rights that the CONTRACTOR derives under the AGREEMENT.

19. CONTRACTOR PERSONNEL & COMPANY PERSONNEL

19.1 CONTRACTOR PERSONNEL – GENERAL

- (a) The CONTRACTOR shall provide and employ on the SITE, and in any other workplace in connection with the performance of the WORKS, such professional, experienced, skilled, semiskilled and unskilled labour and local employees as are necessary for the proper and timely performance and completion of the WORKS. The CONTRACTOR shall ensure that each SUBCONTRACTOR and VENDOR provides and employs employees and other personnel who meet the same standards provided for in this Article 19.1(a).
- (b) The CONTRACTOR shall be responsible for, and shall arrange for, the mobilisation and demobilisation of CONTRACTOR PERSONNEL, including by arranging all CONSENTS (including visas, licenses, work permits, residence permits and applicable licenses for

immigration and emigration of CONTRACTOR PERSONNEL, certificates of medical fitness, drivers' licenses, security passes and all other permits and documentation) as may be required for such CONTRACTOR PERSONNEL to perform the WORKS. The CONTRACTOR shall be liable for any tax, security or any other contributions payable to GOVERNMENTAL AUTHORITIES in relation to the mobilisation and demobilisation of CONTRACTOR PERSONNEL and the procurement of the required CONSENTS.

- (c) The CONTRACTOR shall at all times during the progress of the WORKS use its best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst the CONTRACTOR PERSONNEL.
- (d) The CONTRACTOR shall, in all of its dealings with the CONTRACTOR PERSONNEL during the term of their employment on or in connection with the WORKS, pay due regard to all recognised festivals, official holidays and religious or other holidays or customs in the UAE.
- (e) The CONTRACTOR, upon written request by the COMPANY and at the CONTRACTOR's own cost, shall promptly remove from the SITE and/or from the performance of the WORKS, any of the CONTRACTOR PERSONNEL:
 - (i) who, in the COMPANY's opinion:
 - (A) are uncooperative, negligent or careless;
 - (B) are unsuitable or unable to perform their obligations under the AGREEMENT;
 - (C) have committed a serious and unsafe wilful act, an act of misconduct, an unethical act or an act which would be subject to disciplinary action; or
 - (D) have failed to comply with the LAW or any provision of the AGREEMENT, or
 - (ii) for any other reasonable cause not listed in Article 19.1(e)(i).
- (f) Any CONTRACTOR PERSONNEL removed from the performance of the WORKS in accordance with Article 19.1(e) shall not be allowed to return to the performance of the WORKS and shall be replaced by a competent substitute immediately, at the CONTRACTOR's own cost, in order to avoid any disruption to the WORKS. Such replacement shall be made subject to the COMPANY's right of rejection (which the COMPANY may exercise at its discretion).
- (g) Any removal of a member of CONTRACTOR PERSONNEL pursuant to this Article 19 shall be the sole responsibility of the CONTRACTOR and shall not give rise to any circumstances constituting a VARIATION or entitle the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief.
- (h) The CONTRACTOR shall, at its own expense, be responsible for the repatriation of all CONTRACTOR PERSONNEL employed upon the WORKS in the UAE to the countries from which they were recruited. The CONTRACTOR shall be responsible for the suitable maintenance of all such CONTRACTOR PERSONNEL from the cessation of their employment on the WORKS to their departure from the UAE. Any failure of the CONTRACTOR to comply with its obligations under this Article 19.1(h) shall entitle the COMPANY to repatriate and/or maintain such CONTRACTOR PERSONNEL itself and to recover the cost of doing so from the CONTRACTOR.

19.2 KEY PERSONNEL

- (a) Where applicable, the CONTRACTOR shall provide KEY PERSONNEL to perform the WORKS. The KEY PERSONNEL must have a good working knowledge of English and, if possible, Arabic.

- (b) Where the CONTRACTOR provides KEY PERSONNEL, the CONTRACTOR shall not be entitled to make any changes to the KEY PERSONNEL unless in the event that the individual:
 - (i) resigns;
 - (ii) undertakes maternity, paternity or long term medical leave;
 - (iii) dies, suffers serious illness or bodily injury;
 - (iv) is removed by the CONTRACTOR pursuant to Article 19.1(e);
 - (v) is terminated from the employment of the CONTRACTOR due to a material breach of the terms of the individual's employment contract; or
 - (vi) is prevented from working in the UAE by a GOVERNMENTAL AUTHORITY.

19.3 COMPANY PERSONNEL DURING COMMISSIONING AND PERFORMANCE TESTING

If and to the extent that the AGREEMENT requires provision by the COMPANY of COMPANY PERSONNEL to support activities of the CONTRACTOR at any time prior to the issue of the PROVISIONAL ACCEPTANCE CERTIFICATE, the CONTRACTOR shall be responsible for all acts or omissions of such COMPANY PERSONNEL, except to the extent such acts or omissions result from the GROSS NEGLIGENCE / WILFUL MISCONDUCT of such COMPANY PERSONNEL.

19.4 UAE NATIONALS AND COMPANY PERSONNEL TRAINING OBLIGATIONS

As part of the SCOPE OF WORK, the CONTRACTOR shall comply with its obligation to train UAE nationals and/or COMPANY PERSONNEL as required in ANNEXURE 10D or as instructed by the COMPANY from time to time. The CONTRACTOR shall not be entitled to any adjustment to the AGREEMENT PRICE and/or to the WORK PROGRAM or KEY MILESTONE DATES as a result of its compliance with this Article 19.4.

20. SUBCONTRACTORS & VENDORS

- 20.1 The CONTRACTOR may only enter into subcontracts or purchase orders with SUBCONTRACTORS and VENDORS with the prior written approval of the COMPANY, which approval shall be obtained in accordance with the procedures set out in ANNEXURE 10C.
- 20.2 The approval of a SUBCONTRACTOR or VENDOR shall not relieve the CONTRACTOR of any of its obligations under the AGREEMENT including under this Article 20, nor create any contractual relationship between the COMPANY and any SUBCONTRACTOR or VENDOR.
- 20.3 The CONTRACTOR shall be fully responsible for:
 - (a) any part of the WORKS performed by its SUBCONTRACTORS or VENDORS; and
 - (b) any acts, omissions, breaches or defaults of its SUBCONTRACTORS and VENDORS,
 as if they were the acts, omissions, breaches or defaults of the CONTRACTOR.
- 20.4 The CONTRACTOR shall ensure that any SUBCONTRACTORS used to perform the WORKS or VENDORS used to procure MATERIALS are:
 - (a) to the extent required by LAW, registered and licensed by the relevant GOVERNMENTAL AUTHORITIES within ABU DHABI and the UAE;
 - (b) solvent; and
 - (c) sufficiently experienced to perform the relevant portion of the WORKS.

20.5 In its agreement with each SUBCONTRACTOR and VENDOR, the CONTRACTOR shall include express provisions:

- (a) by which the CONTRACTOR shall undertake to pay the SUBCONTRACTOR or VENDOR within thirty (30) DAYS from the date of receipt of payment from the COMPANY for an undisputed invoice, or, where such invoice is valid but disputed, the CONTRACTOR shall pay any undisputed portion of such invoice within thirty (30) DAYS from the date of receipt of such payment from the COMPANY of such undisputed portion; and
- (b) by which the SUBCONTRACTOR or VENDOR shall undertake to:
 - (i) be bound by confidentiality undertakings no less stringent than the confidentiality provisions set out in Article 37;
 - (ii) preserve and protect the rights of the COMPANY under the AGREEMENT;
 - (iii) comply with LAW and all other matters which can in any way affect performance of the WORKS under the AGREEMENT or the costs associated with such performance;
 - (iv) comply with the ADNOC GROUP SUPPLIER & PARTNER CODE OF ETHICS and any other applicable ADNOC standards as may be specified in the AGREEMENT or communicated by ADNOC to the CONTRACTOR from time to time;
 - (v) vest in the CONTRACTOR all INTELLECTUAL PROPERTY RIGHTS in any WORKS DOCUMENTATION and grant a non-exclusive, irrevocable, fully-transferable, royalty-free license to the CONTRACTOR for all PRE-EXISTING INTELLECTUAL PROPERTY RIGHTS, in order to ensure that the CONTRACTOR is able to comply with its equivalent obligations to the COMPANY pursuant to Article 31;
 - (vi) transfer title to any MATERIALS to the CONTRACTOR not later than the time at which title is to pass to the COMPANY pursuant to Article 33;
 - (vii) prevent the assignment, novation, transfer or further subcontract of any of its rights, obligations or interests under the agreement with the CONTRACTOR without the prior written consent of the CONTRACTOR (which shall only be given if and when the CONTRACTOR obtains the COMPANY's prior written consent to such assignment, novation, transfer or further subcontracting); and
 - (viii) participate in any assignment, novation or transfer of rights, obligations or interests made by the COMPANY pursuant to Article **Error! Reference source not found..**

20.6 The CONTRACTOR shall be solely responsible for all payments to its SUBCONTRACTORS and VENDORS, and the CONTRACTOR shall indemnify and hold harmless the COMPANY from and against all losses, liabilities, damages and costs (including legal costs) arising out of or in connection with any claim by its SUBCONTRACTORS or VENDORS against the COMPANY.

21. HEALTH, SAFETY AND ENVIRONMENT

21.1 The CONTRACTOR shall:

- (a) perform its obligations under the AGREEMENT (including those in relation to the WORKS) in accordance with:
 - (i) all LAW regarding HSE; and
 - (ii) the HSE REQUIREMENTS;

- (b) ensure that the CONTRACTOR PERSONNEL, SUBCONTRACTORS and/or VENDORS observe and comply with all LAW regarding HSE and the HSE REQUIREMENTS, and make available to them all such LAW and HSE REQUIREMENTS upon request; and
 - (c) notify the COMPANY of any violations of such LAW or HSE REQUIREMENTS whether by the CONTRACTOR or any of the CONTRACTOR PERSONNEL, SUBCONTRACTORS or VENDORS, and recommend corrective actions in respect thereof.
- 21.2 The CONTRACTOR shall be responsible for the preparation, implementation and enforcement of safety control procedures for the WORKS in compliance with the PROJECT requirements and the COMPANY STANDARDS, and shall notify the COMPANY of any violations of such requirements by the CONTRACTOR, SUBCONTRACTORS, VENDORS, CONTRACTOR PERSONNEL or THIRD PARTIES and recommend corrective actions in respect thereof.
- 21.3 In its agreement with each CONTRACTOR PERSONNEL, SUBCONTRACTOR and VENDOR, the CONTRACTOR shall include express provisions by which:
 - (a) the CONTRACTOR PERSONNEL, the SUBCONTRACTOR or the VENDOR, as the case may be, undertakes to comply with all LAW regarding HSE, the HSE REQUIREMENTS and the safety control procedures prepared by the CONTRACTOR under the AGREEMENT; and
 - (b) the CONTRACTOR undertakes to provide or make available all such LAW, HSE REQUIREMENTS and safety control procedures to the relevant CONTRACTOR PERSONNEL, SUBCONTRACTOR or VENDOR upon request by the latter.
- 21.4 The CONTRACTOR shall establish SITE regulations setting out the rules to be observed in the execution of the WORKS at the SITE and shall comply, and ensure that all CONTRACTOR INDEMNIFIED PARTIES comply, with such regulations while at or near the SITE. Such SITE regulations shall include, but are not be limited to, rules in respect of:
 - (a) security;
 - (b) safety of works;
 - (c) gate control;
 - (d) sanitation;
 - (e) medical care; and
 - (f) fire prevention.
- 21.5 Any MATERIALS, CONTRACTOR CONSTRUCTION EQUIPMENT, CONTRACTOR PERSONNEL, TEMPORARY WORKS and other things required by the HSE REQUIREMENTS shall be provided at the CONTRACTOR's own cost and no extra charge shall be invoiced to the COMPANY.
- 21.6 The CONTRACTOR shall nominate qualified and experienced safety officers at the SITE, who, subject to the COMPANY's approval, shall be responsible for ensuring adherence to, and compliance with, all LAW regarding HSE, the HSE REQUIREMENTS and the safety control procedures prepared by the CONTRACTOR by the SUBCONTRACTORS, VENDORS, CONTRACTOR PERSONNEL or other PERSONS required to be working at or near the SITE during the performance of the WORKS.
- 21.7 The CONTRACTOR shall at all times maintain a sufficient number of qualified and experienced full time safety officers at the SITE, as may be agreed between the PARTIES, to ensure the proper implementation and monitoring of all LAW regarding HSE, the HSE REQUIREMENTS and the safety control procedures prepared by the CONTRACTOR.
- 21.8 Any material failure by the CONTRACTOR to meet any of the LAW regarding HSE or the HSE REQUIREMENTS, or material failure to satisfy any of the COMPANY's reasonable requirements with

regard to the management of HSE risks, shall entitle the COMPANY to exercise one or more of the following:

- (a) suspend the AGREEMENT with immediate effect in accordance with Article 34.2; and/or
- (b) terminate the AGREEMENT with immediate effect in accordance with Article 35.3(a)(v).

- 21.9 In case of any emergency at the SITE or any of the COMPANY's PREMISES, the CONTRACTOR shall co-operate with the COMPANY in order to provide an appropriate response and shall immediately take all necessary measures to protect life and make safe property where such is in imminent peril. If, by reason of an emergency at the SITE or any of the COMPANY's PREMISES, any protective or remedial measures are necessary as a matter of urgency to protect life and make safe property, the CONTRACTOR shall immediately carry out such measures.
- 21.10 If the CONTRACTOR is unable or unwilling immediately to carry out protective or remedial measures in accordance with Article 21.9, the COMPANY may itself carry out, or appoint a THIRD PARTY to carry out, such measures as the COMPANY may consider necessary in order to protect life and make safe property, in which case the COMPANY shall, as soon as practicable after the occurrence of any such emergency, notify the CONTRACTOR in writing of such emergency, the measures taken and the reasons therefor.
- 21.11 If the CONTRACTOR is responsible for the occurrence of the emergency, the COMPANY shall be entitled to recover from the CONTRACTOR all reasonable costs incurred by the COMPANY in connection therewith and, where applicable, to deduct such costs from any payments due to the CONTRACTOR under the AGREEMENT.
- 21.12 To the extent that the HSE REQUIREMENTS are amended by the COMPANY after the EFFECTIVE DATE, the CONTRACTOR shall comply with such amended HSE REQUIREMENTS. Where the CONTRACTOR incurs additional costs in complying with the amended HSE REQUIREMENTS it shall be entitled to submit a CONTRACTOR VARIATION REQUEST in respect of such costs reasonably incurred and properly evidenced by the CONTRACTOR in accordance with, and subject to, Article 24.

22. REPRESENTATIONS AND WARRANTIES

- 22.1 The CONTRACTOR represents, warrants and undertakes to the COMPANY that:
- (a) it has been duly incorporated, organised and/or established and is validly existing under the laws of the jurisdiction of its incorporation, organisation or establishment (as the case may be);
 - (b) it has all requisite corporate power and authority to enter into the AGREEMENT and to carry out the transactions contemplated thereby;
 - (c) the AGREEMENT has been duly authorised by, and upon execution will constitute a valid and legally binding agreement, enforceable against the CONTRACTOR in accordance with its terms;
 - (d) it shall maintain all applicable CONTRACTOR CONSENTS necessary to perform its obligations under the AGREEMENT;
 - (e) it shall comply with:
 - (i) the ADNOC GROUP SUPPLIER & PARTNER CODE OF ETHICS and any other applicable COMPANY STANDARDS and HSE REQUIREMENTS as may be specified in the AGREEMENT or communicated by the COMPANY to the CONTRACTOR prior to the EFFECTIVE DATE; and
 - (ii) any other applicable COMPANY STANDARDS or HSE REQUIREMENTS as may be communicated by the COMPANY to the CONTRACTOR from time to time;

- (f) the WORKS shall be performed in accordance with, and the WORKS DOCUMENTATION shall comply with, the AGREEMENT, GOOD INDUSTRY PRACTICE and LAW;
 - (g) the WORKS DOCUMENTATION (excluding any information or materials provided by the COMPANY to the CONTRACTOR) shall not infringe any INTELLECTUAL PROPERTY RIGHTS of any THIRD PARTY; and
 - (h) it has adequate expertise, staffing and other resources necessary to meet its obligations under the AGREEMENT.
- 22.2 The CONTRACTOR shall provide the COMPANY with such evidence as the COMPANY may require in order to confirm its compliance with the representations and warranties provided in this Article 22.
- 22.3 The CONTRACTOR shall hold harmless, defend and indemnify the COMPANY against any and all costs (including legal costs), expenses liabilities and/or losses, claims, suits and/or proceedings of any kind arising as a result of a failure by the CONTRACTOR to comply with its obligations set out in:
- (a) Articles 22.1(a), 22.1(b), 22.1(c), 22.1(d) and 22.1(e)(i); and
 - (b) in respect of compliance with the LAW only, Article 22.1(f),
- and shall defend, indemnify and hold the COMPANY harmless from and against any losses, liabilities, damages and costs (including legal costs) arising out of or in connection with any claim by any PERSON against the COMPANY in connection with such failure.

23. PAYMENT

23.1 CONDITIONS PRECEDENT TO PAYMENT

Subject to any other conditions precedent to the COMPANY's obligations to make any payments to the CONTRACTOR set out in the AGREEMENT, the COMPANY shall not be required to make any payments to the CONTRACTOR under the AGREEMENT (other than an ADVANCE PAYMENT that may be payable pursuant to Article 23.1), until:

- (a) the COMMENCEMENT DATE has occurred; and
- (b) the COMPANY has received the following documentation from the CONTRACTOR:
 - (i) where applicable, the PERFORMANCE BANK GUARANTEE in accordance with Article 30.2;
 - (ii) where applicable, the PARENT COMPANY GUARANTEE in accordance with Article 30.3; and
 - (iii) a signed version of the FEED ENDORSEMENT in accordance with Article 5.1(b)(iii).

23.2 INVOICES

- (a) The CONTRACTOR shall submit to the COMPANY detailed invoices together with all required supporting documentation listed below on the dates specified in the FORM OF AGREEMENT ("INVOICES"). INVOICES shall be submitted in one (1) original, clearly stamped "Original" and shall include:
 - (i) references to the AGREEMENT;
 - (ii) the reason for which payment or stage payments are required;
 - (iii) the necessary supporting documents to enable the COMPANY to determine the accuracy of the INVOICE, including the relevant PROGRESS REPORT, and any

applicable certificates confirming MILESTONE and progress completion;

- (iv) the portion of the AGREEMENT PRICE that the CONTRACTOR is claiming, together with any UAE VAT payable in accordance with Article 28:
 - (A) in respect of the MILESTONES required to be completed in accordance with ANNEXURE 5 that are actually completed by the CONTRACTOR during the period covered by such INVOICE;
 - (B) in respect of the progress payments due and payable in accordance with the PRICING SCHEDULE;
 - (C) in respect of the REIMBURSABLE ITEMS, OPTIONAL ITEMS and/or any provisional sum items; and
 - (D) in respect of work related to a VARIATION ORDER issued by the COMPANY in accordance with the AGREEMENT;
 - (v) all further information identified in the PRICING SCHEDULE (if any);
 - (vi) any amounts to be deducted on account of the CONTRACTOR's obligation to reimburse the ADVANCE PAYMENT in accordance with Article 23.5(c) as well as any other amounts which might have become due to the COMPANY under the AGREEMENT or otherwise;
 - (vii) the net amount claimed as payable by the CONTRACTOR or the net credit owing to the COMPANY, as applicable;
 - (viii) the bank details where payments are to be made;
 - (ix) the official company stamp of the CONTRACTOR;
 - (x) the signature of the CONTRACTOR REPRESENTATIVE; and
 - (xi) any invoicing requirements in relation to UAE VAT as may be notified by the COMPANY to the CONTRACTOR from time to time.
- (b) Subject to Articles 23.1 and 23.3, the COMPANY shall pay any amounts due within thirty (30) DAYS of receipt of the corresponding INVOICE, provided always that any information or supporting documentation required by Article 23.2(a) has been provided by the CONTRACTOR.
 - (c) Notwithstanding anything to the contrary in the AGREEMENT, payments made by the COMPANY shall not be considered as an acceptance of the WORKS or any part thereof, and shall not be considered as a waiver of the COMPANY's right subsequently to object to any INVOICE so paid.
 - (d) Each INVOICE shall be issued by the CONTRACTOR, and paid by the COMPANY, in the currency indicated in the FORM OF AGREEMENT.
 - (e) If the CONTRACTOR has not issued to the COMPANY an INVOICE within seven (7) DAYS after the date specified in the FORM OF AGREEMENT, the COMPANY may issue such INVOICE (including a self-billing invoice) and the provisions of this Article 23 shall apply mutatis mutandis.

23.3 DISPUTED INVOICES

- (a) In the event that the COMPANY disagrees with any aspect of any INVOICE issued by the CONTRACTOR under the AGREEMENT or with all or a portion of an amount that is claimed by the CONTRACTOR as payable, the COMPANY shall, within fourteen (14) DAYS of receipt

of such INVOICE, be entitled to return the INVOICE to the CONTRACTOR together with a written notice setting out the reasons for the COMPANY's objection to the INVOICE. Subject to Articles 23.3(b) and 23.3(c) the COMPANY shall have no obligation to pay any amount disputed pursuant to a notice issued in accordance with this Article 23.3(a).

- (b) Upon receiving a notice pursuant to Article 23.3(a), the CONTRACTOR shall promptly provide to the COMPANY the following two (2) invoices:
 - (i) an invoice detailing the amounts which are not in dispute, if any ("**UNDISPUTED INVOICE**"); and
 - (ii) a revised invoice in respect of the amount which the COMPANY has disputed, taking into account the COMPANY's objection ("**REVISED INVOICE**"). In the event that the CONTRACTOR requires further information from the COMPANY regarding the disputed portion of the INVOICE, the PARTIES shall meet to discuss and resolve the DISPUTE.
- (c) Subject to its right to dispute such INVOICES under Article 23.3(a), the COMPANY shall pay the UNDISPUTED INVOICE and the REVISED INVOICE within thirty (30) DAYS of the date of receipt of the same.
- (d) In the event that the COMPANY disagrees with any aspect of the REVISED INVOICE or with all or a portion of an amount that is claimed by the CONTRACTOR as payable, the PARTIES shall repeat the process set out in Articles 23.3(a) to 23.3(c).
- (e) The COMPANY shall be entitled to withhold or deduct from any amount due to the CONTRACTOR under the AGREEMENT any and all amounts due by the CONTRACTOR to the COMPANY and any costs or losses incurred by the COMPANY arising from any breach by the CONTRACTOR of the AGREEMENT. The PARTIES hereby expressly exclude the application of Articles 247 and 879 of the CIVIL CODE, to the fullest extent permitted by LAW, with the consequence that the CONTRACTOR shall not be entitled to suspend the WORKS or otherwise refrain from carrying out any of its obligations under the AGREEMENT in the event that any amount owing to the CONTRACTOR is reasonably disputed by the COMPANY.
- (f) The CONTRACTOR shall maintain complete and accurate records of the time spent and the materials used by the CONTRACTOR in performing the WORKS in such format as the COMPANY shall approve. The CONTRACTOR shall allow the COMPANY to inspect such records at all reasonable times on request.

23.4 AGREEMENT PRICE

- (a) The PARTIES hereby acknowledge that the COMPANY shall pay the CONTRACTOR the AGREEMENT PRICE in accordance with and as more particularly defined in the PRICING SCHEDULE as the full consideration owed to the CONTRACTOR for the full and complete performance of all of its obligations under the AGREEMENT.
- (b) The CONTRACTOR acknowledges and accepts that it has satisfied itself as to the correctness and sufficiency of the AGREEMENT PRICE.

23.5 ADVANCE PAYMENT

- (a) Where the FORM OF AGREEMENT provides for the payment by the COMPANY of an ADVANCE PAYMENT, the CONTRACTOR shall, as a condition precedent to being paid the ADVANCE PAYMENT, provide the COMPANY with an ADVANCE PAYMENT GUARANTEE and the COMPANY shall then pay the ADVANCE PAYMENT to the CONTRACTOR in the amount set out in the FORM OF AGREEMENT in accordance with Article 23.5(b).

- (b) The CONTRACTOR may invoice the COMPANY for the ADVANCE PAYMENT immediately following the EFFECTIVE DATE (“**ADVANCE PAYMENT INVOICE**”), in which case the COMPANY shall make the ADVANCE PAYMENT to the CONTRACTOR by the later of:
 - (i) thirty (30) DAYS after the date of receipt of the ADVANCE PAYMENT INVOICE; and
 - (ii) fourteen (14) DAYS after the date on which the COMPANY receives the ADVANCE PAYMENT GUARANTEE.
- (c) The CONTRACTOR shall reimburse the ADVANCE PAYMENT to the COMPANY by applying a deduction equal to the percentage of the ADVANCE PAYMENT specified in the FORM OF AGREEMENT from the gross value of each INVOICE issued pursuant to Article 23.2, until the entire amount of the ADVANCE PAYMENT has been recovered by the COMPANY.

23.6 OPTIONAL ITEMS

If the COMPANY requires any optional items identified in the PRICING SCHEDULE, the COMPANY REPRESENTATIVE shall issue a written instruction to the CONTRACTOR requiring such item, and shall pay the CONTRACTOR in accordance with the PRICING SCHEDULE in respect thereof. For the avoidance of doubt, the PARTIES acknowledge that any costs associated with the procuring, supplying, storing, installing, testing or commissioning of any of the optional items listed in the PRICING SCHEDULE are not included within the INITIAL AGREEMENT PRICE.

23.7 DELAYED PAYMENT

- (a) Subject to Article 23.7(b), if the COMPANY fails to make payment of any undisputed amount due to the CONTRACTOR in accordance with this Article 23.7:
 - (i) within ninety (90) DAYS of the expiry of the time period specified in Articles 23.2(b), 23.3(c) or 23.3(d), the CONTRACTOR may:
 - (A) notify the COMPANY in writing of its intention to suspend the WORKS if such payment is not made within fourteen (14) DAYS from the date of receipt of the notice by the COMPANY; and
 - (B) following expiry of the fourteen (14) DAY period referred to in Article 23.7(a)(i)(A), notify the COMPANY in writing of its suspension of any part or all of the WORKS with immediate effect until such time as the CONTRACTOR receives payment of the outstanding undisputed amount due to the CONTRACTOR or such other amount that may be agreed between the PARTIES. The CONTRACTOR’s suspension of the WORKS in accordance with this Article 23.7(a)(i) shall not prejudice its entitlement to terminate the AGREEMENT pursuant to Article 23.7(a)(ii); and
 - (ii) within one hundred and twenty (120) DAYS of the expiry of the time period specified in Articles 23.2(b), 23.3(c) or 23.3(d), the CONTRACTOR may:
 - (A) notify the COMPANY in writing of its intention to terminate the AGREEMENT if such payment is not made within fourteen (14) DAYS from the date of receipt of the notice by the COMPANY; and
 - (B) following expiry of the fourteen (14) DAY period specified in Article 23.7(a)(ii)(A), the CONTRACTOR may terminate the AGREEMENT by written notice to the COMPANY, provided that the majority of the outstanding undisputed amount (or such other amount agreed between the PARTIES) has not been paid at the time of delivery of such notice.

- (b) The CONTRACTOR shall not be entitled to exercise any rights under Article 23.7(a), or otherwise enforce its rights under the AGREEMENT, in respect of late payment or non-payment by the COMPANY of any amount in respect of which the COMPANY has issued a notice pursuant to Article 23.3(a).
- (c) If the CONTRACTOR is delayed in its performance of the WORKS and/or incurs additional costs as a result of the suspension of any part or all of the WORKS in accordance with Article 23.7(a), the CONTRACTOR shall promptly give notice to the COMPANY and shall be entitled to submit a CONTRACTOR VARIATION REQUEST to:
 - (i) seek to recover any direct costs it incurred by reason of delay in the performance of the WORKS provided always that the COMPANY shall not be liable for any CONSEQUENTIAL LOSS; and/or
 - (ii) apply for any adjustments to the KEY MILESTONE DATES in accordance with Article 25.
- (d) The PARTIES hereby expressly exclude the application of Articles 247 and 879 of the CIVIL CODE, to the fullest extent permitted by LAW. The PARTIES agree that the CONTRACTOR shall not be entitled to suspend the WORKS or otherwise refrain from carrying out any of its obligations under the AGREEMENT in the event that any amount owing to the CONTRACTOR is not paid by the COMPANY except as expressly provided in this Article 23.7.

24. VARIATIONS

24.1 VARIATION PROCESS

The CONTRACTOR shall only be entitled to adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES where:

- (a) there are circumstances which constitute a VARIATION and/or a DELAY EVENT; and
- (b) the provisions of this Article 24 and, in relation to DELAY EVENTS, Article 25, have been complied with by the CONTRACTOR.

24.2 COMPANY VARIATION REQUEST

- (a) Without prejudice to the COMPANY's rights pursuant to Article 24.3(a) and 24.5(c), the COMPANY may, at its sole discretion, submit a written notice to the CONTRACTOR describing a proposed VARIATION and requesting the CONTRACTOR to submit a VARIATION PROPOSAL containing the information set out in Article 24.2(b) ("**COMPANY VARIATION REQUEST**").
- (b) Within fourteen (14) DAYS of receipt of the COMPANY VARIATION REQUEST (or any longer period as may be agreed between the PARTIES), the CONTRACTOR shall submit a statement to the COMPANY detailing the consequences of such requested VARIATION which shall include:
 - (i) a description of the proposed works to be performed;
 - (ii) the time required to implement the VARIATION;
 - (iii) any proposed changes to the WORK PROGRAM and KEY MILESTONE DATES, including with respect to the information referred to in Articles 25.4(a), 25.4(b), 25.4(c), 25.4(d) and 25.4(e);
 - (iv) any increase or decrease to the AGREEMENT PRICE, together with a breakdown of the CONTRACTOR's calculation of such increase and decrease; and

- (v) identification of any other impact of the VARIATION on the WORKS
- (the “**VARIATION PROPOSAL**”).
- (c) Within a reasonable time following the COMPANY’s receipt of a VARIATION PROPOSAL, the COMPANY may:
 - (i) issue an INSTRUCTION TO PROCEED;
 - (ii) approve the VARIATION PROPOSAL by issuing a VARIATION ORDER reflecting the terms of the VARIATION PROPOSAL, in which case the CONTRACTOR shall be obliged to proceed to implement the VARIATION;
 - (iii) provide comments on or request additional information in relation to the VARIATION PROPOSAL, in which case the CONTRACTOR must amend the VARIATION PROPOSAL in accordance with the comments and re-submit it for approval, including any additional information that may have been requested by the COMPANY, within seven (7) DAYS of receiving the COMPANY’s comments and/or requests, following which the process set out in this Article 24.2(c) shall be repeated; or
 - (iv) reject the VARIATION PROPOSAL.
 - (d) If the CONTRACTOR fails to furnish the VARIATION PROPOSAL within the period specified in Article 24.2(b), or if the COMPANY rejects the VARIATION PROPOSAL pursuant to Article 24.2(c)(iv), the COMPANY may:
 - (i) issue an INSTRUCTION TO PROCEED;
 - (ii) issue a VARIATION ORDER in accordance with Article 24.5(c)(ii); or
 - (iii) withdraw the COMPANY VARIATION REQUEST upon notice to the CONTRACTOR.

24.3 INSTRUCTION TO PROCEED

- (a) Notwithstanding the other provisions of this Article 24, where:
 - (i) the COMPANY requires the CONTRACTOR to implement instructions that the COMPANY acknowledges constitute a VARIATION; and
 - (ii) in the COMPANY’s sole opinion, there is an urgent need to implement the VARIATION,

the COMPANY may issue an instruction to proceed at any time (an “**INSTRUCTION TO PROCEED**”). Whenever an INSTRUCTION TO PROCEED is issued by the COMPANY, Article 24.3(b) shall apply.
- (b) Where Article 24.3(a) applies:
 - (i) the CONTRACTOR shall be obliged to immediately proceed to implement the VARIATION;
 - (ii) the COMPANY may issue a written notice to the CONTRACTOR to request that the CONTRACTOR provide to the COMPANY, in writing and within fourteen (14) DAYS of being requested to do so, the information listed in Articles 24.2(b)(i) to 24.2(b)(v), to the extent applicable; and

- (iii) within forty-five (45) DAYS from the date of issuance of the INSTRUCTION TO PROCEED, the COMPANY shall issue a VARIATION ORDER to replace the INSTRUCTION TO PROCEED.

24.4 CONTRACTOR VARIATION REQUEST

- (a) Subject to Article 24.6, if, during the performance of the WORKS, the CONTRACTOR reasonably considers that any instruction received from the COMPANY or any development arising pursuant to Articles 4.4(c), 5.2(a), 7.9(e), 8.4, 11.10(b), 11.11(b), 12.10, 13.4, 21.12, 23.7(c), 29.1, 33.2(c), 34.1 or 34.3 should be treated as a VARIATION, the CONTRACTOR may issue a written notice to that effect to the COMPANY, together, to the extent applicable, with the same information required for a VARIATION PROPOSAL listed in Article 24.2(b)(i) to 24.2(b)(v) (a “**CONTRACTOR VARIATION REQUEST**”). The burden for demonstrating that such COMPANY instruction or development constitutes a VARIATION shall be upon the CONTRACTOR. The CONTRACTOR must issue a CONTRACTOR VARIATION REQUEST under this Article 24.4 within:

- (i) fourteen (14) DAYS of the earlier of:
 - (A) the date that it received the instruction; or
 - (B) the date on which it became aware or ought to have become aware of the relevant development arising pursuant to Articles 4.4(c), 5.2(a), 7.9(e), 8.4, 11.10(b), 11.11(b), 12.10, 13.4, 21.12, 23.7(c), 29.1, 33.2(c), 34.1 or 34.3; or
- (ii) fourteen (14) DAYS of a FORCE MAJEURE EVENT ceasing altogether or lessening in its effect so as to allow the affected PARTY to resume all or any part of the obligations that has been prevented or delayed by the FORCE MAJEURE EVENT,

as applicable and, in any case, prior to proceeding with the instruction.

- (b) If the CONTRACTOR fails to issue a CONTRACTOR VARIATION REQUEST within the time period specified in Article 24.4(a), then any additional works carried out pursuant to such instruction or development pursuant to Articles 4.4(c), 5.2(a), 7.9(e), 8.4, 11.10(b), 11.11(b), 12.10, 13.4, 21.12, 23.7(c), 29.1, 33.2(c), 34.1 or 34.3 shall not constitute a VARIATION, and the CONTRACTOR shall have no entitlement to claim any extension of any time, adjustment of the AGREEMENT PRICE or other relief in connection therewith.
- (c) Where a CONTRACTOR VARIATION REQUEST concerns a claimed DELAY EVENT, Article 25 shall apply in addition to this Article 24.4 and the process set out in Article 25.4 must be followed.
- (d) The COMPANY may comment on or request additional information in relation to the CONTRACTOR VARIATION REQUEST, in which case the CONTRACTOR must amend the CONTRACTOR VARIATION REQUEST in accordance with the COMPANY’s comments and re-submit it, including any additional information that may have been requested by the COMPANY, within seven (7) DAYS of receiving the COMPANY’s comments and/or requests.
- (e) Within a reasonable time following the COMPANY’s receipt of the CONTRACTOR VARIATION REQUEST pursuant to Article 24.4(a), or any amendments to or additional information for such CONTRACTOR VARIATION REQUEST pursuant to Article 24.4(d), where applicable, the COMPANY may:
 - (i) approve the CONTRACTOR VARIATION REQUEST by issuing a VARIATION ORDER reflecting the terms of the CONTRACTOR VARIATION REQUEST, in which case the CONTRACTOR shall be obliged to proceed to implement the VARIATION;
 - (ii) withdraw its instruction, where the CONTRACTOR VARIATION REQUEST is based on a COMPANY instruction; or

- (iii) reject the CONTRACTOR VARIATION REQUEST, in which case, subject to where Article 24.5(f)(i) applies, the CONTRACTOR shall be obliged to proceed with the implementation of the instruction or otherwise address the development arising pursuant to Articles 4.4(c), 5.2(a), 7.9(e), 8.4, 11.10(b), 11.11(b), 12.10, 13.4, 21.12, 23.7(c), 29.1, 33.2(c), 34.1 or 34.3, in each case without a VARIATION ORDER.

24.5 VARIATION ORDERS

- (a) In any VARIATION ORDER issued pursuant to Article 24, the COMPANY shall:
 - (i) with respect to the AGREEMENT PRICE, either:
 - (A) specify that the adjustment to the AGREEMENT PRICE on account of the relevant VARIATION which shall be either:
 - (1) determined by use of the rate(s) or price(s) in ANNEXURE 5, which shall be deemed to cover the costs of all works, MATERIALS, CONSTRUCTION EQUIPMENT and other things required for the VARIATION, as well as all on-site overheads and preliminaries, off-site overheads and profit; or
 - (2) equal to the costs incurred or saved by the CONTRACTOR in implementing the VARIATION, plus a corresponding adjustment for on-site overheads and preliminaries, off-site overheads and profit calculated in accordance with ANNEXURE 5; or
 - (B) where the COMPANY, acting reasonably, is not able to apply the provisions of Article 24.5(a)(i)(A), determine a lump sum adjustment to the AGREEMENT PRICE on account of the relevant VARIATION, which the COMPANY considers to be reasonable in the circumstances; and
 - (ii) with respect to the KEY MILESTONE DATES, either:
 - (A) determine adjustment(s) to the KEY MILESTONE DATES (and any other applicable dates) on account of the relevant VARIATION, which the COMPANY considers to be reasonable in the circumstances; or
 - (B) specify that the CONTRACTOR may issue a CONTRACTOR VARIATION REQUEST for adjustment to the KEY MILESTONE DATES (and any other applicable dates) in respect of the relevant VARIATION in accordance with this Article 24.
- (b) If the CONTRACTOR fails to furnish the VARIATION PROPOSAL within the period specified in Article 24.2(b) and the COMPANY subsequently issues a VARIATION ORDER pursuant to Article 24.2(d)(ii), the CONTRACTOR shall have no right to claim that any adjustments of the AGREEMENT PRICE and/or the WORK PROGRAM and KEY MILESTONE DATES or other relief stated in such VARIATION ORDER is insufficient for the relevant VARIATION, and any such entitlement is hereby expressly waived and excluded.
- (c) The COMPANY may issue a VARIATION ORDER in accordance with Article 24.5:
 - (i) without issuing a COMPANY VARIATION REQUEST;
 - (ii) if the CONTRACTOR fails to furnish the VARIATION PROPOSAL within the period specified in Article 24.2(b); or
 - (iii) notwithstanding any rejection, in whole or in part, of a VARIATION PROPOSAL pursuant to Article 24.2(c)(iv).
- (d) Subject to where Article 24.5(f)(i) applies, the CONTRACTOR shall be obliged to promptly implement and comply with any VARIATION ORDER issued pursuant to this Article 24.

- (e) If the CONTRACTOR disagrees with any determination made by the COMPANY pursuant to Article 24.2(c), 24.4(e) or 24.5(a), the CONTRACTOR may, within sixty (60) DAYS of such determination, refer such disagreement for resolution in accordance with the dispute resolution procedures set out in Article 46. If the CONTRACTOR fails to dispute any such determination within such sixty (60) DAY period, such determination shall be final and binding upon the CONTRACTOR and the CONTRACTOR shall be deemed to have waived all of its rights to bring any claim against the COMPANY in respect of such determination.
- (f) Where the CONTRACTOR refers a disagreement for resolution pursuant to Article 24.5(e), the COMPANY shall issue to the CONTRACTOR a written notice:
 - (i) cancelling the determination or VARIATION ORDER, as applicable, and instructing the CONTRACTOR to cease performing any works or services that are based on such determination or VARIATION ORDER, as applicable;
 - (ii) amending the determination or VARIATION ORDER, as applicable, to address the CONTRACTOR's concerns; or
 - (iii) confirming that the COMPANY's determination or VARIATION ORDER, as applicable, stands unamended

and, unless and until the CONTRACTOR receives a notice from the COMPANY pursuant to Article 24.5(f)(i), the CONTRACTOR shall immediately proceed with and/or continue to perform (as applicable) any works or services that have arisen under such determination or VARIATION ORDER, as applicable, pending the outcome of the dispute resolution process.

24.6 CONSEQUENCES OF AN INSTRUCTION TO PROCEED OR VARIATION ORDER

- (a) The CONTRACTOR shall not proceed with any VARIATION unless and until the COMPANY issues:
 - (i) an INSTRUCTION TO PROCEED pursuant to Articles 24.2(c)(i), 24.2(d)(i) or 24.3(a); or
 - (ii) a VARIATION ORDER pursuant to Articles 24.2(c)(ii), 24.2(d)(ii), 24.3(b)(iii), 24.4(e)(i) or 24.5(c).

For the avoidance of doubt, if the CONTRACTOR proceeds to implement a VARIATION without the COMPANY issuing an INSTRUCTION TO PROCEED or a VARIATION ORDER, the CONTRACTOR does so entirely at its own risk and hereby waives any entitlement to claim that the instruction or development in question constitutes a VARIATION, or to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief.

- (b) No INSTRUCTION TO PROCEED or VARIATION ORDER shall:
 - (i) in any way invalidate the terms of the AGREEMENT;
 - (ii) relieve the CONTRACTOR from any of its responsibilities, obligations under the AGREEMENT or LAW, except as expressly provided in the relevant INSTRUCTION TO PROCEED or VARIATION ORDER; or
 - (iii) prejudice the COMPANY's rights under the AGREEMENT or LAW.
- (c) If an INSTRUCTION TO PROCEED or VARIATION ORDER eliminates any part of the WORKS, the COMPANY:
 - (i) may carry out the relevant work either itself or by engaging one or more THIRD PARTIES; and

- (ii) subject to Article 24.6(d), shall not be liable for any claim by the CONTRACTOR arising out of, or in connection with, the elimination of the part of the WORKS or the exercise by the COMPANY of its rights pursuant to Article 24.6(c)(i) or the corresponding adjustment(s) to the AGREEMENT PRICE, the WORK PROGRAM or KEY MILESTONE DATES.
- (d) Where an INSTRUCTION TO PROCEED or VARIATION ORDER eliminates a portion of the WORKS and the AGREEMENT PRICE is to be reduced in proportion to the reduction in the WORKS, the CONTRACTOR shall be entitled to be paid:
 - (i) any verified termination costs that have been incurred by the CONTRACTOR in terminating any subcontracts or cancelling any LLI SUPPLY AGREEMENTS; and
 - (ii) where the WORKS are reduced by more than twenty percent (20%) of the original WORKS, its demobilisation costs, at the rate(s) specified in ANNEXURE 5, and if no rates are specified in ANNEXURE 5, at rates to be agreed between the PARTIES.

24.7 NO ENTITLEMENT

- (a) The CONTRACTOR shall not be entitled to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES or other relief for any instruction, decision or act of the COMPANY which is made or given in order to ensure that the CONTRACTOR complies with any of its obligations under the AGREEMENT or, subject to Article 29, LAW and no such instruction, decision or act of the COMPANY shall constitute a VARIATION.
- (b) No change made necessary due to any default of the CONTRACTOR in the performance of the WORKS shall constitute a VARIATION and no such change shall entitle the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES or other relief.
- (c) Corrections to detailed design work performed, or to be performed by the CONTRACTOR, which may be required to achieve compliance with the AGREEMENT, LAW, CONSENTS, COMPANY STANDARDS or GOOD INDUSTRY PRACTICE shall not constitute a VARIATION. For the avoidance of doubt, the COMPANY shall not have any obligation to consider any CONTRACTOR VARIATION REQUEST where:
 - (i) the SCOPE OF WORK is not affected; or
 - (ii) the requested VARIATION is merely a closer definition or change in detail of the WORKS to be carried out.
- (d) The CONTRACTOR's performance of works or provision of materials or equipment which, in the reasonable opinion of the COMPANY are necessary for the proper execution of the WORKS in compliance with:
 - (i) the AGREEMENT, CONSENTS or, subject to Article 29, LAW, at any time; and
 - (ii) COMPANY STANDARDS known or made available to the CONTRACTOR and GOOD INDUSTRY PRACTICE, in force on the EFFECTIVE DATE

shall not give rise to any circumstances constituting a VARIATION or entitle the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES or other relief, regardless of whether the performance of such works or provision of such materials or equipment is denoted in the SCOPE OF WORK.

- (e) The fact that a type or category of instructions, actions, omissions or developments is not listed in this Article 24.7 shall not in and of itself indicate that such instruction, action, omission or development constitutes a VARIATION or otherwise entitles the CONTRACTOR to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief.

24.8 VALUE ENGINEERING PROPOSALS

- (a) The CONTRACTOR may, at any time, submit to the COMPANY a written proposal (a “**VALUE ENGINEERING PROPOSAL**”) which, in the CONTRACTOR’s opinion, will, if adopted:
 - (i) accelerate the completion of the WORKS;
 - (ii) reduce the cost to the COMPANY of executing the WORKS or maintaining or operating the FACILITIES;
 - (iii) improve the efficiency or value to the COMPANY of the FACILITIES; or
 - (iv) otherwise be of benefit to the COMPANY.
- (b) Within a reasonable time following receipt of such VALUE ENGINEERING PROPOSAL, the COMPANY shall either:
 - (i) approve the VALUE ENGINEERING PROPOSAL by issuing a VARIATION ORDER instructing the CONTRACTOR to proceed with the VALUE ENGINEERING PROPOSAL in accordance with its terms, which the CONTRACTOR shall then be obliged to implement; or
 - (ii) reject the VALUE ENGINEERING PROPOSAL.

25. EXTENSIONS OF TIME

- 25.1 Subject to the requirement and the procedures set out in Article 24, the CONTRACTOR shall be entitled to an adjustment to the WORK PROGRAM and KEY MILESTONE DATES to the extent that it is able to demonstrate that completion of the relevant part of the WORKS comprising any MILESTONE has been or will be delayed by one or more of the following events or circumstances (each a “**DELAY EVENT**”):
- (a) any breach of the AGREEMENT or act of prevention by the COMPANY, its AFFILIATES or their respective agents or employees;
 - (b) subject to Article 12.10, any delays caused by ASSOCIATED WORKS CONTRACTORS working at the SITE, except to the extent that the delays caused by ASSOCIATED WORKS CONTRACTORS are attributable to the CONTRACTOR’s breach of Article 12;
 - (c) the circumstances referred to in Articles 4.3(c), 5.2(a), 7.9(e), 8.4, 11.10(b), 11.11(b) 13.4, 23.7(c) or 29.1;
 - (d) a suspension of the WORKS in the circumstances referred to in Article 34.1 or 34.3;
 - (e) the implementation of works constituting a VARIATION pursuant to Article 24;
 - (f) a FORCE MAJEURE EVENT pursuant to Article 38.1; or
 - (g) the occurrence of risks set out in Article 33.2(c).
- 25.2 The CONTRACTOR shall have no entitlement to any adjustment to the WORK PROGRAM and KEY MILESTONE DATES for any event or circumstance that is not a DELAY EVENT.
- 25.3 Where the CONTRACTOR is entitled to an adjustment to the WORK PROGRAM and KEY MILESTONE DATES due to a DELAY EVENT, this shall be recorded as a VARIATION ORDER subject to the requirements and procedures set out in Article 24.5, unless the time consequences of such DELAY EVENT have already been addressed in a previous VARIATION ORDER.

- 25.4 Where the CONTRACTOR issues a CONTRACTOR VARIATION REQUEST pursuant to Article 24.4 which identifies a claimed DELAY EVENT, the CONTRACTOR shall, no later than twenty-one (21) DAYS after the issuance of such CONTRACTOR VARIATION REQUEST, and in any event prior to proceeding to implement any corresponding VARIATION, if applicable, unless the COMPANY issues a written instruction otherwise, give further written notice to the COMPANY providing detailed particulars and supporting evidence demonstrating:
- (a) the occurrence of the claimed DELAY EVENT and the reasons why it occurred;
 - (b) the actual and expected effects of the claimed DELAY EVENT;
 - (c) the CONTRACTOR's mitigation plan by which it shall exercise its best endeavours to avoid or reduce the delay, including re-programming the sequence of the WORKS and measures which it has discussed and agreed with SUBCONTRACTORS and VENDORS, if applicable;
 - (d) documents the CONTRACTOR has to support the claimed adjustment to the WORK PROGRAM and KEY MILESTONE DATES, including the direct effect of the DELAY EVENT on the completion of the WORKS, supported by:
 - (i) a "time impact analysis" method of assessment if such particulars are submitted prior to PROVISIONAL ACCEPTANCE; or
 - (ii) an "as-built versus as-planned" critical path method of assessment if such particulars are submitted after PROVISIONAL ACCEPTANCE,

provided that, in each case, the COMPANY shall not be under any obligation to use such method of assessment when evaluating whether and to what extent any of the KEY MILESTONE DATES should be adjusted; and
 - (e) an estimate of the extent of the expected delay to the achievement of the affected KEY MILESTONE beyond the associated KEY MILESTONE DATE and a statement of the adjustment to the WORK PROGRAM claimed.
- 25.5 The CONTRACTOR acknowledges and agrees that, in the event of CONCURRENCY, it shall, subject to Article 24:
- (a) retain the right to claim any adjustments to the KEY MILESTONE DATES; and
 - (b) not be entitled to any adjustment to the AGREEMENT PRICE for the period of CONCURRENCY or for the period of any extension to any KEY MILESTONE DATE resulting from any CONCURRENCY.

26. AUDIT

- 26.1 Subject to Article 26.3, the COMPANY and its authorised representatives, agents or auditors shall have the right to audit, during business hours and upon reasonable notice, all books, records, accounts, correspondence, instructions, specifications, plans, drawings, receipts, policies and procedures and memoranda of the CONTRACTOR and any SUBCONTRACTOR or VENDOR in order to:
- (a) verify the accuracy of any reimbursable costs payable by the COMPANY;
 - (b) verify the costs submitted by the CONTRACTOR in relation to any adjustments to the AGREEMENT PRICE;
 - (c) verify the CONTRACTOR's and any SUBCONTRACTOR's or VENDOR's compliance with the AGREEMENT and LAWS;
 - (d) identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security;

- (e) identify or investigate any circumstances which may impact upon the financial stability of the CONTRACTOR;
- (f) verify the accuracy and completeness of any technical processes;
- (g) review the CONTRACTOR's quality management systems; and
- (h) review the CONTRACTOR's compliance with the COMPANY's HSE requirements.

26.2 The CONTRACTOR shall be responsible for ensuring that all such books, records, accounts, correspondence, instructions, specifications, plans, drawings, receipts, policies, procedures and memoranda of the CONTRACTOR and any SUBCONTRACTOR or VENDOR are preserved and made available at any time for audit, without any additional compensation therefor, for up to two (2) years from the date of completion of the WORKS (as evidenced by issuance of the FINAL ACCEPTANCE CERTIFICATE) or the termination of the AGREEMENT, whichever is earlier. The COMPANY and its authorised representatives, agents or auditors shall have the right to photocopy or otherwise reproduce, at their own cost, any such books, records, accounts, correspondence, instructions, specifications, plans, drawings, receipts and memoranda of the CONTRACTOR and its SUBCONTRACTORS and VENDORS.

26.3 The COMPANY's audit rights in this Article 26 shall apply provided always that the CONTRACTOR shall not be required to disclose:

- (a) information relating to any THIRD PARTY which is subject to a legally binding confidentiality agreement which would prohibit disclosure pursuant to this Article 26;
- (b) the identity of or information relating to the CONTRACTOR's other customers;
- (c) financial pricing information, except in relation to reimbursable costs as set out above; and
- (d) any information which is protected as a trade secret.

27. CONSENTS

27.1 COMPANY CONSENTS

- (a) The COMPANY shall be responsible for procuring the COMPANY CONSENTS.
- (b) Promptly upon request by the COMPANY, the CONTRACTOR shall assist the COMPANY with the procurement of COMPANY CONSENTS by:
 - (i) providing all necessary documents and information to the COMPANY (including completed applications for COMPANY CONSENTS, to the extent possible) within one (1) week of a request from the COMPANY for the same;
 - (ii) submitting any completed applications for COMPANY CONSENTS to the applicable GOVERNMENTAL AUTHORITY, where applicable (the COMPANY shall provide reasonable assistance and information to the CONTRACTOR for completion of such applications);
 - (iii) following up with any GOVERNMENTAL AUTHORITIES regarding any applications for COMPANY CONSENTS until issuance of the same; and
 - (iv) providing any other assistance as may reasonably be requested by the COMPANY.

27.2 CONTRACTOR CONSENTS

- (a) The CONTRACTOR shall be responsible for procuring all CONTRACTOR CONSENTS at its sole cost and expense.

- (b) The COMPANY shall issue to the CONTRACTOR any letters of approval or other documentary approvals required to permit the CONTRACTOR's procurement of any CONTRACTOR CONSENT within two (2) weeks of receipt of a request by the CONTRACTOR for the same.
- (c) Other than the issuance of letters of approval or other documentary approvals by the COMPANY pursuant to Article 27.2(b), all actions necessary to procure the CONTRACTOR CONSENTS shall be the CONTRACTOR's sole responsibility, and the COMPANY shall not be liable for any costs or delays arising in connection with the procurement or failure to procure the CONTRACTOR CONSENTS.

28. TAXES AND DUTIES

- 28.1 Subject to Article 28.4 and Articles 28.6 to 28.8, the CONTRACTOR shall be liable for all taxes, imposts, duties, withholding taxes, charges or other assessments applicable to the WORKS.
- 28.2 The CONTRACTOR shall be liable for all costs required for the CONTRACTOR to undertake business within the UAE, including any registration charges levied by any GOVERNMENTAL AUTHORITY of ABU DHABI.
- 28.3 The AGREEMENT PRICE does not include any allowance for, and are exclusive of, UAE VAT.
- 28.4 Where UAE VAT is applicable to any WORKS performed under the AGREEMENT, the CONTRACTOR:
 - (a) subject to compliance with Article 28.2 and Article 28.4(b), is entitled to charge UAE VAT on the applicable supply at the applicable rates under the VAT LAW;
 - (b) shall include the UAE VAT amount as an additional line item on the applicable INVOICE; and
 - (c) shall do such other things and provide such other information and documents as may be reasonably required by the COMPANY to enable the COMPANY to claim an input credit or refund under the VAT LAW.
- 28.5 Where costs incurred by one PARTY are to be reimbursed or indemnified by the other PARTY under the AGREEMENT, the amount to be reimbursed or payable under the indemnity, as applicable, shall be calculated net of any input tax credits under the VAT LAW that the PARTY seeking reimbursement or indemnification is entitled to in respect of the cost incurred.
- 28.6 The CONTRACTOR shall not be liable for any customs duties levied in ABU DHABI on the CONTRACTOR CONSTRUCTION EQUIPMENT and MATERIALS supplied by the CONTRACTOR and imported solely for the performance of the WORKS under this AGREEMENT. The COMPANY shall, upon request by the CONTRACTOR, provide such reasonable documents and assistance to the CONTRACTOR as may be necessary for obtaining such customs duties exemption, provided however, as a condition precedent to such exemption, the CONTRACTOR shall comply with all requirements of the COMPANY's prescribed import procedures as may be revised from time to time, and in particular, without limitation:
 - (a) all CONTRACTOR CONSTRUCTION EQUIPMENT and MATERIALS to be imported into ABU DHABI shall be shipped in the name of the CONTRACTOR, as consignee, and shall be marked "FOR COMPANY". The Bill of Lading/Airway Bill and invoice shall incorporate the relevant COMPANY agreement number;
 - (b) the CONTRACTOR shall, forward to the COMPANY all particulars and details of every consignment with copies of the shipping documents as the COMPANY may require in sufficient time for the COMPANY, to give instructions regarding clearance and duty exemption;
 - (c) the COMPANY will advise the CONTRACTOR as to the document which the local customs authorities require for import of CONTRACTOR CONSTRUCTION EQUIPMENT and MATERIALS. The CONTRACTOR will deliver to the COMPANY such documents as early

as possible, but not less than fourteen (14) DAYS before the arrival of such CONTRACTOR CONSTRUCTION EQUIPMENT and MATERIALS; and

- (d) the CONTRACTOR has attempted to secure locally such items that are comparable in quality, price and suitability to those imported, but has failed to obtain them in the local market.

28.7 The exemption provided in Article 28.6 does not extend to:

- (a) any CONTRACTOR CONSTRUCTION EQUIPMENT and MATERIALS which, in the opinion of the COMPANY, are imported by the CONTRACTOR not for the sole purpose of carrying out the WORKS;
- (b) TEMPORARY WORKS and any apparatus, machinery, vehicles and other things required for the execution and completion of the TEMPORARY WORKS;
- (c) CONTRACTOR CONSTRUCTION EQUIPMENT following the PROVISIONAL ACCEPTANCE DATE, expiry or termination of the AGREEMENT, unless the CONTRACTOR CONSTRUCTION EQUIPMENT will continue to be used for the performance of works for the ADNOC GROUP under a separate agreement; and/or
- (d) to personal effects of the CONTRACTOR or those of the CONTRACTOR PERSONNEL. Customs duties on such CONTRACTOR CONSTRUCTION EQUIPMENT and personal effects shall be borne entirely by the CONTRACTOR.

28.8 The COMPANY will not entertain any requests for temporary customs duty exemption. The CONTRACTOR shall deal with and address such requests directly to the Abu Dhabi Customs Authorities. The COMPANY, however, shall upon request by the CONTRACTOR, issue a letter confirming the duration of the AGREEMENT.

29. CHANGE IN LAW

29.1 Subject to Article 29.2, if a change in LAW in the UAE comes into effect after the FINAL COMMERCIAL BID SUBMISSION DATE and increases the CONTRACTOR's costs in performing its obligations under the AGREEMENT and/or delays the CONTRACTOR's performance of the WORKS, the CONTRACTOR shall, subject to Article 24, be entitled to submit a CONTRACTOR VARIATION REQUEST to recover any costs or delays incurred as a result of such change in LAW, provided that the CONTRACTOR has used reasonable and lawful endeavours to mitigate the effects of such change in LAW.

29.2 The following shall not be considered changes in LAW and the CONTRACTOR shall not be entitled to any adjustments to the AGREEMENT PRICE and/or the KEY MILESTONE DATES, or other relief pursuant to Article 29.1 in relation to any of them:

- (a) changes in LAW applicable outside the UAE; and
- (b) changes in utility prices, fuel prices, visa fees, immigration fees or sponsor fees.

30. GUARANTEES

30.1 ADVANCE PAYMENT GUARANTEE

- (a) Where the FORM OF AGREEMENT provides for the payment by the COMPANY of an ADVANCE PAYMENT, on or before the COMMENCEMENT DATE, and as a condition precedent to any obligation on the COMPANY to pay the ADVANCE PAYMENT to the CONTRACTOR, the CONTRACTOR shall provide the COMPANY with an advance payment guarantee (the "**ADVANCE PAYMENT GUARANTEE**"):
 - (i) in the form set out in ANNEXURE 8-C;

- (ii) issued by a bank registered in the UAE and operating within the jurisdiction of the UAE Central Bank;
 - (iii) in an amount equal to the ADVANCE PAYMENT made to the CONTRACTOR pursuant to Article 23.1; and
 - (iv) which expires on a fixed expiry date which is at least forty-five (45) DAYS after the scheduled date for issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE.
- (b) The amount of the ADVANCE PAYMENT GUARANTEE may be reduced progressively on a quarterly basis from time to time on written request from the CONTRACTOR and subject to the COMPANY's written approval (at its sole discretion and in the form attached to the ADVANCE PAYMENT GUARANTEE as ANNEXURE 8) as and when INVOICES subjected to the ADVANCE PAYMENT deductions pursuant to Article 23.5(c) are paid by the COMPANY.
- (c) The COMPANY shall return the ADVANCE PAYMENT GUARANTEE to the CONTRACTOR within forty-two (42) DAYS following the date when the entire amount of the ADVANCE PAYMENT has been recovered by the COMPANY (the "**ADVANCE PAYMENT GUARANTEE RETURN DATE**").
- (d) The CONTRACTOR shall at all times ensure that the ADVANCE PAYMENT GUARANTEE remains valid until the ADVANCE PAYMENT GUARANTEE RETURN DATE, notwithstanding the expiry or termination of the AGREEMENT.
- (e) In order to comply with Article 30.1(d), if the ADVANCE PAYMENT GUARANTEE is due to expire prior to the ADVANCE PAYMENT GUARANTEE RETURN DATE, the CONTRACTOR shall, not less than sixty (60) DAYS before the expiry date of the ADVANCE PAYMENT GUARANTEE, extend the validity of the ADVANCE PAYMENT GUARANTEE.
- (f) If for any reason the ADVANCE PAYMENT GUARANTEE is invalidated before (i) the ADVANCE PAYMENT has been fully repaid or (ii) the ADVANCE PAYMENT GUARANTEE RETURN DATE, the CONTRACTOR shall, within fourteen (14) DAYS of receiving a written request from the COMPANY, provide a new ADVANCE PAYMENT GUARANTEE on the same terms as the invalidated ADVANCE PAYMENT GUARANTEE save for with respect to the amount, which shall be the amount of the ADVANCE PAYMENT outstanding on the date of such request, and subject to any changes that may be necessary to avoid the cause of the invalidation arising again.
- (g) In the event that the CONTRACTOR fails to comply with the obligations set out in Articles 30.1(d), 30.1(e) or 30.1(f), the COMPANY may, without limiting the COMPANY's other rights under the AGREEMENT, draw upon the ADVANCE PAYMENT GUARANTEE and keep the proceeds of the ADVANCE PAYMENT GUARANTEE as a cash deposit until the ADVANCE PAYMENT GUARANTEE has been replaced.
- (h) In the event that the CONTRACTOR has not fully reimbursed the ADVANCE PAYMENT to the COMPANY:
 - (i) at the time of issuance of the FINAL ACCEPTANCE CERTIFICATE; or
 - (ii) upon termination of the AGREEMENT (if earlier),
 the COMPANY may draw on the ADVANCE PAYMENT GUARANTEE.

30.2 PERFORMANCE BANK GUARANTEE

- (a) If specified in the FORM OF AGREEMENT, within fourteen (14) DAYS from the date of execution of the AGREEMENT and as a condition precedent to any obligation on the COMPANY to make any payment under the AGREEMENT, the CONTRACTOR shall provide

the COMPANY with an irrevocable and unconditional performance bank guarantee (the **“PERFORMANCE BANK GUARANTEE”**):

- (i) in the form set out in ANNEXURE 8-B;
 - (ii) issued by a bank registered in the UAE and operating within the jurisdiction of the UAE Central Bank;
 - (iii) which expires on a fixed expiry date which is at least forty-five (45) DAYS after the later of:
 - (A) the scheduled date of FINAL ACCEPTANCE; and
 - (B) expiry of the last WARRANTY PERIOD; and
 - (iv) in the amount specified in the FORM OF AGREEMENT.
- (b) Subject to any outstanding calls and settlement of all claims in connection with any termination of the AGREEMENT (where applicable), the COMPANY shall return the PERFORMANCE BANK GUARANTEE to the CONTRACTOR within forty-five (45) DAYS of:
- (i) issuance of the FINAL ACCEPTANCE CERTIFICATE; or
 - (ii) termination of the AGREEMENT,
- (the **“PERFORMANCE BANK GUARANTEE RETURN DATE”**).
- (c) In the event that there is a change in the AGREEMENT PRICE of more than ten percent (10%), the CONTRACTOR shall procure that the value of the PERFORMANCE BANK GUARANTEE be increased or decreased proportionally.
- (d) The CONTRACTOR shall ensure that a valid PERFORMANCE BANK GUARANTEE is in place until the date which is at least forty-five (45) DAYS after the later of:
- (i) issuance of the FINAL ACCEPTANCE CERTIFICATE; or
 - (ii) expiry of the last WARRANTY PERIOD.
- (e) Subject to Article 17.1(d), upon issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE:
- (i) the amount of the PERFORMANCE BANK GUARANTEE shall be adjusted to fifty percent (50%) of the value that it was at immediately prior to the achievement of PROVISIONAL ACCEPTANCE; or
 - (ii) the CONTRACTOR may issue a new PERFORMANCE BANK GUARANTEE for fifty percent (50%) of the value that it was at immediately prior to the achievement of PROVISIONAL ACCEPTANCE.

In the event the CONTRACTOR elects to issue a new PERFORMANCE BANK GUARANTEE pursuant to Article 30.2(e)(ii), the existing PERFORMANCE BANK GUARANTEE shall be returned to the CONTRACTOR once the new PERFORMANCE BANK GUARANTEE has been received by the COMPANY.

- (f) If for any reason the PERFORMANCE BANK GUARANTEE is invalidated before the PERFORMANCE BANK GUARANTEE RETURN DATE, the CONTRACTOR shall, within fourteen (14) DAYS of the COMPANY issuing notice to the CONTRACTOR, provide a new PERFORMANCE BANK GUARANTEE for the same amount and on the same terms as the invalidated PERFORMANCE BANK GUARANTEE, subject to making any changes that may be necessary to avoid the cause of the invalidation arising again.

- (g) If the PERFORMANCE BANK GUARANTEE is due to expire prior to the PERFORMANCE BANK GUARANTEE RETURN DATE, the CONTRACTOR shall, forty-five (45) DAYS before the expiry date of the PERFORMANCE BANK GUARANTEE, extend the validity of the PERFORMANCE BANK GUARANTEE and submit such extended PERFORMANCE BANK GUARANTEE to the COMPANY.
- (h) In the event that the CONTRACTOR fails to comply with the obligations set out in Article 30.2(f), the COMPANY may, without limiting the COMPANY's other rights under the AGREEMENT, call upon the PERFORMANCE BANK GUARANTEE and keep the proceeds of the PERFORMANCE BANK GUARANTEE as a cash deposit until the validity of the PERFORMANCE BANK GUARANTEE has been so extended.
- (i) If the COMPANY considers, in good faith, that:
 - (i) the CONTRACTOR has breached its obligations under the AGREEMENT and the COMPANY has given the CONTRACTOR thirty (30) DAYS, or such other period which may be agreed between the PARTIES, to remedy such breach but such breach is not remedied by the CONTRACTOR within such reasonable period; or
 - (ii) an INSOLVENCY EVENT has occurred in relation to the CONTRACTOR or any PERSON who CONTROLS the CONTRACTOR (or, if the CONTRACTOR constitutes a JOINT VENTURE, in relation to a CONTRACTOR MEMBER or any PERSON who CONTROLS such CONTRACTOR MEMBER),

the COMPANY may draw on the PERFORMANCE BANK GUARANTEE.
- (j) If the COMPANY receives a payment from the guarantor under the PERFORMANCE BANK GUARANTEE, and it is later found that the CONTRACTOR has not breached its obligations under the AGREEMENT or that an INSOLVENCY EVENT has not occurred with respect to the CONTRACTOR (or any other PERSON to whom Article 30.2(i)(ii) applies) (as applicable), the COMPANY shall immediately reimburse the CONTRACTOR for such payment, after which the CONTRACTOR shall procure the reissuance of the PERFORMANCE BANK GUARANTEE to the COMPANY in accordance with Article 30.2(a). Upon such reimbursement, the COMPANY shall have no other liability to the CONTRACTOR in respect thereof, including, without limitation, for any bank charges or interest the CONTRACTOR may have paid as a consequence of the COMPANY's draw on the PERFORMANCE BANK GUARANTEE.

30.3 PARENT COMPANY GUARANTEE

- (a) If specified in the FORM OF AGREEMENT, within fourteen (14) DAYS from the date of execution of the AGREEMENT and as a condition precedent to any obligation of the COMPANY to make any payment under the AGREEMENT, the CONTRACTOR shall, at its own cost, provide the COMPANY with a duly executed PARENT COMPANY GUARANTEE which must be in the terms and form set out in ANNEXURE 8-A and issued and maintained by the parent company of the CONTRACTOR that is approved by the COMPANY, guaranteeing all of the CONTRACTOR's obligations and liabilities under the AGREEMENT pursuant to the terms and conditions contained in the relevant PARENT COMPANY GUARANTEE.
- (b) Any costs (including all stamp duty or other taxes) incidental to the issuance of and maintaining the PARENT COMPANY GUARANTEE, and of any extensions or modifications, shall be borne by the CONTRACTOR.
- (c) If the CONTRACTOR fails to provide or maintain a PARENT COMPANY GUARANTEE as specified in ANNEXURE 8, the COMPANY shall have no obligation to make any payments to the CONTRACTOR until the CONTRACTOR has delivered the PARENT COMPANY GUARANTEE to the COMPANY, and the COMPANY, has the right at any time, without any liability whatsoever, to suspend the performance of the WORKS without prior notification or to terminate the AGREEMENT pursuant to Article 35.3(b)(iv).

- (d) If, at any time during the term of the AGREEMENT, it is determined by the COMPANY that the PARENT COMPANY GUARANTEE is not enforceable or if its effectiveness has been substantially altered in any way, the COMPANY is entitled to suspend any payments to the CONTRACTOR until the CONTRACTOR has provided the COMPANY with a new and valid and enforceable PARENT COMPANY GUARANTEE in the terms and form set out in ANNEXURE 8 and issued and maintained by any of the CONTRACTOR's AFFILIATES with sufficient financial standing and operational capacity (material means and personnel) to fulfil all of the CONTRACTOR's obligations and liabilities under the AGREEMENT.
- (e) The CONTRACTOR shall ensure that:
 - (i) the PARENT COMPANY GUARANTEE remains valid and in force until such time as the CONTRACTOR has satisfied in full all of its obligations under and in connection with the AGREEMENT, notwithstanding the expiry or termination of the AGREEMENT; and
 - (ii) if the PARENT COMPANY GUARANTEE is or becomes invalid or unenforceable for any reason, the CONTRACTOR shall immediately deliver to the COMPANY a valid and enforceable replacement PARENT COMPANY GUARANTEE in favour of the COMPANY or such other security as the COMPANY may, in its sole discretion, determine.

31. INTELLECTUAL PROPERTY RIGHTS & WORKS DOCUMENTATION

31.1 Each PARTY shall retain ownership of their PRE-EXISTING INTELLECTUAL PROPERTY and:

- (a) the COMPANY shall, at the CONTRACTOR's request and subject to any THIRD PARTY rights and restrictions, grant the CONTRACTOR a limited, royalty free, revocable, non-transferable and non-exclusive licence to use and copy the COMPANY's PRE-EXISTING INTELLECTUAL PROPERTY to the extent necessary for performing the WORKS; and
- (b) the CONTRACTOR grants the COMPANY and its AFFILIATES a royalty-free, non-exclusive, irrevocable licence to use the CONTRACTOR's PRE-EXISTING INTELLECTUAL PROPERTY for the purpose of receiving, using, exploiting and otherwise obtaining the full benefit of the WORKS and of the COMPANY's rights and licences granted by or pursuant to the AGREEMENT, in each case solely to the extent that any such PRE-EXISTING INTELLECTUAL PROPERTY may directly or indirectly prevent or hinder the COMPANY from so doing.

31.2 All INTELLECTUAL PROPERTY RIGHTS in the WORKS DOCUMENTATION shall (insofar as permissible by law) vest in the COMPANY upon creation. From the date the relevant rights vest in the COMPANY in accordance with this AGREEMENT, the COMPANY grants the CONTRACTOR a limited, royalty-free, revocable, non-exclusive and non-transferable licence to use any INTELLECTUAL PROPERTY RIGHTS in the WORKS DOCUMENTATION for the sole purpose of providing the WORKS to the COMPANY.

31.3 Except as otherwise provided in Articles 31 or 32:

- (a) if COMPANY PERSONNEL and/or CONTRACTOR PERSONNEL conceive or devise, or otherwise make or develop during the term of the AGREEMENT, anything in respect of which INTELLECTUAL PROPERTY RIGHTS are created or arise (including without limitation any inventions):
 - (i) the COMPANY shall (as between the COMPANY and the CONTRACTOR) own all such INTELLECTUAL PROPERTY RIGHTS conceived or devised or otherwise made or developed or created or arising by COMPANY PERSONNEL;
 - (ii) the CONTRACTOR shall (as between the COMPANY and the CONTRACTOR) own all such INTELLECTUAL PROPERTY RIGHTS conceived or devised or otherwise made or developed or created or arising by CONTRACTOR PERSONNEL; and

- (iii) the COMPANY and the CONTRACTOR shall each have an equal, undivided share in the right, title and interest in and to any such INTELLECTUAL PROPERTY RIGHTS that are conceived or devised or otherwise made or developed or created or arising jointly by COMPANY PERSONNEL and CONTRACTOR PERSONNEL; and
 - (b) neither PARTY shall acquire any right, title or interest in or to the INTELLECTUAL PROPERTY RIGHTS of the other PARTY and nothing in this AGREEMENT shall give rise to any obligation to convey such rights.
- 31.4 The CONTRACTOR shall ensure that:
- (a) it shall take all such steps and execute and procure the execution of all such assignments and other documents as the COMPANY may require to ensure that all INTELLECTUAL PROPERTY RIGHTS which are to vest in the COMPANY pursuant to Articles 31 and 32 vest in and belong to the COMPANY and the licences granted pursuant to Article 31.1 are perfected; and
 - (b) in carrying out the WORKS, it shall not infringe any INTELLECTUAL PROPERTY RIGHTS owned by a THIRD PARTY, and that the WORKS and the WORKS DOCUMENTATION and the use or exploitation (whether by the CONTRACTOR or by the COMPANY or otherwise howsoever) of any INTELLECTUAL PROPERTY RIGHTS in relation thereto shall not infringe any INTELLECTUAL PROPERTY RIGHTS owned by a THIRD PARTY.

32. COMPANY INFORMATION

- 32.1 The PARTIES agree that all right, title and interest in and to the COMPANY INFORMATION and all INTELLECTUAL PROPERTY RIGHTS which may subsist in the COMPANY INFORMATION are the sole property of the COMPANY and shall (insofar as permissible by law) vest in the COMPANY upon creation and that, save as expressly permitted by the AGREEMENT, the COMPANY has and shall have and retain the sole and exclusive right to disclose and use the COMPANY INFORMATION and all INTELLECTUAL PROPERTY RIGHTS which may subsist therein, save to the limited extent set out in Article 32.2 below.
- 32.2 The COMPANY shall provide to the CONTRACTOR the COMPANY INFORMATION which is in its possession insofar as required to perform the WORKS under this AGREEMENT. The COMPANY shall grant to the CONTRACTOR, for the sole purpose of performing the WORKS under this AGREEMENT, a limited, non-exclusive, non-sublicensable, revocable and non-transferable right to use the COMPANY INFORMATION, including the right to store, load, process, modify and copy the COMPANY INFORMATION. In relation to COMPANY INFORMATION which is in the COMPANY's possession, the COMPANY shall provide to the CONTRACTOR only copies, and shall retain all originals and/or back-up copies.
- 32.3 The CONTRACTOR and the CONTRACTOR PERSONNEL shall:
- (a) not use or reproduce the COMPANY INFORMATION in whole or in part in any form except as expressly permitted by the COMPANY in accordance with the AGREEMENT;
 - (b) if the CONTRACTOR stores any COMPANY INFORMATION, keep such COMPANY INFORMATION physically and technically separate from the data of its other customers and identify it as CONFIDENTIAL INFORMATION in accordance with GOOD INDUSTRY PRACTICE;
 - (c) ensure that no COMPANY INFORMATION is transferred, transported, or transmitted outside of the UAE without the prior written consent of the COMPANY;
 - (d) apply appropriate security procedures within the CONTRACTOR's PREMISES and take all precautions necessary to preserve the security and integrity of the COMPANY INFORMATION in accordance with GOOD INDUSTRY PRACTICE;

- (e) ensure that no unauthorised THIRD PARTY obtains access to any COMPANY INFORMATION or any information forming part of or being used in connection with the WORKS for any reason, including, without limitation, as a result of any act or omission of the CONTRACTOR or the CONTRACTOR PERSONNEL;
 - (f) ensure that the CONTRACTOR and the CONTRACTOR PERSONNEL do not corrupt, erase or otherwise alter the COMPANY INFORMATION;
 - (g) not disclose passwords supplied by the COMPANY to access the COMPANY's computers or data to any PERSON other than the CONTRACTOR PERSONNEL who need such passwords to perform the WORKS; and
 - (h) in case of a breach or suspected breach, immediately notify the COMPANY of such breach or suspected breach and take all steps to prevent it from occurring or reoccurring (as the case may be) and mitigate it.
- 32.4 If any COMPANY INFORMATION is corrupted, lost, degraded or otherwise altered due to an act or omission of the CONTRACTOR or the CONTRACTOR PERSONNEL, or if the CONTRACTOR otherwise fails to fulfil its obligations under the AGREEMENT, the COMPANY may, at the cost and expense of the CONTRACTOR:
- (a) require the CONTRACTOR to restore (or procure the restoration of) the COMPANY INFORMATION as soon as practicable and, in any case, within five (5) DAYS of the COMPANY notifying the CONTRACTOR to do so; or
 - (b) itself restore (or procure the restoration of) the COMPANY INFORMATION, within five (5) DAYS of the COMPANY notifying the CONTRACTOR to do so.

33. TITLE & RISK OF LOSS

33.1 TITLE

- (a) Each item of the MATERIALS provided by the CONTRACTOR or any SUBCONTRACTOR or VENDOR under the terms of the AGREEMENT shall become the property of the COMPANY upon the earlier of:
 - (i) delivery of such MATERIALS to the SITE; or
 - (ii) any payment by the COMPANY under the AGREEMENT for the applicable item,
 and the CONTRACTOR warrants that:
 - (iii) title to such MATERIALS (and, for the avoidance of doubt, the resultant WORKS) shall pass to the COMPANY pursuant to this Article 33.1;
 - (iv) such MATERIALS shall be free from any and all liens, charges, encumbrances, retention of title claims or other ownership or security interests in favour of THIRD PARTIES and that no PERSON other than the COMPANY shall have any claim to ownership thereto;
 - (v) it shall take all steps necessary to ensure that the good title of the COMPANY and the exclusion of any such liens, charges, encumbrances, retention of title claims or other ownership or security interests is expressly notified to any VENDOR, supplier and other PERSON dealing with or transporting any such MATERIALS; and
 - (vi) where title to such MATERIALS passes to the COMPANY prior to delivery of them to the SITE, the CONTRACTOR shall ensure that the applicable item(s) are set aside and marked as the property of the COMPANY.

- (b) If any MATERIALS or other materials referenced in Article 33.1 are subject to any lien, charge, encumbrance, retention of title claim or other ownership or security interests, without limiting any other rights, the COMPANY may discharge the relevant ownership or security interest and the costs incurred in so doing will be a debt due and payable from the CONTRACTOR to the COMPANY.
- (c) Notwithstanding the passing of title and subject to Article 33.2(c), the CONTRACTOR shall be responsible for and bear the risk of loss or damage to the WORKS, MATERIALS, COMPANY CONSTRUCTION EQUIPMENT (following its delivery to the CONTRACTOR) and CONTRACTOR CONSTRUCTION EQUIPMENT in accordance with Article 33.2(a) until the earlier of the date of the issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE or the termination of the AGREEMENT.
- (d) Title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of the CONTRACTOR or any SUBCONTRACTORS at the SITE (including during COMMISSIONING and the PERFORMANCE TESTS) is hereby expressly reserved by the COMPANY. Neither the CONTRACTOR nor any SUBCONTRACTORS nor any of their CONTRACTOR PERSONNEL or representatives shall have any right, title or interest in said materials nor shall they assert or make any claim in relation thereto.
- (e) Title to any product produced by the FACILITIES prior to PROVISIONAL ACCEPTANCE is hereby expressly reserved by the COMPANY. Neither the CONTRACTOR nor any SUBCONTRACTORS nor any of their CONTRACTOR PERSONNEL or representatives shall have any right, title or interest in such products nor shall they assert or make any claim in relation thereto.

33.2 RISK OF LOSS

- (a) The CONTRACTOR shall take full responsibility for the care of the WORKS from the EFFECTIVE DATE until issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE, following which responsibility for the care of the WORKS shall pass to the COMPANY (subject to Article 33.2(b)). In case of any loss or damage to the WORKS prior to issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE as a consequence of any cause not listed in Article 33.2(c), the CONTRACTOR shall rectify such loss or damage at its sole cost and expense.
- (b) Without prejudice to Article 33.2(a), the CONTRACTOR shall remain liable for any loss or damage caused to all or a part of the WORKS or the COMPANY by any acts or omissions of the CONTRACTOR or by another PERSON acting on behalf of the CONTRACTOR:
 - (i) after issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE (including in connection with the CONTRACTOR's performance of its remedial obligations during the WARRANTY PERIOD); or
 - (ii) which is discovered or the consequences of which are realised only after issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE,

and shall bear exclusive risk and responsibility for rectifying any such loss or damage at its own cost and, subject to Article 42.11, for compensating the COMPANY for any further losses it might have suffered as a result thereof.
- (c) If loss or damage occurs to the WORKS or any part thereof by reason of:
 - (i) war (whether declared or undeclared), invasion, armed conflict, act of foreign enemy, rebellion, revolution, insurrection, sabotage, civil war, epidemic or terrorism;
 - (ii) expropriation or compulsory acquisition or seizure of the FACILITIES by a GOVERNMENTAL AUTHORITY;

- (iii) radioactive contamination or ionising radiation originating from a source in the UAE;
- (iv) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (v) the use or occupation by the COMPANY or any THIRD PARTY authorised by the COMPANY of any part of the FACILITIES that is lost or damaged; or
- (vi) the GROSS NEGLIGENCE / WILFUL MISCONDUCT of any of the COMPANY INDEMNIFIED PARTIES,

the CONTRACTOR shall notify the COMPANY of the works it proposes for rectifying such loss or damage, together with a method statement for their implementation and its costings for such works, which, subject to the requirements and procedures of Article 24, shall be submitted as a CONTRACTOR VARIATION REQUEST in accordance with Article 24.4 as soon as reasonably ascertainable. The COMPANY shall, within twenty eight (28) DAYS of receipt of such CONTRACTOR VARIATION REQUEST, notify the CONTRACTOR if it requires such works to be carried out, in which event the CONTRACTOR shall make good such loss or damage forthwith at the COMPANY's expense, in accordance with the price set out in the VARIATION ORDER.

- (d) For the avoidance of doubt, where Article 33.2(c) applies, the CONTRACTOR shall not carry out any works to rectify any such loss or damage until it is so required by the COMPANY.
- (e) If the COMPANY does not so require the CONTRACTOR to rectify any loss or damage to the WORKS by way of written notification, the COMPANY shall:
 - (i) issue a COMPANY VARIATION REQUEST in accordance with Article 24.2 omitting the performance of that part of the WORKS thereby lost, destroyed or damaged;
 - (ii) where the loss or damage affects a substantial part of the WORKS, terminate the CONTRACTOR's engagement pursuant to Article 35.1; or
 - (iii) if applicable, terminate the AGREEMENT pursuant to Article 35.4.

34. SUSPENSION

34.1 COMPANY'S RIGHT TO SUSPEND FOR CONVENIENCE

The COMPANY shall have the right at any time, at its sole discretion and without cause, to suit the convenience of the COMPANY to suspend the performance of all or any part of the WORKS with immediate effect by providing notice in writing to the CONTRACTOR.

34.2 SUSPENSION FOR CONTRACTOR'S MATERIAL BREACH

Without prejudice to Article 34.1, if the CONTRACTOR commits a material breach of any of its obligations under the AGREEMENT, then the COMPANY shall have the right to suspend the performance of all or any part of the WORKS, and/or suspend the performance of all or any part of the COMPANY's obligations under this AGREEMENT, with immediate effect by providing notice in writing to the CONTRACTOR, provided that such right of the COMPANY shall be in addition to its other rights and remedies under this AGREEMENT and LAW.

34.3 SUSPENSION FOR A FORCE MAJEURE EVENT

If either PARTY is prevented or delayed in the performance of its obligations under the AGREEMENT by reason of a FORCE MAJEURE EVENT, provided that the relevant PARTY has satisfied the conditions of Article 38.1, and the COMPANY elects not to exercise its termination right pursuant to

Article 40.7(b), the COMPANY, shall have the right at any time, at its sole discretion to suspend the performance of all or any part of the WORKS by providing notice in writing to the CONTRACTOR.

34.4 SUSPENSION FOR DELAYED PAYMENT

Where the circumstances set out in Article 23.7(a)(i) occur, the CONTRACTOR shall be entitled to suspend the whole of the WORKS in accordance with Article 23.7(a)(i) and this Article 34.

34.5 SUSPENSION MEASURES

With effect from any suspension of the WORKS pursuant to Articles 34.1, 34.2, 34.3 or 34.4 and upon receipt of any such notice, the CONTRACTOR shall, unless instructed otherwise:

- (a) discontinue the performance of all or the part of the WORKS on the date and to the extent specified in the COMPANY's notice; and
- (b) during any such period of suspension, use its best efforts to safeguard and protect the WORKS and utilise the CONTRACTOR PERSONNEL in such a manner as to minimise any costs arising from or associated with the suspension.

34.6 COSTS DURING SUSPENSION

If the WORKS are suspended in accordance with Articles 34.1, 34.2, 34.3 or 34.4, the COMPANY shall be liable to pay the CONTRACTOR costs in accordance with the following, provided always that the COMPANY shall not be liable for any CONSEQUENTIAL LOSS:

- (a) Suspension for the COMPANY's Convenience

Subject to any express provisions in ANNEXURE 5 and/or the AGREEMENT to the contrary, if the WORKS are suspended in accordance with Article 34.1, the COMPANY shall not be liable for any costs arising from or in relation to such suspension period.

- (b) Suspension for the CONTRACTOR's Material Breach

If the WORKS are suspended in accordance with Article 34.2, the COMPANY shall not be liable for any costs arising from or in relation to such suspension period.

- (c) Suspension for a FORCE MAJEURE EVENT

If the WORKS are suspended in accordance with Article 34.3, the COMPANY shall not be liable to the CONTRACTOR for any costs arising from or in relation to such suspension period, except to the extent that such costs are:

- (i) expressly provided for in ANNEXURE 5;
- (ii) incurred by the CONTRACTOR as a result of the suspension by reason of a FORCE MAJEURE EVENT; and
- (iii) in all cases, incurred after a continuous period in excess of sixty (60) consecutive DAYS or one hundred and eighty (180) DAYS in aggregate.

Notwithstanding anything to the contrary in ANNEXURE 5 and/or the AGREEMENT, the CONTRACTOR shall not be entitled to claim for costs incurred prior to the sixty (60) consecutive DAYS or one hundred and eighty (180) DAYS in aggregate in Article 34.6(c)(iii) if the WORKS are suspended in accordance with Article 34.3 .

(d) Suspension for Delayed Payment

Subject to any express provisions in ANNEXURE 5 and/or the AGREEMENT to the contrary, if the WORKS are suspended in accordance with Article 34.4, the COMPANY shall not be liable for any costs arising from or in relation to such suspension period.

In accordance with Articles 34.6(a), 34.6(c) and 34.6(d), any payments due to the CONTRACTOR shall be made only after submission to the COMPANY by the CONTRACTOR of detailed INVOICES in accordance with Article 23.2.

34.7 PERIOD OF SUSPENSION

(a) Any suspension in accordance with this Article 34 shall remain in place until the earlier of the following occurrences:

- (i) the COMPANY ends such suspension by providing written notice to the CONTRACTOR in accordance with Article 34.7(b) requiring it to resume performance of all or part of the suspended WORKS; or
- (ii) the COMPANY makes payment of any properly invoiced and overdue undisputed amount, the delay in payment for which the CONTRACTOR became entitled to suspend the WORKS; or
- (iii) the COMPANY terminates the AGREEMENT in accordance with Article 35.

(b) Subject to Article 34.7(a)(ii), the COMPANY may, by notice, instruct the CONTRACTOR to resume the suspended WORKS or part thereof and the CONTRACTOR shall promptly resume performance of the suspended WORKS or any part thereof as soon as practicable following receipt of notification to resume performance by the COMPANY and to the extent specified in the notice.

34.8 NO RIGHT TO SUSPEND

Notwithstanding any DISPUTE arising between the PARTIES, the CONTRACTOR shall not suspend the performance of any WORKS or any part thereof except in accordance with this Article 34.

34.9 UAE FEDERAL LAW

The PARTIES' obligations under this AGREEMENT may not be suspended on any ground, or for any reason, except as set forth in this AGREEMENT. The PARTIES hereby expressly exclude, to the fullest extent permitted by LAW, the application of Article 247 and, where applicable, Article 879 of the CIVIL CODE. In the event of suspension of the whole or part of the AGREEMENT, the PARTIES shall not be relieved of any continuing obligations or liabilities under the provisions of the AGREEMENT.

35. TERMINATION

35.1 The COMPANY may terminate the AGREEMENT for convenience upon providing the CONTRACTOR with not less than thirty (30) DAYS' written notice. Unless otherwise instructed by the COMPANY on or after issuing the termination notice, the CONTRACTOR shall not commence any new activities related to the execution of the WORKS, such as undertaking new work or placing new orders, to ensure prompt and efficient compliance with the requirements set out in Article 36 upon termination. The COMPANY may thereafter, at its absolute discretion, complete the uncompleted part of the WORKS itself or by engaging one or more THIRD PARTIES.

35.2 Either PARTY may terminate the AGREEMENT with immediate effect by written notice to the other PARTY if an INSOLVENCY EVENT occurs in relation to the other PARTY or any PERSON who CONTROLS such PARTY (or, if the CONTRACTOR constitutes a JOINT VENTURE, in relation to a CONTRACTOR MEMBER or any PERSON who CONTROLS such CONTRACTOR MEMBER).

- 35.3 Without prejudice to Article 35.1 and the COMPANY's other rights or remedies under the AGREEMENT, the COMPANY shall be entitled to terminate all or a part of the AGREEMENT by written notice to the CONTRACTOR:
- (a) with immediate effect, if:
 - (i) the CONTRACTOR has assigned, transferred, charged or otherwise encumbered any of its rights, obligations, interests or benefits arising under the AGREEMENT (or purports to do any of the foregoing) otherwise than in accordance with the AGREEMENT;
 - (ii) the CONTRACTOR fails to achieve any of the PERFORMANCE GUARANTEES during the PERFORMANCE TESTS on three (3) occasions and Article 16.3(d) applies;
 - (iii) any express limitations on the liability of the CONTRACTOR under the AGREEMENT, including the overall maximum amount for DELAY LIQUIDATED DAMAGES in relation to delay to PROVISIONAL ACCEPTANCE (but excluding any overall maximum amounts for other KEY MILESTONES), have been reached or exceeded;
 - (iv) ABANDONMENT by the CONTRACTOR; or
 - (v) the circumstances contemplated by Article 21.8 exist; or
 - (b) within thirty (30) DAYS of the CONTRACTOR's receipt of a written notice from the COMPANY identifying one or more of the following breaches by the CONTRACTOR, provided that the CONTRACTOR has not remedied the relevant breach within such period:
 - (i) the CONTRACTOR's suspension or delay of the performance of the WORKS in breach of Article 34;
 - (ii) the CONTRACTOR's failure to provide or maintain any bonds, bank guarantees or other forms of security required under the AGREEMENT;
 - (iii) the CONTRACTOR's projected or actual failure to achieve:
 - (A) READY FOR START-UP within twelve (12) months of the applicable READY FOR START-UP DATE; or
 - (B) PROVISIONAL ACCEPTANCE within twelve (12) months of the PROVISIONAL ACCEPTANCE DATE,
 other than where such failure is due to the suspension of the WORKS by the COMPANY pursuant to Article 34.1; or
 - (iv) the CONTRACTOR's breach of a material obligation under the AGREEMENT other than the breaches listed in Articles 35.3(a) and 35.3(b)(i) to 35.3(b)(iii).
- 35.4 The COMPANY may terminate the AGREEMENT with immediate effect by written notice to the CONTRACTOR in the circumstances described in Article 33.2(e)(iii) and 40.7(b).
- 35.5 The COMPANY shall be entitled to terminate the AGREEMENT with immediate effect by written notice to the CONTRACTOR if, without the COMPANY's prior written consent having been given, there is a change of CONTROL of the CONTRACTOR and/or the change of CONTROL of any PERSON that directly or indirectly CONTROLS the CONTRACTOR (including any intermediate or ultimate parent company).
- 35.6 Without prejudice to the CONTRACTOR's other rights or remedies, the CONTRACTOR may terminate the AGREEMENT in the circumstances described in Articles 23.7(a)(ii)(B).

- 35.7 The AGREEMENT may not be terminated or otherwise ended by either PARTY on any ground, or for any reason, except as set forth in the AGREEMENT. The PARTIES hereby expressly exclude, to the fullest extent permitted by LAW, the application of Articles 267 through 275 of the CIVIL CODE as well as Articles 877, 886 and 892 through 896 of the CIVIL CODE. For the avoidance of doubt, except as set forth in the AGREEMENT, the PARTIES hereby expressly exclude any requirements of notice, proportionality, or of the need to have recourse to a court or tribunal that may be provided for in the CIVIL CODE.

36. EFFECTS, RIGHTS AND OBLIGATIONS ON EXPIRY OR TERMINATION

- 36.1 With effect from the expiry or termination of the AGREEMENT, the CONTRACTOR shall, subject to Article 36.5:

- (a) immediately discontinue the performance of the WORKS and vacate the SITE, and ensure that its CONTRACTOR PERSONNEL, SUBCONTRACTORS and/or VENDORS vacate the SITE;
- (b) cause to be delivered to the COMPANY:
 - (i) all materials provided to the CONTRACTOR by the COMPANY which relate to the WORKS; and
 - (ii) the WORKS DOCUMENTATION (whether in the course of preparation or completed) and any COMPANY CONSTRUCTION EQUIPMENT in the CONTRACTOR's guardianship or control in the same condition as when the CONTRACTOR received them (fair wear and tear excepted);
- (c) destroy or have destroyed any copies and reproductions of materials and WORKS DOCUMENTATION referred to in Article 36.1(b);
- (d) perform (or procure the performance of) all further acts and things necessary to ensure that the WORKS are protected and that the SITE is left in a clean and safe condition;
- (e) perform (or procure the performance of) all further acts and things, and execute and deliver (or procure the execution and delivery of) such further documents to the COMPANY, as may be required by LAW or as the COMPANY may reasonably require, and take all actions necessary whether on or after the date of expiry or termination of the AGREEMENT, to implement and/or give effect to this Article 36 and the transactions contemplated by it;
- (f) execute and deliver to the COMPANY all documents required by the COMPANY and take all actions necessary to fully vest in the COMPANY the rights and benefits of the CONTRACTOR under any existing agreements with THIRD PARTIES (including SUBCONTRACTORS and VENDORS) relevant to the provision of the WORKS as the COMPANY may specify (including by novation of such agreements to the COMPANY at the COMPANY's request);
- (g) allow the COMPANY or its nominee full right of access to the SITE to remove and/or take over the WORKS or such part thereof to which the termination relates, together with all MATERIALS, supplies, facilities and CONSTRUCTION EQUIPMENT. Thereafter, the COMPANY or any other retained THIRD PARTY may complete the WORKS or the relevant part of the WORKS using such MATERIALS, supplies, facilities, and CONSTRUCTION EQUIPMENT;
- (h) assist the COMPANY in making an inventory of all MATERIALS and CONSTRUCTION EQUIPMENT in storage or manufacture at the SITE or en route to the SITE or away from the SITE (including at any CONTRACTOR SITE), as well as those which have been ordered from SUBCONTRACTORS or VENDORS;
- (i) hand over control and custody of the SITE to the COMPANY or its nominee;
- (j) promptly make every reasonable effort to obtain cancellation, upon terms satisfactory to the

COMPANY, of all contracts and orders not vested or required to be vested in the COMPANY pursuant to Article 36.1(f); and

- (k) make every reasonable effort to minimise and mitigate costs incurred as a result of the termination.

36.2 If all or a part of the AGREEMENT is terminated by the COMPANY pursuant to Articles 35.2 or 35.3, the COMPANY:

- (a) shall pay the CONTRACTOR for the portion of the WORKS performed and completed prior to the date of termination, provided that the COMPANY shall not be liable to make any payments to the CONTRACTOR after termination until all costs, losses and damages of the kind referred to in Article 36.2(b) have been ascertained; and
- (b) may recover from the CONTRACTOR any losses and damages incurred by the COMPANY arising out of or in connection with the termination, including the COST TO COMPLETE, provided that:
 - (i) the COMPANY shall not be required to obtain competitive tenders for the COST TO COMPLETE but may make such expenditures which, in the COMPANY's sole judgment, will accomplish completion under substantially the same terms as those set forth in the AGREEMENT;
 - (ii) the COMPANY shall deduct the COST TO COMPLETE from the amounts due to the CONTRACTOR under this Article 36.2, whether or not such COST TO COMPLETE have already been incurred by the COMPANY; and
 - (iii) the COMPANY may draw on the PERFORMANCE BANK GUARANTEE(s) in full or in part in order to recover the COST TO COMPLETE or as an advance thereon to be held by the COMPANY in anticipation of the same being used to pay, in part or in full, the COST TO COMPLETE.

36.3 If the AGREEMENT is terminated by the CONTRACTOR pursuant to Article 35.2, or by the COMPANY pursuant to Article 35.1, the COMPANY shall pay the CONTRACTOR:

- (a) for the portion of the WORKS performed and completed prior to the date of termination; and
- (b) subject to Article 36.4, the CONTRACTOR's proven costs incurred in relation to any of the following, provided that such costs were not already recovered by the CONTRACTOR prior to termination:
 - (i) demobilisation of the CONTRACTOR PERSONNEL, MATERIALS and CONSTRUCTION EQUIPMENT;
 - (ii) works and services already commenced by the CONTRACTOR, SUBCONTRACTORS or VENDORS, for which cancellation cannot be made or can be made upon payment of cancellation fees, against documented proof; and
 - (iii) cancellation fees for cancellation of subcontracts with SUBCONTRACTORS and VENDORS (excluding, in each case, AFFILIATES of the CONTRACTOR),

however, the CONTRACTOR shall not be entitled to reimbursement of any loss or alleged loss of overheads, profit, business or opportunity or to further financial recovery as a result of the termination.

36.4 If the AGREEMENT is terminated by the COMPANY pursuant to Articles 35.4 or 35.5, the COMPANY shall pay the CONTRACTOR for the portion of the WORKS performed and completed prior to the date of termination.

- 36.5 Notwithstanding Article 36.1 and subject to Article 37, the CONTRACTOR may retain copies and reproductions of the materials and WORKS DOCUMENTATION referred to in Article 36.1(b) following any expiry or termination of the AGREEMENT to the extent:
- (a) required to comply with LAW; or
 - (b) contained in electronic files created pursuant to automatic archiving and back-up procedures in the ordinary course of business.

37. CONFIDENTIALITY

37.1 For the purpose of this Article 37, “**CONFIDENTIAL INFORMATION**” shall mean:

- (a) all fiscal, commercial, financial, technical, operational or other information in whatever form (including, without limitation, information disclosed orally or electronically) pertaining to a PARTY, an AFFILIATE of a PARTY, or a CO-VENTURER, or the business (including any products or services, methods, processes, opportunities or activities howsoever arising) of any of them;
- (b) any information provided by any member of the COMPANY INDEMNIFIED PARTIES prior to the EFFECTIVE DATE for the purposes of evaluating the transactions contemplated by the AGREEMENT and/or in connection with the negotiations leading up to the execution of the AGREEMENT;
- (c) the AGREEMENT, and any drafts thereof or information contained therein; and
- (d) any discussions and negotiations between the PARTIES and documents pertaining to the AGREEMENT or the performance thereof, any related agreements between the PARTIES concerning the SCOPE OF WORK, including any pending or future AMENDMENTS or VARIATIONS thereto and any CONFIDENTIAL ARBITRATION INFORMATION.

37.2 Subject to Articles 37.4, 37.5 and 37.6, each PARTY shall:

- (a) hold CONFIDENTIAL INFORMATION in strict confidence and shall not disclose or otherwise make it available to any PERSON without the written consent of the other PARTY;
- (b) save as expressly provided by Article 31, use CONFIDENTIAL INFORMATION solely for the purpose of performing its obligations under the AGREEMENT and/or pertaining howsoever to any related agreements between the PARTIES concerning the SCOPE OF WORK, including any pending or future AMENDMENTS or VARIATIONS thereto; and
- (c) keep CONFIDENTIAL INFORMATION securely and properly protected against theft, damage, loss and unauthorised access (including unauthorised access by electronic means) and shall use at least the same degree of care that it uses for its own confidential information of like kind, but no less than reasonable efforts to ensure that CONFIDENTIAL INFORMATION is kept confidential.

37.3 Each PARTY shall notify the other PARTY immediately upon becoming aware that the CONFIDENTIAL INFORMATION provided by that PARTY has been disclosed to, or obtained by, a THIRD PARTY (otherwise than as permitted by these GENERAL TERMS AND CONDITIONS) and shall take such steps as may reasonably be necessary to mitigate any adverse effects of such disclosure by that PARTY.

37.4 The obligations set out in Article 37.2 shall not apply to any information which:

- (a) at the time of supply by (or on behalf of) the relevant PARTY is in, or subsequently comes into, the public domain, except through breach of any of the undertakings set out in the AGREEMENT;

- (b) the PARTY can prove that it was known by, or already in the PARTY's lawful possession prior to its disclosure by (or on behalf of) the other PARTY;
- (c) subsequently comes lawfully into the possession of the PARTY or any of its respective AFFILIATES from a THIRD PARTY who does not owe the relevant PARTY an obligation of confidence in relation to it;
- (d) was independently developed by the PARTY or any of its AFFILIATES without any reliance on any part of the CONFIDENTIAL INFORMATION; or
- (e) the PARTIES agree in writing is not confidential.

37.5 Notwithstanding Article 37.2, each PARTY may disclose CONFIDENTIAL INFORMATION:

- (a) to its directors, officers, employees to the extent such PERSON needs access to the CONFIDENTIAL INFORMATION for the purposes of or in connection with the AGREEMENT or the WORKS;
- (b) to an AFFILIATE, CO-VENTURER or SUBCONTRACTOR, to the extent such AFFILIATE, CO-VENTURER or SUBCONTRACTOR needs access to the CONFIDENTIAL INFORMATION for the purposes of or in connection with the AGREEMENT or the WORKS and provided that the AFFILIATE, CO-VENTURER or SUBCONTRACTOR agrees in writing to abide by the same confidentiality obligations of such PARTY with respect to the CONFIDENTIAL INFORMATION;
- (c) to any technical consultant or professional adviser engaged by or on behalf of such PARTY or its AFFILIATES, to the extent access to the CONFIDENTIAL INFORMATION is required for the purposes of or in connection with the AGREEMENT, and provided that such technical consultant or professional adviser agrees in writing (unless such professional adviser is under a legal obligation of confidentiality):
 - (i) to abide by the obligations of such PARTY with respect to CONFIDENTIAL INFORMATION, including any applicable THIRD PARTY obligations;
 - (ii) to hold the CONFIDENTIAL INFORMATION in confidence and use it only for the express purpose for which the CONFIDENTIAL INFORMATION was provided;
 - (iii) to treat the CONFIDENTIAL INFORMATION in the same manner as if it were a party to the AGREEMENT; and
 - (iv) not to consent to the disclosure of the CONFIDENTIAL INFORMATION except with the prior written consent of the other PARTY;
- (d) to the extent necessary to enforce or defend its rights in legal proceedings, provided that the disclosing PARTY uses its reasonable commercial efforts to:
 - (i) disclose only that portion of the CONFIDENTIAL INFORMATION as is reasonably necessary for the disclosing PARTY's enforcement or defence of its rights in such proceedings;
 - (ii) disclose only to those PERSONS reasonably necessary for the disclosing PARTY's enforcement of the AGREEMENT or defence of its rights in legal proceedings; and
 - (iii) cooperate with the other PARTY to obtain a protective order or similar device to maintain the confidential status of the CONFIDENTIAL INFORMATION; and
- (e) to the extent required by LAW (including, without limitation, any rule or regulation of any organised securities exchange, market or automated quotation system on which any of the disclosing PARTY's or its AFFILIATES' securities are listed or quoted), valid legal process or

GOVERNMENTAL AUTHORITY, provided that the disclosing PARTY uses its reasonable commercial efforts to:

- (i) provide the other PARTY with prompt notice of such requirement in order to enable the non-disclosing PARTY to:
 - (A) seek an appropriate protective order or other remedy; or
 - (B) consult with the disclosing PARTY with respect to taking steps to resist or narrow the scope of such request or requirement; and
- (ii) disclose only that part of the CONFIDENTIAL INFORMATION as is required if such protective order or other remedy is not obtained.

37.6 Notwithstanding Article 37.2, the COMPANY may disclose CONFIDENTIAL INFORMATION to any PERSON who is a potential investor, provided that such PERSON agrees in writing (unless such PERSON is under a legal obligation of confidentiality):

- (a) to abide by the obligations of the COMPANY with respect to CONFIDENTIAL INFORMATION;
- (b) to hold the CONFIDENTIAL INFORMATION in confidence and use it only for the express purpose for which the CONFIDENTIAL INFORMATION was provided;
- (c) to treat the CONFIDENTIAL INFORMATION in the same manner as if it were a party to the AGREEMENT; and
- (d) not to consent to the disclosure of the CONFIDENTIAL INFORMATION except with the prior written consent of the other PARTY.

37.7 Notwithstanding anything to the contrary in the AGREEMENT, the COMPANY may disclose the WORKS DOCUMENTATION for any purpose.

38. PUBLICITY

38.1 The CONTRACTOR shall not, without the prior written consent of the COMPANY:

- (a) take any photographs or make any video recordings of any existing COMPANY PROPERTY, the WORKS or WORKS DOCUMENTATION or any part thereof, even if anonymised, or use in any advertisement or publicity, or otherwise communicate to THIRD PARTIES any such photographs or video recordings, even if anonymised; or
- (b) advertise or publicly announce by any means whatsoever that it is providing or has provided services to the COMPANY, or otherwise identify the COMPANY in any marketing and/or publicity activities.

39. NOT USED

40. FORCE MAJEURE EVENT

40.1 Neither PARTY shall be considered in default of the performance of its obligations under the AGREEMENT to the extent that performance of such obligations is prevented or delayed by a FORCE MAJEURE EVENT, provided that:

- (a) there is a causal relation between the prevention or delay claimed and the FORCE MAJEURE EVENT invoked;

- (b) the affected PARTY (defined as the PARTY claiming FORCE MAJEURE EVENT) notifies the other PARTY within seven (7) DAYS after becoming aware of the FORCE MAJEURE EVENT in writing, including the following information:
 - (i) the first date on which the affected PARTY is claiming prevention or delay of its obligations under the AGREEMENT by a FORCE MAJEURE EVENT;
 - (ii) the full particulars of the FORCE MAJEURE EVENT which the affected PARTY considers has caused or will cause delay or non-performance;
 - (iii) which obligations have been or will be impacted by the FORCE MAJEURE EVENT;
 - (iv) the causal link between the FORCE MAJEURE EVENT and the impact on the obligations under the AGREEMENT;
 - (v) the likely duration of the delay or non-performance;
 - (vi) the proposed steps to mitigate the effects of the FORCE MAJEURE EVENT; and
 - (vii) a best estimate of the time which will be required to remove, overcome or circumvent the FORCE MAJEURE EVENT;
 - (c) the affected PARTY has complied with Article 40.2 and 40.3; and
 - (d) the affected PARTY shall bear the burden of proving that a FORCE MAJEURE EVENT has occurred and that it is so affected.
- 40.2 A PARTY affected by a FORCE MAJEURE EVENT shall take all reasonable measures available (at its own cost) to overcome and mitigate the effects of such FORCE MAJEURE EVENT, including cooperating with the other PARTY to develop and implement a plan of remedial action and reasonable alternative measures to remedy the effects of such FORCE MAJEURE EVENT.
- 40.3 During any period of the FORCE MAJEURE EVENT, the CONTRACTOR shall use its best efforts to safeguard and protect the WORKS and utilise the CONTRACTOR PERSONNEL in such a manner as to minimise the costs associated with the FORCE MAJEURE EVENT.
- 40.4 The affected PARTY shall not be entitled to rely on Article 40.1 in respect of the PARTY's performance under the AGREEMENT for any greater scope or longer duration than is required due to the relevant FORCE MAJEURE EVENT.
- 40.5 As soon as the relevant FORCE MAJEURE EVENT has ceased altogether or has lessened in its effect so as to allow the affected PARTY to resume all or any part of the obligations that has been prevented or delayed by the FORCE MAJEURE EVENT:
- (a) the affected PARTY shall notify the other PARTY of the same;
 - (b) the affected PARTY shall resume the performance of all or as much of such obligations; and
 - (c) the CONTRACTOR, in cooperation with the COMPANY, shall prepare a revised program to include for rescheduling the WORKS so as to minimise the effects of the FORCE MAJEURE EVENT.
- 40.6 Without prejudice to Articles 24 and 25, the COMPANY shall, at its sole discretion, have the right to extend the COMMENCEMENT DATE or any of the KEY MILESTONE DATES, as applicable, for additional periods for which the performance of obligations under the AGREEMENT were prevented or delayed due to a FORCE MAJEURE EVENT, without any change to the AGREEMENT PRICE, prices, rates and the GENERAL TERMS AND CONDITIONS applicable to this AGREEMENT.

40.7 If any FORCE MAJEURE EVENT prevents or delays the performance of obligations under the AGREEMENT for a continuous period in excess of sixty (60) consecutive DAYS or for one hundred and eighty (180) DAYS in aggregate, the COMPANY shall either:

- (a) suspend all or any part of the performance of the WORKS in accordance with Article 34.3; and/or
- (b) without prejudice to Article 40.7(a), terminate the AGREEMENT in accordance with Article 35.4.

40.8 At any time during a suspension in accordance with Article 40.7(a), the COMPANY shall have the right to terminate the AGREEMENT in accordance with Article 40.7(b).

41. INSURANCE

41.1 In the event any CONTRACTOR PERSONNEL are performing WORKS in the UAE, without limitation to its obligations and responsibilities, the CONTRACTOR shall obtain and maintain Workmen's Compensation Insurance (Employer's Liability) with a limit of liability of not less than USD 1,000,000 per occurrence.

41.2 In the event any CONTRACTOR PERSONNEL are performing WORKS outside the UAE, without limitation to its obligations and responsibilities, the CONTRACTOR shall obtain and maintain Workmen's Compensation Insurance (Employer's Liability) or insurance coverage of a comparable nature in accordance with the applicable LAW and/or the contracts of employment of the CONTRACTOR PERSONNEL.

41.3 In the event the CONTRACTOR uses motor vehicles in the performance of the WORKS in the UAE, the CONTRACTOR shall obtain and maintain Motor Vehicle Third Party and Passenger Liability Insurance which shall be:

- (a) as per the applicable LAWS of the UAE for death or injury to any THIRD PARTY; and
- (b) for damage to PROPERTY of a THIRD PARTY with a limit of not less than USD 1,000,000 per occurrence.

41.4 Without limitation to its obligations and responsibilities, the CONTRACTOR shall obtain and maintain All Risk Insurance on CONTRACTOR CONSTRUCTION EQUIPMENT covering the full value thereof.

41.5 The CONTRACTOR shall obtain and maintain:

- (a) Third Party Liability Insurance with a limit of not less than USD 10,000,000 per occurrence; and
- (b) Pollution Liability Insurance to cover the risk arising from the performance of WORKS and any pollution emanating/originating from the CONTRACTOR CONSTRUCTION EQUIPMENT with a limit of not less than USD 10,000,000 per occurrence,

noting that the two insurance coverage requirements named in Articles 41.5(a) and 41.5(b) may be addressed in one insurance policy.

41.6 The CONTRACTOR shall ensure that all insurance policies provided by the CONTRACTOR shall:

- (a) be obtained on an additional insured basis in the names of the PARTIES with the exception of the insurances required under Articles 41.1 and 41.2; and
- (b) contain a waiver of subrogation against its contractual principals which shall include the COMPANY INDEMNIFIED PARTIES,

to the extent of the liabilities assumed by the CONTRACTOR under the AGREEMENT.

- 41.7 Upon the COMPANY's request, CONTRACTOR shall provide the COMPANY with certificates of insurance or other documentary evidence, satisfactory to the COMPANY, of the insurance cover and conditions required under this Article 41 and the AGREEMENT. The COMPANY's acceptance of such evidence does not constitute a waiver, release or modification of the required insurance.
- 41.8 If at any time the COMPANY considers that any insurance certificate provided by the CONTRACTOR is not sufficient to evidence that such insurance policies have been obtained and maintained, the COMPANY may request, and the CONTRACTOR shall promptly provide, any further information the COMPANY requires to verify that such insurance policies have been obtained and maintained and/or an undertaking from the CONTRACTOR confirming that such insurance policies have been obtained and maintained. The COMPANY may take any steps necessary to ensure that the insurance policies shall remain in force throughout the term of the AGREEMENT.
- 41.9 All deductibles or self-insured retentions that are applicable under insurance policies to be procured by the CONTRACTOR or which the CONTRACTOR is to require any SUBCONTRACTORS to procure under the AGREEMENT shall be for the account of and paid for by the CONTRACTOR and/or SUBCONTRACTORS, including any deductibles or self-insured retentions applicable to coverage of claims made against the COMPANY INDEMNIFIED PARTIES for which the CONTRACTOR is responsible.
- 41.10 If any insurance policy is cancelled, or if there is a material change which may affect the COMPANY's interest, or if the CONTRACTOR fails to effect or maintain any policy which it is required by the AGREEMENT to effect and maintain, the COMPANY may at its sole discretion effect and maintain any such insurance or additional insurance as the COMPANY shall consider necessary and recover the cost from the CONTRACTOR.
- 41.11 The CONTRACTOR shall either:
- (a) require its SUBCONTRACTORS and VENDORS to obtain and maintain the same level of insurance as the CONTRACTOR is obliged to take out under the AGREEMENT for performing any part of the WORKS, in proportion to the value of the WORKS that are to be performed by such SUBCONTRACTORS and VENDORS, save and except that the CONTRACTOR shall not require such SUBCONTRACTORS to carry insurance that would duplicate the coverage of the insurance carried by the CONTRACTOR; or
 - (b) ensure that such SUBCONTRACTORS and VENDORS are insured under the CONTRACTOR's relevant insurance policies.
- 41.12 The CONTRACTOR's compliance with the insurance requirements set out in this Article 41 shall not be construed as limiting the CONTRACTOR's liability to the COMPANY and others as set out in Article 42. The CONTRACTOR shall save, indemnify, defend, release and hold harmless the COMPANY INDEMNIFIED PARTIES from and against all losses, liabilities, damages and costs (including legal costs) arising out of or in connection with any claim by any PERSON against the COMPANY INDEMNIFIED PARTIES in respect of any shortfall in insurance cover it is obliged to obtain under the AGREEMENT or any failure to effect or maintain such insurances specified by the AGREEMENT or out of any act or omission, which invalidates the said insurances or in the event that liability for any loss or damage be denied by any underwriter, in all or in part, because of breach of said insurance requirements by the CONTRACTOR, to the extent of the liabilities assumed by the CONTRACTOR under the AGREEMENT.
- 41.13 The CONTRACTOR shall:
- (a) as soon as possible inform the COMPANY in writing of any occurrence that may give rise to a claim under an insurance policy required by the AGREEMENT;
 - (b) keep the COMPANY informed of subsequent developments concerning the claim; and
 - (c) ensure that the SUBCONTRACTORS and VENDORS similarly inform the CONTRACTOR

and the COMPANY in respect of occurrences which may give rise to a claim by them.

- 41.14 Any insurance arranged in accordance with this Article 41, shall be obtained in accordance with Article 26 of Federal Law No. (6) of 2007, as far as possible. However, the COMPANY may at its discretion accept insurance policies from other competent insurance companies provided that such insurance policies meet all other requirements mentioned in this Article 41.
- 41.15 Not used.
- 41.16 The COMPANY shall effect the insurance specified in ANNEXURE 7-A for the period specified in ANNEXURE 7-A and shall provide the CONTRACTOR with a copy of the relevant insurance policies. The insurance referred to in ANNEXURE 7-A shall be subject to the exclusions, conditions and deductibles noted on the policies. The CONTRACTOR shall:
- (a) satisfy itself of the nature and extent of the COMPANY's insurance;
 - (b) if required by the COMPANY, effect insurance to:
 - (i) insure any risks not insured by the COMPANY's insurance; and/or
 - (ii) cover any exclusions, conditions or deductibles in that insurance;
 - (c) where it bears the risk of the relevant loss, damage or liability or is required to indemnify the COMPANY pursuant to Article 42, bear the cost of any deductibles in the COMPANY's insurance;
 - (d) compensate the COMPANY for all losses, damages and costs arising out of or in connection with the COMPANY's inability to recover under any of the insurance policies effected by the COMPANY under this Article 41 as a result of a vitiating act by the CONTRACTOR. The CONTRACTOR shall defend, indemnify and hold harmless the COMPANY from and against all losses, liabilities, damages and costs (including legal costs) arising out of or in connection with any claim by any PERSON in relation to the same; and
 - (e) ensure adherence to the COMPANY's insurance practices in connection with the transition from a 'construction-phase' insurance programme prior to the issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE to an 'operational phase' insurance programme. To evidence the CONTRACTOR's compliance with this requirement, the CONTRACTOR must provide the INSURANCE DECLARATION to the COMPANY pursuant to Article 17.1(a)(vi) prior to the issuance of the PROVISIONAL ACCEPTANCE CERTIFICATE.
- 41.17 Without limitation to its obligations and responsibilities, if the FORM OF AGREEMENT states that the CONTRACTOR is required to take out additional insurance above what is stated in Articles 41.1 to 41.15, the details of such additional insurance shall be set out in ANNEXURE 7 and the CONTRACTOR shall:
- (a) for the period specified in ANNEXURE 7, effect the insurance specified in ANNEXURE 7:
 - (i) with insurers approved by the COMPANY and with minimum long-term credit ratings not lower than A- rated by S&P and/or AM BEST;
 - (ii) on terms satisfactory to the COMPANY (acting reasonably);
 - (iii) containing an additional insured clause for COMPANY INDEMNIFIED PARTIES, where such clause is stated to be required in this Article 41; and
 - (iv) containing waivers by insurers of all rights, remedies or relief to which they might become entitled by way of subrogation against the COMPANY INDEMNIFIED PARTIES;

- (b) fifteen (15) DAYS prior to the relevant date specified in ANNEXURE 7 (or if no date is specified, from the COMMENCEMENT DATE), and within seven (7) DAYS of any subsequent request as may be issued from time to time by the COMPANY to do so, provide the COMPANY with a copy of any required insurance policy and evidence satisfactory to the COMPANY that the policy is current;
 - (c) inform the COMPANY whenever it receives from the insurer a notice under or in connection with the policy, which in the case of a notice of cancellation shall be given to the COMPANY no later than thirty (30) DAYS prior to the cancellation of the policy; and
 - (d) ensure that it:
 - (i) does not do anything which prejudices any insurance;
 - (ii) if necessary, rectifies anything which might prejudice any insurance;
 - (iii) reinstates an insurance policy if it lapses;
 - (iv) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the COMPANY;
 - (v) immediately notifies the COMPANY of any event which may result in an insurance policy lapsing or being cancelled;
 - (vi) immediately notifies the COMPANY if the long-term credit rating of any insurer falls below the rating required by Article 41.17(a)(i) or such other rating requirements specified in ANNEXURE 7;
 - (vii) gives full, true and particular information to the insurer of all matters and things, the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and
 - (viii) require its SUBCONTRACTORS and VENDORS to:
 - (A) maintain insurance in accordance with this Article 41, save and except that the CONTRACTOR shall not require such SUBCONTRACTORS to carry insurance that would duplicate the coverage of the insurance carried by the CONTRACTOR; and
 - (B) otherwise comply with this Article 41.
- 41.18 Wherever insurance is effected under the AGREEMENT in the joint names of the PARTIES, or on terms containing provisions for indemnity to principals, the PARTY effecting such insurance shall ensure that the insurance policy provides that:
- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) shall operate in the same manner as if there were a separate policy of insurance covering each named insured;
 - (b) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against any of the persons covered as an insured, and that failure by any insured to observe and fulfil the terms of the policy shall not prejudice the insurance with respect to any other insured;
 - (c) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
 - (d) a notice to the insurer by one insured person shall be deemed to be notice by all insured persons.

- 41.19 Where the COMPANY procures insurance hereunder for the benefit of both PARTIES, claims management shall be COMPANY-driven and the CONTRACTOR shall not, and shall take all steps necessary to ensure that any SUBCONTRACTOR or VENDOR do not, report any claims to the insurer without coordinating with the COMPANY. For the avoidance of doubt, the insurer's claim investigation process shall not be considered as a hindrance to, or be a reason for delay in the execution of the WORKS.

42. LIABILITY AND INDEMNITY

42.1 LIABILITY FOR PERSONNEL

- (a) The CONTRACTOR shall indemnify and hold harmless the COMPANY INDEMNIFIED PARTIES from and against all losses, liabilities, damages and costs (including legal costs) arising out of or in connection with any claim by any PERSON against the COMPANY INDEMNIFIED PARTIES in respect of death, illness of or injury to the CONTRACTOR PERSONNEL that arises out of or in connection with the performance or non-performance of the AGREEMENT by the COMPANY INDEMNIFIED PARTIES and/or the CONTRACTOR INDEMNIFIED PARTIES, except to the extent arising out of or in connection with the GROSS NEGLIGENCE / WILFUL MISCONDUCT of the COMPANY INDEMNIFIED PARTIES.
- (b) The COMPANY shall indemnify and hold harmless the CONTRACTOR INDEMNIFIED PARTIES from and against all losses, liabilities, damages and costs (including legal costs) arising out of or in connection with any claim by any PERSON against the CONTRACTOR INDEMNIFIED PARTIES in respect of death, illness of or injury to the COMPANY PERSONNEL that arises out of or in connection with the performance or non-performance of the AGREEMENT by the COMPANY INDEMNIFIED PARTIES and/or the CONTRACTOR INDEMNIFIED PARTIES, except to the extent arising out of or in connection with the GROSS NEGLIGENCE / WILFUL MISCONDUCT of the CONTRACTOR INDEMNIFIED PARTIES.

42.2 LIABILITY FOR PROPERTY

- (a) The CONTRACTOR shall indemnify and hold harmless the COMPANY INDEMNIFIED PARTIES from and against all losses, liabilities, damages and costs (including legal costs) arising out of or in connection with any claim by any PERSON against the COMPANY INDEMNIFIED PARTIES in respect of:
 - (i) loss of or damage to the PROPERTY of the CONTRACTOR INDEMNIFIED PARTIES, including the loss of use thereof, that arises out of or in connection with the performance or non-performance of the AGREEMENT by the COMPANY INDEMNIFIED PARTIES and/or the CONTRACTOR INDEMNIFIED PARTIES; and
 - (ii) loss of or damage to the PROPERTY of the COMPANY INDEMNIFIED PARTIES, including the loss of use thereof, that arises out of or in connection with the performance or non-performance of the AGREEMENT by the CONTRACTOR INDEMNIFIED PARTIES up to a maximum of USD 1,000,000 per occurrence,

in the case of each event, except to the extent arising out of or in connection with the GROSS NEGLIGENCE / WILFUL MISCONDUCT of the COMPANY INDEMNIFIED PARTIES.

- (b) Subject to Article 42.4(b), the COMPANY shall indemnify and hold harmless the CONTRACTOR INDEMNIFIED PARTIES from and against all losses, liabilities, damages and costs (including legal costs) arising out of or in connection with any claim by any PERSON against the CONTRACTOR INDEMNIFIED PARTIES in respect of any loss of (including the loss of use thereof) or damage to the PROPERTY of the COMPANY INDEMNIFIED PARTIES, which (i) is not covered by Article 42.2(a)(ii), and (ii) arises out of or in connection with the performance or non-performance of the AGREEMENT by the COMPANY INDEMNIFIED PARTIES and/or the CONTRACTOR INDEMNIFIED PARTIES, except to the extent arising out of or in connection with the GROSS NEGLIGENCE / WILFUL MISCONDUCT of the CONTRACTOR INDEMNIFIED PARTIES.

42.3 LIABILITY FOR THIRD PARTIES

- (a) Subject to Article 42.4(b), the CONTRACTOR shall indemnify and hold harmless the COMPANY INDEMNIFIED PARTIES from and against all losses, liabilities, damages and costs (including legal costs) arising out of or in connection with any claim by any PERSON against the COMPANY INDEMNIFIED PARTIES in respect of any of the following:

- (i) death, illness of or injury to any THIRD PARTY; or
- (ii) loss of or damage to the PROPERTY of any THIRD PARTY,

which, in the case of each event, arises out of or in connection with any negligent act or omission by the CONTRACTOR INDEMNIFIED PARTIES.

- (b) Not used.

- (c) Subject to Article 42.4(b), the COMPANY shall indemnify and hold harmless the CONTRACTOR INDEMNIFIED PARTIES from and against all losses, liabilities, damages and costs (including legal costs) arising out of or in connection with any claim by any PERSON against the CONTRACTOR INDEMNIFIED PARTIES in respect of any of the following:

- (i) death, illness of or injury to any THIRD PARTY; or
- (ii) loss of or damage to the PROPERTY of any THIRD PARTY,

which, in the case of each event, arises out of or in connection with any negligent act or omission by the COMPANY INDEMNIFIED PARTIES.

42.4 LIABILITY FOR POLLUTION AND CONTAMINATION

Pollution from CONTRACTOR PROPERTY

- (a) The CONTRACTOR shall indemnify and hold harmless the COMPANY INDEMNIFIED PARTIES from and against all losses, claims, costs, liabilities, damages and expenses (including legal expenses) arising from or in connection with any pollution originating from any PROPERTY of the CONTRACTOR INDEMNIFIED PARTIES which arises out of the CONTRACTOR's performance of the WORKS and/or the AGREEMENT.

Pollution from the reservoir and COMPANY PROPERTY

- (b) The COMPANY shall indemnify and hold harmless the CONTRACTOR INDEMNIFIED PARTIES from and against all losses, claims, costs, liabilities, damages and expenses (including legal expenses) arising from or in connection with any pollution emanating from the reservoir or from any PROPERTY of the COMPANY INDEMNIFIED PARTIES.

42.5 LIABILITY FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

The CONTRACTOR shall indemnify and hold harmless the COMPANY INDEMNIFIED PARTIES from and against all losses, liabilities, damages and costs (including legal costs) arising out of or in connection with any claim by any PERSON against the COMPANY INDEMNIFIED PARTIES in respect of any infringement by the WORKS or the WORKS DOCUMENTATION (or any part thereof) of the INTELLECTUAL PROPERTY RIGHTS of a THIRD PARTY or of the CONTRACTOR INDEMNIFIED PARTIES, except to the extent such infringement is based solely on:

- (a) any information or materials provided by the COMPANY to the CONTRACTOR; or
- (b) the COMPANY's use of the WORKS and WORKS DOCUMENTATION for purposes not contemplated by the AGREEMENT; or

- (c) any material changes made to the WORKS or WORKS DOCUMENTATION that are not done by or on behalf of the CONTRACTOR or to which the CONTRACTOR has not otherwise provided its consent.

42.6 EXCLUSIONS AND INDEMNITIES

The PARTIES agree that all limitations on or exclusions of liability as well as all indemnities provided under this Article 42 shall not apply in the event of the GROSS NEGLIGENCE / WILFUL MISCONDUCT and/or fraud of the INDEMNIFIED PARTY.

42.7 PROCEDURE FOR DEFENCE OF INDEMNIFIED CLAIMS

- (a) If either PARTY becomes aware of any claim in respect of any of the events described in Articles 4.3(e), 20.6, 22.3, 41.12, 41.16(d) and 42.1 to 42.5 (“**INDEMNIFIED CLAIM**”), such PARTY shall promptly provide notice thereof in writing to the other PARTY. Such notice shall include as much detail as is reasonably practicable regarding the INDEMNIFIED CLAIM. Notwithstanding the foregoing, lack of prompt notice shall not be a defence to indemnification.
- (b) Upon receiving written notice of any INDEMNIFIED CLAIM, the INDEMNIFYING PARTY may request permission from the INDEMNIFIED PARTY to assume control of the defence of the INDEMNIFIED CLAIM. The INDEMNIFIED PARTY shall promptly decide, at its sole discretion, whether to grant the permission sought by the INDEMNIFYING PARTY, provided that the INDEMNIFIED PARTY’s silence, or any delay in response, shall not be deemed as an acceptance to grant the permission sought by the INDEMNIFYING PARTY.
- (c) Subject to Article 42.7(e), in the event the INDEMNIFIED PARTY grants permission under Article 42.7(b), the INDEMNIFYING PARTY shall have control of the conduct of the defence of the INDEMNIFIED PARTY, including but not limited to the selection and management of counsel. An INDEMNIFYING PARTY who assumes control of the defence shall be responsible for paying the INDEMNIFIED PARTY’s reasonable defence costs, including attorneys’ fees, on a current basis and throughout the pendency of any such INDEMNIFIED CLAIMS. In this case, the INDEMNIFIED PARTY shall have the right, at its sole discretion, to be represented by advisory counsel of its own selection and at its own cost and to monitor the progress and handling of an INDEMNIFIED CLAIM.
- (d) If the INDEMNIFYING PARTY does not assume control of the defence, the INDEMNIFIED PARTY shall assume the defence of and defend such INDEMNIFIED CLAIMS to the best of its ability. The INDEMNIFIED PARTY shall provide the INDEMNIFYING PARTY with regular notices in writing, which include as much detail as is reasonably practicable, regarding the status of the INDEMNIFIED CLAIMS. Notwithstanding the foregoing, lack of regular notices shall not be a defence to indemnification. The INDEMNIFYING PARTY may provide the INDEMNIFIED PARTY with advice regarding the defence strategy for the INDEMNIFIED CLAIMS. The INDEMNIFIED PARTY shall carefully consider, but not be legally obliged to implement, the INDEMNIFYING PARTY’s advice (if any).
- (e) Notwithstanding the other provisions of Article 42.7, if any PERSON brings any claim against the CONTRACTOR INDEMNIFIED PARTIES which arises (i) in ABU DHABI; (ii) out of or in connection with the AGREEMENT; or (iii) in respect of the PROPERTY of the COMPANY INDEMNIFIED PARTIES, the COMPANY, at its sole discretion, may assume control of the conduct of the defence of the claim, including but not limited to the selection and management of counsel. The CONTRACTOR hereby agrees, and shall ensure that the CONTRACTOR INDEMNIFIED PARTIES agree, to the COMPANY assuming control of the defence of such claim. Upon assuming control of the defence in relation to any such claim, the COMPANY shall be subrogated to the rights and liabilities of the CONTRACTOR INDEMNIFIED PARTIES in relation to the claim, including with respect to the damages payable or owing as a result of any such claim. For the avoidance of doubt, such subrogation shall include the COMPANY’s assumption of responsibility for paying the CONTRACTOR INDEMNIFIED PARTIES’ defence costs, including attorney’s fees, on a current basis and throughout the pendency of the claim. For the avoidance of doubt, the COMPANY shall only be subrogated to the rights and obligations of the CONTRACTOR INDEMNIFIED PARTIES in relation to the

claim where the COMPANY assumes control of the defence of claims in accordance with this Article 42.7(e).

- (f) Wherever the COMPANY assumes control of the defence pursuant to Article 42.7(e), it undertakes not to disclose the details of any related litigation or arbitration proceedings or negotiated or agreed settlements without the prior written consent of the CONTRACTOR INDEMNIFIED PARTIES.
- (g) Save for where the COMPANY assumes control of the defence pursuant to Article 42.7(e), (in which case the COMPANY shall be subrogated to the rights of the CONTRACTOR INDEMNIFIED PARTIES, including the right to settlement), no PARTY shall settle, compromise, offer to settle or compromise, assume any contractual obligation relating to, or admit liability for INDEMNIFIED CLAIMS without the consent of the other PARTY, which consent shall not unreasonably be withheld or delayed.

42.8 PAYMENT OF INDEMNITY

- (a) Any indemnity provided under Articles 4.3(e), 20.6, 22.3, 41.12, 41.16(d) or this Article 42 shall be due by the INDEMNIFYING PARTY to the INDEMNIFIED PARTY within ninety (90) DAYS following either:
 - (i) the notification by the INDEMNIFIED PARTY to the INDEMNIFYING PARTY of the final adjudication by a court or an arbitral tribunal of competent jurisdiction of the claims referred to in Articles 4.3(e), 20.6, 22.3, 41.12, 41.16(d) or Articles 42.1 to 42.5; or
 - (ii) the conclusion of a settlement of claims by the INDEMNIFIED PARTY and the claimant(s), provided that the INDEMNIFYING PARTY approves the terms of such settlement, which approval shall not unreasonably be withheld or delayed.
- (b) All losses, liabilities, damages and costs which are recoverable under Articles 4.3(e), 20.6, 22.3, 41.12, 41.16(d) or this Article 42, other than amounts ordered by a tribunal or agreed in a settlement, shall become due by the INDEMNIFYING PARTY to the INDEMNIFIED PARTY within ninety (90) DAYS following the notification by the INDEMNIFIED PARTY to the INDEMNIFYING PARTY of the final adjudication by a court or an arbitral tribunal of competent jurisdiction of the related claims, or, upon the conclusion of a settlement of the related claims by the INDEMNIFIED PARTY and the claimant(s) in accordance with Article 42.8(a)(ii), as the case may be, provided that the INDEMNIFIED PARTY furnishes proof of the losses, liabilities, damages and/or costs incurred.

42.9 WAIVER OF RECOURSE

- (a) In consideration for the rights that the CONTRACTOR has received under the AGREEMENT, the COMPANY INDEMNIFIED PARTIES shall have no liability whatsoever to the CONTRACTOR in respect of the events set forth in Articles 4.3(e), 20.6, 22.3, 41.12, 41.16(d), 42.1(a), 42.2(a), 42.3(a), 42.4(a) and 42.5. For the avoidance of doubt, the CONTRACTOR hereby waives all claims against the COMPANY INDEMNIFIED PARTIES in respect of the events set forth in Articles 4.3(e), 20.6, 22.3, 41.12, 41.16(d), 42.1(a), 42.2(a), 42.3(a), 42.4(a) and 42.5.
- (b) In consideration for the rights that the COMPANY has received under the AGREEMENT, the CONTRACTOR INDEMNIFIED PARTIES shall have no liability whatsoever to the COMPANY in respect of any of the events listed in Articles 42.1(b), 42.2(b), 42.3(c) and 42.4(b). For the avoidance of doubt, the COMPANY hereby waives all claims against the CONTRACTOR INDEMNIFIED PARTIES in respect of the events set forth in Articles 42.1(b), 42.2(b), 42.3(c) and 42.4(b).
- (c) Notwithstanding Articles 42.9(a) and 42.9(b) above, no PARTY shall be deemed to have waived any claims against the other PARTY or its related INDEMNIFIED PARTIES in respect of events arising out of or in connection with the GROSS NEGLIGENCE / WILFUL

MISCONDUCT of that other PARTY or its related INDEMNIFIED PARTIES. The COMPANY INDEMNIFIED PARTIES and the CONTRACTOR INDEMNIFIED PARTIES shall remain liable in respect of events arising out of or in connection with their GROSS NEGLIGENCE / WILFUL MISCONDUCT.

42.10 LIMITATIONS OF LIABILITY

- (a) The total liability of either PARTY to the other PARTY arising under or in connection with the AGREEMENT shall be limited to the total liability cap set out in the FORM OF AGREEMENT.
- (b) Article 42.10(a) shall not apply in relation to, or otherwise limit or affect:
 - (i) either PARTY's liability in respect of:
 - (A) its GROSS NEGLIGENCE / WILFUL MISCONDUCT or fraud;
 - (B) a breach of Article 37;
 - (C) THIRD PARTIES; or
 - (D) an indemnity obligation to the other PARTY under Articles 4.3(e), 20.6, 22.3, 41.12, 41.16(d) and 42.1 to 42.5 (as applicable);
 - (ii) the CONTRACTOR's liability:
 - (A) in respect of its warranty of title pursuant to Article 33; or
 - (B) to make payments, to the extent corresponding payments:
 - (1) are received or receivable by the CONTRACTOR, or adjusted or declined by insurers, pursuant to the insurance policies required by Article 41, or
 - (2) would have been received pursuant to such policies (including via reimbursement from the COMPANY) had the CONTRACTOR complied with its obligations under the AGREEMENT to effect and maintain insurance; or
 - (iii) the COMPANY's liability as a result of the payment of any part of the AGREEMENT PRICE made in consideration of the CONTRACTOR's performance of its obligations under the AGREEMENT.

42.11 CONSEQUENTIAL LOSS

- (a) Subject to the CONTRACTOR's liability to pay DELAY LIQUIDATED DAMAGES pursuant to Article 18.4, the COMPANY INDEMNIFIED PARTIES shall have no liability to the CONTRACTOR INDEMNIFIED PARTIES and the CONTRACTOR INDEMNIFIED PARTIES shall have no liability to the COMPANY INDEMNIFIED PARTIES, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any of the other's indirect or consequential loss or any loss of profit or revenue, loss of production or downtime costs, loss of opportunity, loss of contract or loss of goodwill or other pure economic loss arising under or in connection with the AGREEMENT ("**CONSEQUENTIAL LOSS**").
- (b) Article 42.11(a) shall not apply in relation to, or otherwise limit or affect the liability of the INDEMNIFYING PARTY towards the INDEMNIFIED PARTY under Articles 4.3(e), 20.6, 22.3, 41.12, 41.16(d) or Articles 42.1 to 42.5, to the extent such liability arises out of a claim against the INDEMNIFIED PARTY by a THIRD PARTY.

42.12 INSURANCE AND INDEMNITIES SEPARATE

The PARTIES agree that the indemnity and insurance obligations contained in the AGREEMENT are separate and apart from each other, such that failure to fulfil the indemnity obligations does not alter or eliminate the insurance obligations or vice versa.

43. ASSIGNMENT

43.1 The CONTRACTOR shall not assign, novate or otherwise transfer any of its rights, obligations or interests under and in connection with the AGREEMENT without the prior written consent of the COMPANY. Any purported assignment, novation, or transfer without the prior written consent of the COMPANY shall be expressly deemed absolutely null and void against the COMPANY and shall not transfer any rights in the AGREEMENT to the purported assignee and, in such event, the COMPANY shall have no obligation whatsoever to the purported assignee. Any purported assignment, novation, or transfer without the prior written consent of the COMPANY shall entitle the COMPANY to terminate the AGREEMENT with immediate effect in accordance with Article 35.3(a)(i).

43.2 The COMPANY may assign, novate or otherwise transfer any of its rights, obligations or interests under and in connection with the AGREEMENT to any AFFILIATE upon written notice to the CONTRACTOR, and the CONTRACTOR hereby consents unconditionally to such assignment, novation or transfer. The CONTRACTOR shall execute any documentation required to ensure that the assignment is properly executed in accordance with the applicable LAW.

43.3 The PARTIES' obligations in relation to:

- (a) (i) confidentiality and (ii) INTELLECTUAL PROPERTY RIGHTS shall survive any assignment, novation or any other form of transfer of the AGREEMENT indefinitely; and
- (b) subject to Article 43.3(a), indemnities shall survive any assignment, novation or any other form of transfer of the AGREEMENT for five (5) years from the date of such assignment, novation or other form of transfer of the AGREEMENT.

44. CHANGE OF CONTROL

44.1 Where permitted by applicable LAW, the CONTRACTOR shall provide the COMPANY with written notice of the occurrence of any change in CONTROL of the CONTRACTOR to any PERSON and/or the change of CONTROL of any PERSON that directly or indirectly CONTROLS the CONTRACTOR (including any intermediate or ultimate parent company) to any PERSON promptly upon the CONTRACTOR becoming aware of such change in CONTROL.

44.2 Where the COMPANY has not given its prior written consent to such change of CONTROL, any change of CONTROL of the CONTRACTOR and/or the change of CONTROL of any PERSON that directly or indirectly CONTROLS the CONTRACTOR shall entitle the COMPANY to terminate the AGREEMENT in accordance with Article 35.5.

45. SURVIVABILITY

The accrued obligations and liabilities of the PARTIES shall survive the expiry or termination of the AGREEMENT and the provisions of Articles 1, 2.3, 4.3(e), 4.4(h), 18, 20.6, 23, 26, 27, 28, 30, 31, 32, 36, 37, 38, 41.6, 41.16(d), 42, 43, 45 and 46 shall survive any expiry or termination of the AGREEMENT. The provisions of Article 42 shall survive for five (5) years from the date of expiry or termination of the AGREEMENT.

46. GOVERNING LAW AND DISPUTE RESOLUTION**46.1 GOVERNING LAW**

The AGREEMENT is governed by, and shall be construed in accordance with the laws of ABU DHABI and the Federal Laws of the UAE.

46.2 DISPUTE RESOLUTION

- (a) The PARTIES shall attempt in good faith to amicably settle any dispute, controversy or claim arising out of or in connection with the conclusion, validity, effect, interpretation, performance, termination or dissolution of the AGREEMENT and/or any non-contractual obligations arising out of or in connection with the AGREEMENT (“**DISPUTE**”). The PARTIES agree that all discussions during attempts to settle DISPUTES amicably will be on a “without prejudice” basis and shall not be admissible as evidence in any arbitral proceedings initiated under Article 46.2(b).
- (b) If the DISPUTE is not settled amicably within sixty (60) DAYS from the date the DISPUTE is first notified in writing to the other PARTY, such DISPUTE may be referred to by any PARTY and finally resolved by arbitration in accordance with the rules of arbitration of the International Chamber of Commerce applicable at the time of conclusion of the AGREEMENT (the “**RULES**”) by three (3) arbitrators. Each PARTY shall nominate an arbitrator for confirmation by the International Court of Arbitration (the “**COURT**”) under the RULES. The two arbitrators nominated by the PARTIES shall nominate the third arbitrator who will act as president of the arbitral tribunal (the “**PRESIDENT**”) within thirty (30) DAYS from their confirmation by the COURT. Failing nomination by the arbitrators of the PRESIDENT within the time limit provided for in this Article or any other time limit agreed by the PARTIES, the PRESIDENT shall be appointed by the COURT.
- (c) If the DISPUTE is not settled amicably within sixty (60) DAYS from the date the DISPUTE is first notified in writing to the other PARTY or PARTIES pursuant to Article 46.2, and provided the DISPUTE has not been referred to arbitration pursuant to Article 46.2(b), the PARTIES may mutually agree in writing at any time to refer a DISPUTE to be resolved by an alternative forum for resolution including mediation or expert determination. The PARTIES agree that all discussions and proceedings thereunder will be on a “without prejudice” basis and shall not be admissible as evidence in any arbitral proceedings initiated under Article 46.2(b).
- (d) A PARTY may apply to any competent judicial authority for interim or conservatory relief. The application for such measures or the enforcement of such measures ordered by such judicial authority shall not be deemed an infringement or waiver of the agreement to arbitrate and shall not affect the powers of the arbitrators.
- (e) The seat of the arbitration shall be ABU DHABI, UAE. The language to be used in the arbitral proceedings shall be the English language.
- (f) The arbitration proceedings, including all documents, submissions, written and oral evidence, transcripts and correspondence used therein or relating thereto, as well as any order or award issued in connection therewith shall be strictly confidential (“**CONFIDENTIAL ARBITRATION INFORMATION**”). Notwithstanding this provision, but without prejudice to any other confidentiality obligation which may otherwise be applicable, either PARTY may disclose to a domestic court, for the purposes of setting aside and/or enforcement proceedings pending before such domestic court, any **CONFIDENTIAL ARBITRATION INFORMATION**, which it deems necessary for the purposes of those proceedings, (iv) after seeking an appropriate confidentiality order from such court, if available under the applicable LAW.
- (g) For the avoidance of doubt, where a DISPUTE is not settled amicably under Article 46.2(a) and a PARTY elects to refer such DISPUTE to arbitration under Article 46.2(b), such PARTY acknowledges that arbitration shall be the final platform for resolution of the DISPUTE.

47. CONFLICT OF INTEREST

- 47.1 The CONTRACTOR shall not, and shall ensure that its AFFILIATES do not, enter into any contracts, undertakings, bids, letters of intent, business associations, joint ventures, partnership or other arrangements (each a “**BUSINESS VENTURE**”) directly relating to any aspect of the WORKS, except for those disclosed to the COMPANY prior to the EFFECTIVE DATE, without obtaining the COMPANY’s prior written consent, which consent shall not unreasonably be withheld.

- 47.2 If the COMPANY deems (at its absolute discretion) that any BUSINESS VENTURE by the CONTRACTOR under this Article 47 is prejudicial to the COMPANY's interest, the COMPANY shall instruct the CONTRACTOR in writing to take steps to terminate such BUSINESS VENTURE, and the CONTRACTOR shall comply with the COMPANY's instruction.

48. ENTIRE AGREEMENT

The AGREEMENT constitutes the entire agreement between the PARTIES concerning the subject matter of the AGREEMENT and supersedes and, subject to Article 3.2, replaces any previous agreements between the PARTIES or any representation made by one PARTY to the other PARTY (whether oral or written) concerning the subject matter of the AGREEMENT. To the extent permitted by LAW, the PARTIES shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein, provided that nothing in this Article 48 shall limit a PARTY's liability for fraud.

49. REPRESENTATIONS AS TO NO PAYMENTS, GIFTS AND LOANS

- 49.1 Each PARTY represents and warrants to the other PARTY that neither it nor its respective AFFILIATES, directors, officers, employees, agents and representatives and consultants have made or committed to make, and shall not make or commit to make, any payment of money or give anything of value to:

- (a) any GOVERNMENT OFFICIAL, for the purpose of securing or inducing the act, decision, influence, or omission of such GOVERNMENT OFFICIAL to obtain, retain, or direct business, or secure any improper advantage, for any PERSON in connection with the AGREEMENT or any other asset or business opportunity of the PARTIES; or
- (b) any PERSON while knowing, believing or being aware of a high probability that the payment or other value would be offered, given or promised by such PERSON in whole or in part to any GOVERNMENT OFFICIAL, for the purpose of securing or inducing the act, decision, influence or omission of such GOVERNMENT OFFICIAL to obtain, retain or direct business, or secure any improper advantage, for any PERSON in connection with the AGREEMENT or any other asset or business opportunity of the PARTIES.

- 49.2 The CONTRACTOR represents and warrants to the COMPANY that neither it nor its respective AFFILIATES, directors, officers, employees, agents and representatives and consultants have made or committed to make, and shall not make or commit to make, any payment of money or give anything of value to:

- (a) any official, agent, director or employee of the COMPANY or any of its AFFILIATES, for the purpose of securing or inducing the act, decision, influence, or omission of such PERSON to obtain, retain, or direct business, or secure any improper advantage, for any PERSON in connection with the AGREEMENT or any other asset or business opportunity of the CONTRACTOR or its AFFILIATES; or
- (b) any PERSON while knowing, believing or being aware of a high probability that the payment or other value would be offered, given or promised by such PERSON in whole or in part to any PERSON referred to in Article 49.2(a), for the purpose of securing or inducing the act, decision, influence or omission of such PERSON referred to in Article 49.2(a) to obtain, retain, or direct business, or secure any improper advantage, for any PERSON in connection with the AGREEMENT or any other asset or business opportunity of the CONTRACTOR or its AFFILIATES.

- 49.3 Each PARTY has conducted and will conduct its business in compliance with any applicable ANTI-BRIBERY LAWS and ANTI-MONEY LAUNDERING LAWS.

- 49.4 EACH PARTY has instituted and shall maintain adequate policies and procedures to prevent violation of applicable ANTI-BRIBERY LAWS and ANTI-MONEY LAUNDERING LAWS.

- 49.5 The CONTRACTOR represents, warrants and undertakes to comply with any ethics, anti-bribery or anti-corruption policies, as may be updated from time to time, provided by the COMPANY to the

CONTRACTOR.

50. MISCELLANEOUS

50.1 Except as expressly stated otherwise in the AGREEMENT:

- (a) the rights, duties, obligations and liabilities of the PARTIES under the AGREEMENT shall be several and not joint or collective; and
- (b) no partnership shall exist between the PARTIES by virtue of the AGREEMENT, and nothing herein shall constitute a PARTY as agent, fiduciary or trustee for the other PARTY.

50.2 The AGREEMENT may only be amended by written agreement of the PARTIES signed by authorised signatories (an “**AMENDMENT**”).

50.3 Each PARTY hereby undertakes that it will comply, and will take all necessary measures to facilitate that the other PARTY complies, with any LAW that is applicable or relevant to the performance of this AGREEMENT.

50.4 Except where expressly provided otherwise in the AGREEMENT, no delay or omission of a PARTY in exercising any right, power or privilege under the AGREEMENT shall impair or be construed as a waiver of such right, power or privilege, nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. A waiver given or consent granted by a PARTY under the AGREEMENT shall be effective only if given in writing and then only in the instance and for the purpose for which it is given. A waiver by a PARTY shall not constitute a continuing waiver and shall not prevent that PARTY from subsequently enforcing any of the provisions of the AGREEMENT.

50.5 Except where expressly provided otherwise in the AGREEMENT, the rights and remedies of a PARTY provided for in the AGREEMENT are cumulative and not exclusive of, nor do they modify or waive any rights or remedies provided by LAW.

50.6 The right of a PARTY to terminate, rescind or agree to any VARIATION or waiver or settlement under the AGREEMENT is not subject to the consent of any THIRD PARTY.

50.7 Any provision in the AGREEMENT which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the AGREEMENT. If one PARTY gives notice to the other PARTY of the possibility that any provision or part-provision of the AGREEMENT is illegal, invalid or unenforceable, the PARTIES shall within fourteen (14) DAYS negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

50.8 The AGREEMENT may be executed in any number of counterparts, each of which, when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument.

ANNEXURE 3

SCOPE OF WORK

1. INTRODUCTION

- 1.1 This ANNEXURE 3 is an AGREEMENT DOCUMENT forming part of the AGREEMENT, and shall be read with and into the AGREEMENT.
- 1.2 The PARTIES agree and acknowledge that, notwithstanding anything to the contrary set out in this ANNEXURE or any other, this ANNEXURE shall be read and applied in accordance with the order of precedence set out at Clause 1.6 of the FORM OF AGREEMENT.
- 1.3 In this ANNEXURE 3, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS.
- 1.4 For the avoidance of doubt, the Governing Law and Dispute Resolution provision of Article 46 of the GENERAL TERMS AND CONDITIONS shall apply to this ANNEXURE 3.
- 1.5 Preference to Local Manufacturers:

CONTRACTOR shall promote and give the first preference to the UAE based manufacturers for all products and equipment required for PROJECT based on a total cost of delivery to the Project site. Accordingly, preference shall be given by CONTRACTOR to UAE based manufacturing Entities (or their Agents) over Manufacturers located outside of the UAE (or their Agents).

In case manufacturers or vendors located outside of the UAE are finally shortlisted for award, CONTRACTOR will be required to provide an explanation and evidence to substantiate these findings for COMPANY approval, prior to proceeding with the purchase.

- 1.6 Mandate Fabrication activities to Local Sub Contractors:

CONTRACTOR shall perform all Fabrication activities only within the UAE. In case, they intend to engage SUBCONTRACTORS for the Fabrication activities, they shall engage only UAE based companies listed in ADNOC Approved Vendor List (AVL) / ADNOC Approved Contractor List (ACL).

In case CONTRACTOR is unable to perform the Fabrication activities in the UAE directly or indirectly, CONTRACTOR will be required to provide an explanation and evidence to substantiate these findings for COMPANY approval, prior to execute the Fabrication works outside UAE.

2. SCOPE OF WORK

- 1.1 EPC CONTRACTOR shall be responsible for multi-discipline detailed engineering, procurement, supply of equipment and material, HSE studies, Shop Fabrication, inspection and testing, transportation to site, installation, construction, demolition, pre-commissioning and commissioning, test run, PROJECT Management and support services in accordance with the AGREEMENT Articles, Exhibits and Work Package.

The project scope includes 4 packages as per following:

PACKAGE 1 DELUGE SKIDS (32 No.) UPGRADE IN HSGP

A PRE-FEED study was conducted by COMPANY to verify if the DGS requirements are fulfilled for deluge valve installations at HSGP. A detailed study revealed that to comply to DGS 1900 004 requirements a downstream isolation valve, test line and a by-pass valve with associated piping is required to be installed in existing deluge valve piping at 32 locations.

PACKAGE 2 WASTEWATER TREATMENT PUMP BUSHES LUBRICATION SYSTEM UPGRADE

Ensivel Pumps in Habshan Sulphur Granulation Plant have experienced frequent failures in the pump column - sleeve bearings.

The objective of this project is to modify pump bushes lubrication system, and additional filtration arrangement to be provided in services lines and Filtration system to be linked with DCS for close monitoring, during clogging filter pump can be stopped to avoid repeatedly failure which is leading to increase operating cost. All Pit (Granulation, RCL Building & WWTP) filtration system/ screening to be improved, by replacing existing screens with new screens with same mesh size.

PACKAGE 3 HAB-3 STABILIZER FEED CAPACITY ENHANCEMENT

The objective of this project is to carry out the EPC to divert hydrocarbon condensate from existing Unit-24 at Habshan-1 to two identical condensate stabilization Units-320 and 321 at Habshan-3 which is currently operating less than the design capacity and check the adequacy of Unit 320,321 and Unit 325 for additional condensate from Unit 24.

PACKAGE 4 HABSHAN 1/2 HAZOP & SIL RECOMMENDATIONS IMPLEMENTATIONS

During HAZOP and SIL validation of Habshan 1 and 2 Plants, several critical recommendations were identified and FEED was carried out by Engineering Consultant and recommendations are provided under the EPC tender package.

The detailed Scope of Work along with additional clarifications are attached herewith as part of RFT package.

ANNEXURE 4

COMPLETION SCHEDULE

1. INTRODUCTION

- 1.1 This ANNEXURE 4 is an AGREEMENT DOCUMENT forming part of the AGREEMENT, and shall be read with and into the AGREEMENT.
- 1.2 The PARTIES agree and acknowledge that, notwithstanding anything to the contrary set out in this ANNEXURE or any other, this ANNEXURE shall be read and applied in accordance with the order of precedence set out at Clause 1.6 of the FORM OF AGREEMENT.
- 1.3 In this ANNEXURE 4, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS.
- 1.4 For the avoidance of doubt, the Governing Law and Dispute Resolution provision of Article 46 of the GENERAL TERMS AND CONDITIONS shall apply to this ANNEXURE 4.

2. COMPLETION SCHEDULE

PACKAGE-1: commissioning and PAC issuance by 30-APRIL-2026

PACKAGE-2: commissioning and PAC issuance by 30-APRIL-2026

PACKAGE-3:

Option-A: utilization of Hab-1 shutdown in **Oct/Nov-2024** and project commissioning in Hab-3 shutdown in **Feb-2026**

Option-B: utilization of Hab-6 shutdown in **Feb-2026** and project commissioning in Hab-1 shutdown in **Nov-2026**

CONTRACTOR shall - depending on their readiness - utilize either options for package 3 above at **no additional cost to COMPANY**

PACKAGE-4: All pre-shutdown construction activities shall be completed prior to the following shutdowns

- a. Hab-1 scope shall be commissioned during HAB-1 **October-2024** shutdown OR during HAB-1 **Dec-2026** shutdown depending on CONTRACTOR readiness, at no additional cost to COMPANY
- b. Hab-2 scope shall be commissioned during HAB-2 **November-2025** shutdown

As-built EPC dossier/hand over package shall be handed over to COMPANY within 2 weeks from commissioning of the full scope associated with each package

AGREEMENT END DATE: 30-MARCH-2027

ANNEXURE 5

PRICING SCHEDULE

1. INTRODUCTION

- 1.1 This ANNEXURE 5 is an AGREEMENT DOCUMENT forming part of the AGREEMENT, and shall be read with and into the AGREEMENT.
- 1.2 The PARTIES agree and acknowledge that, notwithstanding anything to the contrary set out in this ANNEXURE or any other, this ANNEXURE shall be read and applied in accordance with the order of precedence set out at Clause 1.6 of the FORM OF AGREEMENT.
- 1.3 In this ANNEXURE 5, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS.
- 1.4 For the avoidance of doubt, the Governing Law and Dispute Resolution provision of Article 46 of the GENERAL TERMS AND CONDITIONS shall apply to this ANNEXURE 5.

2. PRICING SCHEDULE

Refer to attachment “ANNEXURE-5 - Pricing Schedule” for Preamble and Pricing Schedule

ANNEXURE 6

COMPANY PROVIDED FACILITIES

1. INTRODUCTION

- 1.1 This ANNEXURE 6 is an AGREEMENT DOCUMENT forming part of the AGREEMENT, and shall be read with and into the AGREEMENT.
- 1.2 The PARTIES agree and acknowledge that, notwithstanding anything to the contrary set out in this ANNEXURE or any other, this ANNEXURE shall be read and applied in accordance with the order of precedence set out at Clause 1.6 of the FORM OF AGREEMENT.
- 1.3 In this ANNEXURE 6, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS.
- 1.4 For the avoidance of doubt, the Governing Law and Dispute Resolution provision of Article 46 of the GENERAL TERMS AND CONDITIONS shall apply to this ANNEXURE 6.

2. COMPANY PROVIDED FACILITIES

COMPANY shall provide a bilingual (Arabic & English) “TO WHOM IT MAY CONCERN” letter to assist CONTRACTOR in securing necessary approvals, licences, visas, work permits, security passes and other documentation in connection with execution of work under the AGREEMENT, including but not limited to access and egress of personnel and equipment. The provision of such Letters of Assistance shall not be construed in any manner so as to hold COMPANY liable for any delays in obtaining the said approvals, licences, visas, work permits, security passes and documentation or for not obtaining the same for any reason whatsoever. All requests for Letters of Assistance shall be submitted to COMPANY online with necessary details and back-up at least twenty (21) working days in advance. Immediately upon award, COMPANY shall provide the authorised login and password to the CONTRACTOR for applying for Letters of Assistance online.

COMPANY shall also provide Customs Clearance Authorisation Letters addressed to the Abu Dhabi Customs Authorities to enable CONTRACTOR to import goods intended for permanent incorporation into the WORK into the Emirate of Abu Dhabi without payment of customs duty. All requests for Customs Clearance Authorisation Letters shall be submitted to COMPANY with necessary details and back-up at least ten (10) working days in advance. Customs Clearance Authorisation Letters will not be issued if imports into the U.A.E. are made through a port other than a port in the Emirate of Abu Dhabi, and CONTRACTOR shall be liable for payment of customs duty levied if any in such cases. In addition, customs duty in connection with import of temporary items (not intended for permanent incorporation in the WORK) as well as CONTRACTOR’s construction equipment shall be to CONTRACTOR’s account. For the avoidance of doubt, all taxes and duties in the course of customs clearance, other than customs duty, shall be to CONTRACTOR’s account in all cases.

Unless otherwise specifically provided for elsewhere in the AGREEMENT, COMPANY will not provide any other facility or assistance to CONTRACTOR.

ANNEXURE 7

INSURANCE REQUIREMENTS

1. INTRODUCTION

- 1.1 This ANNEXURE 7 is an AGREEMENT DOCUMENT forming part of the AGREEMENT, and shall be read with and into the AGREEMENT.
- 1.2 The PARTIES agree and acknowledge that, notwithstanding anything to the contrary set out in this ANNEXURE or any other, this ANNEXURE shall be read and applied in accordance with the order of precedence set out at Clause 1.6 of the FORM OF AGREEMENT.
- 1.3 In this ANNEXURE 7, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS.
- 1.4 For the avoidance of doubt, the Governing Law and Dispute Resolution provision of Article 46 of the GENERAL TERMS AND CONDITIONS shall apply to this ANNEXURE 7.

2. INSURANCE REQUIREMENTS

ANNEXURE 7 – Refer to Attachment

ANNEXURE 8

SECURITIES AND FORMS

1. INTRODUCTION

- 1.1 This ANNEXURE 8 is an AGREEMENT DOCUMENT forming part of the AGREEMENT, and shall be read with and into the AGREEMENT.
- 1.2 The PARTIES agree and acknowledge that, notwithstanding anything to the contrary set out in this ANNEXURE or any other, this ANNEXURE shall be read and applied in accordance with the order of precedence set out at Clause 1.6 of the FORM OF AGREEMENT.
- 1.3 In this ANNEXURE 8, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS.
- 1.4 For the avoidance of doubt, the Governing Law and Dispute Resolution provision of Article 46 of the GENERAL TERMS AND CONDITIONS shall apply to this ANNEXURE 8.

2. SECURITIES AND FORMS

ANNEXURE 8 – Refer to Attachment

ANNEXURE 9**CONTRACTOR'S SUBMISSIONS****1. INTRODUCTION**

- 1.1 This ANNEXURE 9 is an AGREEMENT DOCUMENT forming part of the AGREEMENT, and shall be read with and into the AGREEMENT.
- 1.2 The PARTIES agree and acknowledge that, notwithstanding anything to the contrary set out in this ANNEXURE or any other, this ANNEXURE shall be read and applied in accordance with the order of precedence set out at Clause 1.6 of the FORM OF AGREEMENT.
- 1.3 In this ANNEXURE 9, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS.
- 1.4 For the avoidance of doubt, the Governing Law and Dispute Resolution provision of Article 46 of the GENERAL TERMS AND CONDITIONS shall apply to this ANNEXURE 9.

2. CONTRACTOR'S SUBMISSIONS

- 2.1 Agreement shall contain full details of CONTRACTOR's submission which shall also include the CONTRACTOR's approach towards giving preference to local manufacturer.
- 2.2 CONTRACTOR to provide following details as a minimum with respect to local manufacturers:
 - (a) Name of Local Manufacturer (from ADNOC approved AVL / ACL list) from which CONTRACTOR intends to source the GOODS / SERVICES
 - (b) Any deviation from point no. (a) above require complete justification with supporting documentation submitted to COMPANY for acceptance or otherwise.

ANNEXURE 10

PROJECT EXECUTION REQUIREMENTS

1. INTRODUCTION

- 1.1 This ANNEXURE 10 is an AGREEMENT DOCUMENT forming part of the AGREEMENT, and shall be read with and into the AGREEMENT.
- 1.2 The PARTIES agree and acknowledge that, notwithstanding anything to the contrary set out in this ANNEXURE or any other, this ANNEXURE shall be read and applied in accordance with the order of precedence set out at Clause 1.6 of the FORM OF AGREEMENT.
- 1.3 In this ANNEXURE 10, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS.
- 1.4 For the avoidance of doubt, the Governing Law and Dispute Resolution provision of Article 46 of the GENERAL TERMS AND CONDITIONS shall apply to this ANNEXURE 10.
- 1.5 Preference to Local Manufacturers:

CONTRACTOR shall promote and give the first preference to the UAE based manufacturers for all products and equipment required for PROJECT based on a total cost of delivery to the Project site. Accordingly, preference shall be given by CONTRACTOR to UAE based manufacturing Entities (or their Agents) over Manufacturers located outside of the UAE (or their Agents).

In case manufacturers or vendors located outside of the UAE are finally shortlisted for award, CONTRACTOR will be required to provide an explanation and evidence to substantiate these findings for COMPANY approval, prior to proceeding with the purchase.

- 1.6 Mandate Fabrication activities to Local Sub Contractors:

CONTRACTOR shall perform all Fabrication activities only within the UAE. In case, they intend to engage SUBCONTRACTORS for the Fabrication activities, they shall engage only UAE based companies listed in ADNOC Approved Vendor List (AVL) / ADNOC Approved Contractor List (ACL).

In case CONTRACTOR is unable to perform the Fabrication activities in the UAE directly or indirectly, CONTRACTOR will be required to provide an explanation and evidence to substantiate these findings for COMPANY approval, prior to execute the Fabrication works outside UAE.

2. PROJECT EXECUTION REQUIREMENTS

CONTRACTOR shall fully comply with the EPC Scope of Work, COMPANY tender phase clarifications, standards, and requirements as detailed in the package-wise EPC SOW.

The requirements are attached with this RFT Package.

ANNEXURE 11

COMPLETION AND ACCEPTANCE REQUIREMENTS

1. INTRODUCTION

- 1.1 This ANNEXURE 11 is an AGREEMENT DOCUMENT forming part of the AGREEMENT, and shall be read with and into the AGREEMENT.
- 1.2 The PARTIES agree and acknowledge that, notwithstanding anything to the contrary set out in this ANNEXURE or any other, this ANNEXURE shall be read and applied in accordance with the order of precedence set out at Clause 1.6 of the FORM OF AGREEMENT.
- 1.3 In this ANNEXURE 11, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS.
- 1.4 For the avoidance of doubt, the Governing Law and Dispute Resolution provision of Article 46 of the GENERAL TERMS AND CONDITIONS shall apply to this ANNEXURE 11.

2. COMPLETION AND ACCEPTANCE REQUIREMENTS

Annexure 11 – Refer to Attachment.

ANNEXURE 12

HSE REQUIREMENTS

1. INTRODUCTION

- 1.1 This ANNEXURE 12 is an AGREEMENT DOCUMENT forming part of the AGREEMENT, and shall be read with and into the AGREEMENT.
- 1.2 The PARTIES agree and acknowledge that, notwithstanding anything to the contrary set out in this ANNEXURE or any other, this ANNEXURE shall be read and applied in accordance with the order of precedence set out at Clause 1.6 of the FORM OF AGREEMENT.
- 1.3 In this ANNEXURE 12, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS.
- 1.4 For the avoidance of doubt, the Governing Law and Dispute Resolution provision of Article 46 of the GENERAL TERMS AND CONDITIONS shall apply to this ANNEXURE 12.

2. HSE REQUIREMENTS

CONTRACTOR shall fully comply with the all latest ADNOC HSE standards, guidelines, and procedures as per the details attached herewith.

The details are attached.

ANNEXURE 13

ICV IMPROVEMENT PLAN

1. INTRODUCTION

- 1.1 This ANNEXURE 13 is an AGREEMENT DOCUMENT forming part of the AGREEMENT, and shall be read with and into the AGREEMENT.
- 1.2 The PARTIES agree and acknowledge that, notwithstanding anything to the contrary set out in this ANNEXURE or any other, this ANNEXURE shall be read and applied in accordance with the order of precedence set out at Clause 1.6 of the FORM OF AGREEMENT.
- 1.3 In this ANNEXURE 13, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the GENERAL TERMS AND CONDITIONS.
- 1.4 For the avoidance of doubt, the Governing Law and Dispute Resolution provision of Article 46 of the GENERAL TERMS AND CONDITIONS shall apply to this ANNEXURE 13.

2. ICV IMPROVEMENT PLAN

Bidder shall submit ICV Improvement Plan as part of the Priced Commercial Bid. The same shall be included as part of the Agreement. Application of ICV payment is provided hereunder:

A. Application Process:

- 1. In each submitted invoice, the CONTRACTOR shall claim 95% of the eligible amount and the remaining 5% shall be reserved as the ICV PAYMENT.

Note –The ICV Payment deduction shall not be applicable for Provisional Sums in the Agreement
- 2. To claim the ICV PAYMENT, in accordance with the applicable articles of the GENERAL TERMS AND CONDITIONS, the CONTRACTOR shall submit an invoice once annually for the annual portion of the ICV PAYMENT calculated on a pro-rata basis based on actual growth achieved in ICV% to reach ANNUAL ICV TARGET achieved, and the overall value of the invoices submitted by the CONTRACTOR and approved by COMPANY in the relevant year.
- 3. If any amounts relating to the ICV PAYMENT for the previous year were not paid as a result of the CONTRACTOR’s failure to achieve the ANNUAL ICV TARGET but the same target was partially or fully achieved in the current year, the CONTRACTOR may invoice for such amounts on a pro-rata basis or in full, together with any amounts due for achieving the ANNUAL ICV TARGET for the current year, in accordance with the process described in point 2 above.
- 4. If any of the ANNUAL ICV TARGETS were not achieved at the AGREEMENT completion or if these were achieved only partially, the COMPANY will respectively either (i) not pay the ICV PAYMENT, or (ii) pay the ICV PAYMENT on a pro-rata basis based on the achieved percentage and the remaining amounts will be retained by the COMPANY.

B. Calculation Formula:

$\frac{\text{ICV\% Actual Growth for the Agreement Year}}{\text{ICV\% Planned Growth for the Agreement Year}}$	x	5% of the total gross value of paid invoices in the Agreement Year
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Note: Each ICV invoice should be supported by the latest Company level ICV Certificate of the Contractor.