

Subcontract Agreement 116186/017
Shell and Core works
for the
Al Reem Integrated Health Care Center
(Hereinafter referred to as the “Subcontract”)

Date: 21st January 2019

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THIS SUBCONTRACT is made on the Signature Date.

BETWEEN

- (1) **VAMED Emirates LLC**, P.O. Box 109038, Abu Dhabi, UAE (**Contractor**); and
- (2) **United Engineering Construction (UNEC)**, having its registered address at Al Fattan Plaza, Office 209; PO Box 7510; Dubai, UAE (**Subcontractor**).

RECITALS

1. BLUE APPLE PROPERTY MANAGEMENT L.L.C. (hereinafter referred to as the “Employer”) is the developer of the Al Reem Island Integrated Health Care Center in Abu Dhabi.
2. The Employer has entered into a Turnkey Design & Construct Contract dated December 22, 2015 (hereinafter referred to as the “**Main Contract**”) with VAMED ENGINEERING GmbH (hereinafter referred to as the “**Main Contractor**”) for the design, construction and equipping of the Al Reem Integrated Health Care Center (hereinafter referred to as the “**Project**”).
3. The Main Contractor has engaged the Contractor for the performance of some works within the Project.
4. The Contractor has accepted the Subcontractor’s offer for the design (to the extent required by the Subcontract), execution and completion of the Works (and the remedy of any defects therein) on the terms set out in this Subcontract.
5. This Subcontract sets out the terms and conditions upon which the Contractor and the Subcontractor will perform their respective obligations in relation to the Works.

The Contractor and the Subcontractor agree as follows:

1. Defined terms & Interpretation

1.1 Definitions

In this Subcontract:

Affiliate means, in relation to any party, any other party that directly or indirectly controls or is controlled by or is under common control with such party. For the purposes of this definition ‘control’ means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other party, whether through the ownership of voting shares, by contract or otherwise, and ‘controls’ and ‘controlled’ shall be interpreted accordingly.

Authority means any local, regional, territorial, free zone, municipal government, ministry, government department, commission, board, bureau, agency, instrumentality, executive, judicial or administrative body having jurisdiction over the Works, the Subcontractor, the Contractor or any of their Affiliates.

Beneficiaries is defined in the Subcontract Particulars.

Buildability Issue means any ambiguity, inconsistency, omission or discrepancy in or between the Contractor’s Requirements and any of the Accepted Design Documents that result in the Works not being able to be constructed as designed or which would delay the Subcontractor or cause it to incur additional Costs in order to construct the Works in accordance with the Subcontract, absent such issue.

Commencement Date is defined in Clause 9.1.

Conditions Precedent is defined in the Subcontract Particulars.

Subcontract means this agreement, comprising the documents listed in Clause 1.5(a).

Subcontract Particulars means the completed pages entitled ‘Subcontract Particulars’ which are immediately following the signature pages hereto.

Subcontract Price means the lump sum, fixed price referred to in Clause 14.1 (The Subcontract Price).

Subcontractor's Documents means the calculations, computer programs and other software, as-built drawings, improvements or adjustments thereto, Records, manuals, models and other documents of a technical nature (if any) supplied by the Subcontractor under the Subcontract.

Subcontractor Permits means all existing and future Permits (excluding the Contractor Permits) which are required for the design (to the extent required by the Subcontract), execution and completion of the Works, the remedying of any defects and the performance of the Subcontractor's other obligations under the Subcontract, including those Permits required by local construction practices or required pursuant to applicable Law from, by or with an Authority.

Subcontractor's Equipment means all apparatus, machinery, vehicles and other things required for the design (to the extent required by the Subcontract), execution and completion of the Works and the remedying of any defects. However, the Subcontractor's Equipment excludes Temporary Works, equipment, Plant, Materials and any other things intended to form or forming part of the Permanent Works.

Subcontractor's Personnel means the Subcontractor's Representative and all other personnel whom the Subcontractor utilises on Site, who may include the staff, labour and other employees of the Subcontractor and of each sub-subcontractor; and any other personnel assisting the Subcontractor in the design (to the extent required by the Subcontract), execution and completion of the Works.

Subcontractor's Representative means the person named by the Subcontractor in the Subcontract Particulars or appointed from time to time by the Subcontractor and approved by the Subcontractor under Clause 4.4 (Subcontractor's Representative), who acts on behalf of the Subcontractor.

Subcontractor's Site Assumptions means the assumptions set out in paragraph 1.2.3 of Annexure 3 (CSA Scope of Works & Quality Description).

Cost means all direct expenditure reasonably and necessarily incurred by the Subcontractor in performing the Works in accordance with the Subcontract, whether on or off the Site, excluding overheads, mark-up, margin, profit, loss of profit or any expenditures or any other Disallowed Costs.

day means a calendar day and **year** means a calendar year.

Dealings is defined in Clause 1.6(a).

Defects Notification Period means the period stated in the Subcontract Particulars (with any extension under Clause 12.3 (Extension of Defects Notification Period)).

Design Documents means any and all surveys, investigations, enquiries, studies, reports, plans, drawings, sketches, details, sections, schedules, diagrams, elevations, schedules of levels, setting out dimensions, specifications, methodologies, calculations, bills of quantities, schedules of work, patterns, models, computer generated data, images, programmes and software, as-built drawings, operation and maintenance manuals and any and all other technical and design related information, data, documents and/or media which it is necessary for the Subcontractor to produce or cause to be produced in order to define the Works and comply with the Subcontractor's obligations in accordance with the Subcontract and includes the Concept Design, the Schematic Design and the Detailed Design.

Submittal Procedure means the submittal procedure comprised in Schedule 3 (Submittal Procedure).

Disallowed Costs means any expenditures, costs or losses to the Subcontractor arising out of or in connection with (a) making good any defect, except where such defect has arisen as a result of the negligence, breach or default of the Contractor, (b) any breach of the Subcontract by the Subcontractor, (c) any fraud, illegal or criminal activity, gross misconduct, misrepresentation, negligence, or other tortious act or omission and/or strict liability by the Subcontractor or its subcontractors or any of their respective employees, servants, agents, sub-subcontractors and/or suppliers, (d) the Subcontractor, an Affiliate of the Subcontractor or a subcontractor or any of their respective employees, servants or agents committing a Prohibited Act.

Emergency means a situation or circumstance in relation to the Works, which, in the bona fide opinion of the Contractor or the Contractor's Representative, determined having regard to

the facts then known to the Contractor or the Contractor's Representative, constitutes a serious threat to, or causes or will cause material damage or material disruption or injury to:

- (a) the health or safety of persons;
- (b) the environment;
- (c) private or public property; or
- (d) the safe and secure operation of the Works.

Experienced Subcontractor means a Subcontractor having expertise and experience in constructing works of similar scope, complexity, purpose and size to the Works;

Contractor's Equipment means the apparatus, machinery and vehicles (if any) made available by the Contractor for the use of the Subcontractor in the design (to the extent required by the Subcontract), execution and completion of the Works, as stated in the Contractor's Requirements, but does not include Plant which has not been Taken Over by the Contractor / Employer.

Contractor Permits means those Permits (excluding the Subcontractor Permits) which are required pursuant to applicable Law from, by or with an Authority for the Project and which are expressly stated in the Contractor's Requirements as having been (or being) obtained by the Contractor.

Contractor's Personnel means the Contractor's Representative, the assistants referred to in Clause 3.6 (Delegation by the Contractor's Representative) and all other staff, labour and other employees of the Contractor and of the Contractor's Representative, and any other personnel notified to the Subcontractor, by the Contractor or the Contractor's Representative, as Contractor's Personnel.

Contractor's Representative means the person appointed by the Contractor to act as the Contractor's Representative for the purposes of the Subcontract and named in the Subcontract Particulars, or other person, appointed from time to time by the Contractor and notified to the Subcontractor under Clause 3.8 (Replacement of the Contractor's Representative).

Contractor's Requirements means the Contractor's objectives and requirements for the Works, which are set out in each of Schedule 1 (Bill of Quantities), Annexure 2 (Design Study (Tender)) and Annexure 4 (Mechanical & Electrical (M&E) (Specifications)) and any additions and/or modifications made to such documents(s) by the Contractor in accordance with the Subcontract.

Final Payment Certificate means the payment certificate issued under Clause 14.12 (Issue of Final Payment Certificate).

Final Statement means the statement defined in Clause 14.10 (Application for Final Payment Certificate).

Financiers means any providers of debt financing to the Employer (or an Affiliate of the Employer) under any Financing Agreements from time to time and may, where the context permits, include an agent or trustee of such providers.

Financing Agreements means any and all senior and mezzanine loan agreements, notes, bonds, indentures, security agreements, direct agreements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust, credit agreements, note or bond purchase agreements, participation agreements and other documents entered into by the Employer (or an Affiliate of the Employer) from time to time relating to the financing or refinancing of the Project including any modifications, supplements, extensions, renewals and replacements of that financing or refinancing but excluding shareholder loans and equity investments.

Force Majeure is defined in Clause 19 (Force Majeure).

Good Industry Practice means those practices, methods of working and standards which are generally exercised and adhered to by international contractors experienced in carrying out works of a similar size, type, nature and complexity to the Works.

Goods mean Subcontractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

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

Insolvency Event means, in relation to a party, the occurrence of any of the following events: insolvency, inability to pay its debts as they fall due, admission of its inability to pay its debts, general assignment, arrangement or composition with or for the benefit of its creditors, commencement of insolvency proceedings (including rehabilitation or restructuring, whether instituted by itself or others against it) which, in the case of any proceeding brought by another party against it, has not been dismissed within thirty (30) days, passing of a resolution for its winding-up, official management, liquidation or dissolution (other than pursuant to a consolidation, amalgamation or merger), appointment of an administrator, provisional liquidator, receiver or similar official over its assets or any similar

Interim Payment Certificate means a payment certificate issued under Clause 14 (Subcontract Price and Payment), other than the Final Payment Certificate.

LCIA Rules means the Rule of Arbitration (2014) issued by the London Court of International Arbitration.

Laws means all national (or state) legislation, statutes, ordinances, laws, treaties, decrees, codes, resolutions, acts, rules, orders, directives, regulations, standards, decisions, judgments, injunctions, authorizations, by-laws and any other legal requirements of any legally constituted public Authority.

Latent Defect means any defect in the Permanent Works attributable to:

- (a) the construction of the Permanent Works; or
- (b) equipment, Plant, Materials or workmanship not being in accordance with the Subcontract, Laws or Permits,

which:

- (c) results in the full or partial collapse of the Permanent Works, and/or
- (d) threatens the stability or safety of the Permanent Works.

Main Works Package means the works as set out in Annexures 3 and 4.

Major Sub-Subcontractor means a subcontractor listed in the Subcontract Particulars as being a 'Major subcontractor of the Subcontractor'.

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

Minimum Payable Amount has the meaning given to it in Clause 14.6 (c).

Other Subcontractors means any person appointed to undertake works for the Contractor / Employer (other than the Works) in or around the Site, and includes those persons as set out in the Subcontract Particulars.

Party means the Contractor or the Subcontractor, as the context requires.

Payment Certificate means a payment certificate issued under Clause 14 (Subcontract Price and Payment).

Payment Milestone means a milestone for payment as set out in Annexure 6.

Performance Certificate means the certificate issued under Clause 12.8 (Performance Certificate).

Performance Security means the security (or securities, if any) under Clause 4.3 (Performance Security).

Permanent Works means the permanent works to be executed and completed by the Subcontractor under the Subcontract and handed over to the Contractor in accordance with the Subcontract.

Permits means all permits, licenses, consents, authorisations, approvals, exemptions, clearances, permissions, notifications, applications, filings, registrations, lodgements, deeds, certificates, directives, declarations, no objection certificates, grants and similar decisions of any kind required by applicable Laws relating to the design (to the extent required by the Subcontract), execution and completion of the Works and the remedying of any defects in the Works, including Contractor Permits and Subcontractor Permits (as applicable).

Plant means the apparatus and machinery intended to form or forming part of the Permanent Works.

Prohibited Act means any one or more of the following:

- (a) offering or giving to, or accepting from, (or agreeing to offer, give or accept) directly or indirectly any person retained or employed by or on behalf of the Contractor, an Affiliate of the Contractor, or any Authority any bribe, gift, gratuity, commission or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or agreeing to do or not do the same) directly or indirectly any act in relation to the obtaining or performance of the Subcontract or any other agreement or arrangement relating to the Works; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to the Subcontract or any other agreement or arrangement relating to the Works; or
- (b) acting fraudulently or dishonestly, including committing any offence under any Laws relating to fraudulent or dishonest acts, or defrauding or attempting to defraud or conspiring to defraud the Contractor, an Affiliate of the Contractor or any Authority.

Prohibited Materials means any Materials or Plant which:

- (a) affect or put at risk the health or safety of any person who may come into contact with the Permanent Works (whether during their construction or after their completion); or
- (b) either by themselves or as a result of their use in a particular situation or in combination with other Materials or Plant, would or are likely to have the effect of reducing the normal life expectancy or performance of any other material or structure in which they are incorporated or to which they are affixed.

Project means the project identified in the Subcontract Particulars.

Records includes all books, construction logs, records, daily reports, accounts, schedules, health and safety records, payroll records, receipts, statements, electronic files, correspondence, documents, recordings, agreements, notes, minutes of meetings, site diaries and site supervisors' reports, invoices, receipts and vouchers, timesheets, payroll information subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes), original bid estimates, estimating worksheets, variation files, information detailing cash, trade discounts and volume rebates earned, insurance rebates and dividends.

Retention Period is defined in Clause 3.4(a).

Retention Money means the accumulated retention moneys which the Contractor retains in accordance with Clause 14.7 – Retention

Samples Programme means the programme for the submission and review of samples of Materials and relevant information (including the batching, sequence and anticipated volume of samples involved) developed in accordance with Clause 8.2 (Samples) and approved by Contractor's Representative.

Scheduled Commencement Date is defined in the Subcontract Particulars.

Separable Portion means a part of the Works specified in the Subcontract Particulars and Schedule 2 (Separable Portions) as a Separable Portion or which is determined as a Separable Portion in accordance with Clause 4.22 (Separable Portions).

Signature Date means the date on which the Subcontract was executed by the Contractor and the Subcontractor.

Site means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Subcontract as forming part of the Site or which are instructed as such by the Contractor's Representative.

Site Conditions means any conditions in relation to the Site including the form and nature of the Site, including ground surface conditions, physical obstructions and pollutants, sub-surface geology and conditions and all other physical conditions and characteristics on, above or below the surface which may affect the performance by the Subcontractor of its obligations under this Subcontract.

Statement means a statement submitted by the Subcontractor as part of an application, under Clause 14 (Subcontract Price and Payment), for a Payment Certificate.

Sub-Subcontractor means any person appointed by the Subcontractor as a subcontractor (including a Major Sub-Subcontractor, or a supplier or manufacturer), for a part of the Works and the legal successors in title to each of these persons and any subcontractor, supplier or manufacturer of each of these persons.

Subcontracts means the subcontract agreements concluded between the Subcontractor and its Sub-Subcontractors.

Taken Over means the stage in the execution and completion of the whole of the Works, or the relevant Separable Portion (as the case may be), when:

- (a) the Permanent Works are complete in accordance with the requirements of the Subcontract except for minor outstanding work and defects which (individually and collectively):
 - (i) will not affect the use or safety of the Works or a Separable Portion for their intended purpose;
 - (ii) can be completed or rectified promptly by the Subcontractor without causing inconvenience or nuisance to the Contractor or any third parties; and
 - (iii) do not cause any restriction under any Law, Permit or under any direction of any Authority for the use and occupation of the Permanent Works;
- (b) all Tests on Completion have been successfully performed and duly certified reports of such tests have been forwarded to the Contractor in accordance with Clause 10 (Tests on Completion) and the Contractor or the Contractor's Representative have endorsed the Subcontractor's test certificate in accordance with Clause 10 (Tests on Completion);
- (c) all other documents and information specified in this Subcontract and in the Subcontract Particulars are delivered to the Contractor's Representative and all documents required for the use, operation and maintenance of the Permanent Works have been provided to the Contractor and all other completion certificates and occupation and usage Permits and documentation required by Law or by any Authority;
- (d) the Subcontractor has cleaned, refurbished, reconditioned and otherwise made good any wear and tear of Plant which the Subcontractor may have run or operated prior to date which the Contractor issues the Taking-Over Certificate;
- (e) the Permanent Works have been cleaned throughout to a standard suitable for immediate use and/or occupation (including cleaning of interior and exterior surfaces), and all debris, Subcontractor's Equipment, rubbish, wreckage, Temporary Works, waste and surplus material have been removed from the Site;
- (f) all applicable Laws regarding the use and occupation of the Works or relevant Separable Portion and all Permits to be obtained by the Subcontractor have been obtained and passed onto the Contractor; and
- (g) any other stipulations identified in the Subcontract as being pre-requisites of completion and Taking Over have been satisfied,

and the expressions '**Take Over**', '**Taking Over**', '**is Taken Over**' and '**are Taken Over**' mean that a Taking-Over Certificate has been issued in accordance with Clause 11.1 (Taking Over of the Works and Separable Portions);

Taking-Over Certificate means a certificate issued under Clause 11 (Contractor's Taking Over) certifying that the Works or a Separable Portion (as the case may be) have reached the stage of being Taken Over.

Temporary Works means all temporary works of every kind (other than Subcontractor's Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects and all other things which the Subcontractor must do in order to fulfil its obligations under the Subcontract.

Tests on Completion means the tests which are specified in the Subcontract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 10 (Tests on Completion) before the Works or a Separable Portion (as the case may be) are Taken Over by the Contractor.

Time for Completion means the date, or period of time calculated from the Commencement Date, for completing the Works or a Separable Portion (as the case may be) under Clause 9.2 (Time for Completion), as stated in the Subcontract Particulars (with any extension under Clause 9.4 (Extension of Time for Completion)).

UAE Civil Code means the United Arab Emirates Civil Code promulgated under Federal Law No. 5 of 1985 relating to Civil Transactions.

Variation means any change to the Contractor's Requirements, the Works described in Clause 13.1 (Right to Vary), which is instructed as a variation by the Contractor under Clause 13 (Variations and Adjustments).

Variation Order has the meaning set forth in Clause 13.1 (Right to Vary).

Works mean all works to be carried out by the Subcontractor in accordance with the Subcontract, including the execution, administration and completion of the Permanent Works and the Temporary Works (but shall not include any work set out in Annexure 7 (List of Exclusions)).

1.2 Interpretation

- (a) In the Subcontract, except where the context requires otherwise:
 - (i) words indicating one gender include all genders;
 - (ii) words indicating the singular also include the plural and words indicating the plural also include the singular;
 - (iii) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
 - (iv) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
 - (v) references to the word "including" or "includes" means "including, but not limited to";
 - (vi) if a period of time is specified and commences on the day on which an event occurs, then the period of time shall be calculated exclusive of the day on which that event occurred;
 - (vii) a reference to any Law includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any substituted legislation issued under, that Law;
 - (viii) a reference to specific standards, codes of practice and guidelines includes any modification, supplement and any substitution of such standards, codes of practice and guidelines;
 - (ix) unless the context otherwise applies, a reference to a Clause is to a Clause of this Subcontract and a reference to a Schedule and an Annexure is to a Schedule and an Annexure to this Subcontract;
 - (x) a reference to a person includes, where appropriate, an individual, an unincorporated body of persons or association, a firm, partnership, joint venture, trust, a company, corporation or other body corporate or Authority;
 - (xi) a reference to a specific Authority includes any successor to such Authority which takes over the function or responsibilities of such Authority; and
 - (xii) a reference to a specific agreement includes any permitted modification, supplement and substituted agreement.

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- (b) The marginal words and other headings shall not be taken into consideration in the interpretation of this Subcontract.

1.3 Communications

- (a) Wherever this Subcontract provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:
 - (i) transmitted using any of the agreed systems of electronic transmission as stated in the Subcontract Particulars. Such communications are deemed received on the date of notification specified by the electronic transmission system; and
 - (ii) delivered in hard copy format, by hand, to the Contractor's office on the Site or other address as advised by the Contractor. Two (2) copies of each document are required with any drawings produced in both their original size and in A3 format. All documents shall be suitably collated and folded to A4 size.
- (b) In the event the agreed systems of electronic transmission as stated in the Subcontract Particulars are unavailable, then these communications shall be:
 - (i) in writing and delivered by hand or sent by courier (in which case service is deemed against receipt), or transmitted by facsimile (in which case service is deemed on printing of a successful transmission report); and
 - (ii) delivered, sent or transmitted to the address for the recipient's communications as stated in the Subcontract Particulars,however:
 - (iii) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (iv) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.
- (c) Unless expressly stated otherwise in this Subcontract, approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed by the Subcontractor or the Contractor. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Contractor's Representative, a copy shall be sent to the Contractor's Representative or the other Party, as the case may be.

1.4 Law and Language

- (a) The Subcontract shall be governed by and construed in accordance with the Laws of the Emirate of Abu Dhabi and the Federal Laws of the United Arab Emirates as applicable in the Emirate of Abu Dhabi.
- (b) The language for communications shall be that stated in the Subcontract Particulars.

1.5 Priority of Documents

- (a) The following documents are deemed to form and shall be read and construed as part of the Subcontract:
 - (i) the Subcontract Particulars;
 - (ii) Clauses 1 (Defined terms & Interpretation) to 21 (Miscellaneous Provisions) (inclusive);
 - (iii) the Contractor's Requirements;
 - (iv) the Design Documents, Tender Schedules and Addenda; and
 - (v) the remaining Schedules and Annexures.
- (b) The documents forming the Subcontract are to be taken as mutually explanatory of one another and shall be read as a whole. For the purposes of interpretation, the priority of documents forming the Subcontract shall be in accordance with the descending order of priority of documents listed in Clause 1.5(a).

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- (c) If either Party discovers an ambiguity, inconsistency or discrepancy in or between the documents forming the Subcontract, that Party shall immediately inform the Contractor's Representative who shall issue any necessary clarification or instruction which shall be implemented by the Subcontractor without delay.
 - (d) The Subcontractor shall not be entitled to any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price or any additional Costs arising from or in relation to any such ambiguity, inconsistency or discrepancy in or between the documents forming the Subcontract or any clarification or instruction issued under Clause 1.5(c).
 - (e) Notwithstanding the priority of documents listed in Clause 1.5(a), if there is any ambiguity, inconsistency, omission or discrepancy in or between the documents forming the Subcontract in regard to the obligations or requirements for the standard or quality of work, then the higher or more onerous obligation or requirement upon the Subcontractor prevails at its cost.

1.6 Entire Agreement

- (a) The Subcontract constitutes the entire agreement between the Parties with respect to the subject matter of the Subcontract and supersedes all prior arrangements, statements, representations, communications, negotiations, agreements and contracts (whether written or oral) made between or entered into by the Parties prior to the date of the Subcontract (**Dealings**).
- (b) Neither Party shall seek to rely on any Dealings other than those that are expressly contained in the Subcontract.

1.7 Assignment

- (a) The Subcontractor shall not assign, novate or transfer the whole or any part of the Subcontract or any benefit, right, interest or any obligation of the Subcontractor under the Subcontract.
- (b) The Contractor may assign, and the Subcontractor hereby consents to the assignment of, the whole or any part of the Contractor's benefit, right or interest under the Subcontract to any third party including any Affiliate of the Contractor, Employer and any Beneficiary.

The Contractor may novate or transfer, and the Subcontractor hereby consents to the novation or transfer of, the whole or any part of the Contractor's obligations under the Subcontract to any Affiliate of the Contractor, Employer, any Beneficiary or any third party. The Contractor shall notify the Subcontractor about the effectively executed novation or transfer, however, the consent of the Subcontractor for any future novation / transfer is granted with the signing of the present Subcontract without any limitations and such notification (or any other document) is not a pre-requisite to the effectiveness of the novation described in this Clause 1.7 (Assignment). In the event the Contractor requests the conclusion of the relevant novation agreement, the Subcontractor shall enter into the novation agreement according to the form set out in Annexure 15 (Forms of Novation Agreement), however, the Subcontractor acknowledges that the execution of such novation agreement is a formality only and is not a pre-requisite to the effectiveness of the novation described in this Clause 1.7.

1.8 Care and Supply of Documents

- (a) The Contractor transfers to the Subcontractor 1 copy of the Design Documents (if relevant) in the volumes required for the performance of the Works under the Subcontract and within the reasonable terms in order to allow the Subcontractor to perform the Works in compliance with the Time for Completion and Working Programme as per Annexure 5.
- (b) The Subcontractor shall keep, on the Site, a copy of the Subcontract, publications named in the Contractor's Requirements, the Design Documents and records of all Variation Orders and other communications given or received under the Subcontract. The Contractor's Personnel shall have the right of access to all these documents at all reasonable times.
- (c) If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party

and the Contractor's Representative of such error or defect, and Clause 1.5 (Priority of Documents) shall apply in such instance.

1.9 Confidential Details

- (a) The Subcontractor shall disclose all such confidential and other information as the Contractor's Representative may reasonably require in order to verify the Subcontractor's compliance with the Subcontract and applicable Laws.
- (b) All information and documentation obtained by the Subcontractor or the Subcontractor's Personnel in the course or conduct of the Subcontract and the design (to the extent required by the Subcontract), execution and completion of the Works shall be held confidential.
- (c) Subject to Clause 1.9(d), all such information and documentation shall not, without the prior consent of the Contractor, be divulged by the Subcontractor, Subcontractor's Personnel or its Sub-Subcontractors to any third party, save to the extent necessary to effect the execution of the Subcontract and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Subcontractor.
- (d) The obligation in Clause 1.9(b) shall not apply to information and documentation which is or shall become part of the public domain otherwise than in consequence of a breach of the Subcontract (or Subcontractor's Personnel or Sub-Subcontractors) of its obligations under this Clause 1.9 (Confidential Details) (or breach of a recipient of such confidential information of its separate confidentiality commitment).
- (e) Without limiting Clause 1.9(b), the Subcontractor must not (and shall procure that its Subcontractor Personnel and all Sub-Subcontractors do not) advertise or issue any information, publication, document or article (including photographs or film) for publication or media release or other publicity relating to the Works, the Subcontract, the Site (including the water boundaries offshore), any Subcontractor's Personnel's accommodation, any labour issues, the appointment of Sub-Subcontractors, the Contractor's or Employer's business and activities or any matter relating to the Works without the prior written approval of the Contractor.
- (f) The Subcontractor must refer to the Contractor any enquiries from the media concerning the Works, the Subcontract, the Site (including the water boundaries offshore), any Subcontractor's Personnel's accommodation, any labour issues, the appointment of Sub-Subcontractors, the Contractor's business and activities or any matter relating to the Works.
- (g) The Subcontractor must ensure that all Subcontractor Personnel, Sub-Subcontractors and all personnel of their Affiliates are bound by similar obligations to those undertaken by Subcontractor under this Clause 1.9 (Confidential Details), and the Subcontractor must enforce such obligations.
- (h) This Clause 1.9 (Confidential Details) shall remain binding on the Subcontractor notwithstanding the termination of the Subcontract or the Subcontractor's employment under the Subcontract, or the issue of the Performance Certificate.

1.10 Compliance with Laws

- (a) The Subcontractor shall, in performing the Subcontract, comply with applicable Laws, Permits and the requirements of all Authorities.
- (b) The Subcontractor must promptly give the Contractor's Representative:
 - (i) copies of all notices, orders or directions given to or received by it or any Sub-Subcontractors by any Authorities in connection with any Permit, the Works or the Project pursuant to any Law; and
 - (ii) copies of all documents given by it or its related bodies corporate or any Sub-Subcontractors to an Authority in connection with any Permit, the Works or the Project pursuant to any Law.
- (c) The Contractor shall have obtained (or shall obtain) the Contractor Permits (if any).
- (d) The Subcontractor shall give all notices, pay all taxes, duties and fees, and the Subcontractor shall obtain all Subcontractor Permits; and the Subcontractor shall

indemnify and hold the Contractor harmless against and from the consequences of any failure to do so.

2. Nature of the Subcontract

2.1 Project objectives

The Parties agree that, in addition to the Contractor's stated objectives for the Project as set out in the Contractor's Requirements or as otherwise communicated to the Subcontractor prior to the Signature Date, the following are the Parties' mutual objectives for the Project:

- (a) co-ordination between the performance of the Works and other work on or around the Site by Other Subcontractors and smooth transition and co-operation between the Subcontractor and Other Subcontractors;
- (b) promotion of innovative ideas for the constructability and completion of the Works and identification of and elimination of Buildability Issues before construction of the Works (or a relevant Separable Portion) starts, including construction methods and materials to be used for the Works and methods of sustainable development both for the Works and at the Site; and
- (c) ensuring that the Works are Taken Over by the Time for Completion taking into account the fast track nature of the Project.

2.2 Fundamental Obligations of the Parties

- (a) In consideration of the payments to be made by the Contractor to the Subcontractor as set out in the Subcontract, the Subcontractor:
 - (i) hereby covenants with the Contractor to design (to the extent required by the Subcontract), execute and complete the Works and remedy any defects in accordance with the Subcontract and to otherwise perform all of its obligations in accordance with the Subcontract; and
 - (ii) accepts all risks and all costs (whether or not capable of ascertainment on the date of the Subcontract) in designing (to the extent required by the Subcontract), executing and completing the Works, remedying any defects and otherwise complying with its obligations under the Subcontract, except to the extent the Subcontract expressly provides otherwise.
- (b) In consideration of the Subcontractor's covenants in Clause 2.2(a), the Contractor hereby covenants to pay the Subcontractor the Subcontract Price at the times and in the manner prescribed by the Subcontract.

2.3 Financing Agreements

- (a) The Subcontractor acknowledges that the Contractor or Employer intends, or may at some point in the future intend, to obtain financing from the Financiers in connection with the Project. The Subcontractor hereby agrees to reasonably co-operate with the Contractor and / or the Employer and / or any such Financiers in connection with such financing and to enter into any customary agreement required as part of such financing, including a direct agreement, provide any information or document and undertake any action as, in each case, may be reasonably required by the Contractor in order to give effect to such financing.
- (b) The Subcontractor acknowledges that, as security for the finance to be provided by the Financiers in respect of the Project, the Contractor may assign the benefit of this Subcontract. The Subcontractor will, promptly after being requested to do so in writing by the Contractor, sign and return to the Contractor a consent to such assignment in the form required by the Contractor and the Financiers.

3. The Contractor and the Contractor's Representative

3.1 Right of Access to the Site

- (a) The Contractor shall give the Subcontractor sufficient right of access to those parts of the Site within the time, or times, stated in the Subcontract Particulars and/or Schedule 2 (Separable Portions). If no such time is stated in the Subcontract Particulars and/or Schedule 2 (Separable Portions), the Contractor shall give the Subcontractor sufficient right of access to the Site within such times as may be

required to enable the Subcontractor to proceed in accordance with the programme submitted under Clause 9.3 (Programme).

- (b) The right of access to the Site shall not be exclusive to the Subcontractor. If, under the Subcontract, the Contractor is required to give possession of any foundation, structure, plant or means of access, the Contractor may do so in the time and manner stated in the Contractor's Requirements or as instructed by the Contractor. However, the Contractor may withhold any such right or possession until the Performance Security has been received and proof of any required insurances and Permits to commence the Works and access the Site have been provided to the Contractor's Representative.
- (c) Only if the Subcontractor suffers critical delay as a result of a failure by the Contractor to give any such right of access to the Site within such time, shall it be entitled to claim, subject to Clause 20.1 (Subcontractor's Claims), an extension the Time for Completion to the extent permitted under Clause 9.4 (Extension of Time for Completion).
- (d) After receiving a notice under Clause 20.1 (Subcontractor's Claims), the Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) and this Clause 3.1 (Right of Access to the Site) to agree or determine these matters.
- (e) However, if and to the extent that the Contractor's failure was caused, in whole or part, by any error or delay by the Subcontractor or any Sub-Subcontractor, the Subcontractor shall not be entitled to an extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme) and/or any adjustment to the Subcontract Price or any additional Cost.

3.2 Permits

- (a) The Subcontractor has satisfied itself as to the nature of all Subcontractor Permits required for the design (to the extent required by the Subcontract), execution and completion of the Works, the remedying of any defects in the Works and the performance of its other obligations under the Subcontract. The Subcontractor must:
 - (i) in a timely manner apply for, and obtain all Subcontractor Permits;
 - (ii) obtain any signatures required from the Contractor and notify the Contractor of, and arrange and attend, any meetings which the Parties or any Authorities reasonably determine is required for a Subcontractor Permit;
 - (iii) pay all fees, effect all insurances, provide bonds and undertakings, and otherwise comply with, carry out and fulfil all conditions and requirements imposed under or in connection with all Subcontractor Permits;
 - (iv) comply with the requirements of all Authorities for processing and determining applications for all Subcontractor Permits;
 - (v) maintain and renew all Subcontractor Permits; and
 - (vi) perform its obligations and carry out the Works so as to comply with and not to cause a breach of the terms of any Permits in effect from time to time.
- (b) The Subcontractor must provide to Contractor's Representative upon request of the Contractor:
 - (i) any applications for a Subcontractor Permit ;
 - (ii) a copy of each Subcontractor Permits as soon as practicable after the Subcontractor Permit has been received by the Subcontractor; and
 - (iii) copies of all documents given by the Subcontractor, or Sub-Subcontractor, to any Authority in connection with obtaining or maintaining each Subcontractor Permit.
- (c) N/a
- (d) N/a
- (e) The Costs associated with complying with all obligations under this Clause 3.2 (Permits) are deemed to be included in the Subcontract Price.

3.3 Cooperation with the Contractor's Personnel

The Subcontractor shall procure that the Subcontractor's Personnel on Site:

- (a) co-operate with the Contractor's Personnel and Other Subcontractors under Clause 4.5 (Co-operation), and
- (b) take actions similar to those which the Subcontractor is required to take under Clauses 4.7(a), 4.7(b) and 4.7(c) (Safety Procedures) and under Clause 4.16 (Environment).

3.4 Record Retention

- (a) The Subcontractor shall maintain full and detailed Records as may be necessary for the proper execution of the Works under the Subcontract and as required by applicable Laws. Such Records shall be prepared and maintained in accordance with generally accepted accounting principles and, unless a longer period is imposed by applicable Laws, shall be retained from the Signature Date to the date which is seven (7) years after:
 - (i) the date of the Performance Certificate; or
 - (ii) the date of termination of the Subcontract,whichever is earlier (**Retention Period**).

3.5 Contractor's Representative's Duties and Authority

- (a) The Contractor shall appoint a Contractor's Representative who shall carry out the duties assigned to the Contractor's Representative in the Subcontract and which are expressly conferred on the Contractor's Representative by the Contractor in writing from time to time.
- (b) The Contractor's Representative shall have no authority to amend the Subcontract.
- (c) The Contractor's Representative may exercise the authority attributable to the Contractor's Representative as specified in the Subcontract or as conferred on the Contractor's Representative by the Contractor in writing from time to time.
- (d) The Contractor undertakes not to impose further constraints on the Contractor's Representative's authority without prior notice to the Subcontractor.
- (e) Notwithstanding any other provision of the Subcontract:
 - (i) the Contractor's Representative has no authority to relieve either Party of any duties, obligations or responsibilities under the Subcontract; and
 - (ii) any approval, review, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Contractor's Representative (including absence of disapproval or approval, review, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Contractor's Representative) does not relieve the Subcontractor from any responsibility it has under the Subcontract, including responsibility for errors, omissions, discrepancies and non-compliances.

3.6 Delegation by the Contractor's Representative

- (a) Subject to the Contractor's approval, the Contractor's Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Contractor's Representative shall not delegate the authority to determine any matter in accordance with Clause 3.9 (Determinations).
- (b) Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Clause 1.4 (Law and Language).

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- (c) Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Subcontractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Contractor's Representative. However:
 - (i) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Contractor's Representative to reject the work, Plant or Materials;
 - (ii) if the Subcontractor questions any determination or instruction of an assistant, the Subcontractor may refer the matter to the Contractor's Representative, who shall promptly confirm, reverse or vary the determination or instruction.

3.7 Instructions of the Contractor's Representative

- (a) The Contractor or the Contractor's Representative may issue to the Subcontractor (at any time) instructions which may be necessary for the design (to the extent required by the Subcontract), execution and completion of the Works and the remedying of any defects, all in accordance with the Subcontract.
- (b) The Subcontractor shall only take instructions from the Contractor, the Contractor's Representative or any delegated assistant. An instruction shall only constitute a Variation if Clause 13.2 (Variation Procedure) applies. If Clause 13.2 (Variation Procedure) does not apply, the Subcontractor shall not be entitled to any extension of the Time for Completion any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price or additional Cost.
- (c) The Subcontractor shall forthwith comply with the instructions given by the Contractor, the Contractor's Representative or any delegated assistant, on any matter related to the Subcontract. Instructions shall be given in writing, however, in Emergencies, the instruction may be given verbally and the Subcontractor must forthwith (and within forty-five (45) hours of the verbal instruction) confirm its understanding of the verbal instruction by issuing a written acknowledgement to the Contractor's Representative.
- (d) The Subcontractor shall not be entitled to any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price or any additional Cost where an instruction is issued requesting the Subcontractor to comply with its obligations under the Subcontract and such instruction shall not be considered a Variation by the Contractor.

3.8 Replacement of the Contractor's Representative

The Contractor may replace the Contractor's Representative at any time. In such circumstance, the Contractor shall, before the intended date of replacement, give notice to the Subcontractor of the name, address, date of commencement of delegation, and the delegated duties of the intended replacement Contractor's Representative.

3.9 Determinations

- (a) Whenever the Subcontract requires the Contractor or Contractor's Representative to proceed in accordance with this Clause 3.9 (Determinations) to agree or determine any matter, the Contractor will consult, or the Subcontractor or the Contractor's Representative shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Contractor or the Contractor's Representative shall make a determination in accordance with the Subcontract, taking due regard of all relevant circumstances.
- (b) The Contractor shall give notice to the Subcontractor (or the Contractor's Representative shall give notice to both Parties, as the case may be) of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 (Claims and Dispute Resolution).

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- (c) Notwithstanding any other provision in the Subcontract, the Contractor and Contractor's Representative are not bound to seek agreement or make any determination unless the Subcontractor has first complied with Clause 20.1 (Subcontractor's Claims), if applicable.

4. The Subcontractor

4.1 Subcontractor's General Obligations

- (a) The Subcontractor shall design (to the extent required by the Subcontract), execute and complete the Works in accordance with the Subcontract and shall remedy any defects in the Works.
- (b) The Subcontractor shall undertake all works which are necessary to satisfy the Contractor's Requirements and the Design Documents and all other works which (although not expressly mentioned in the Subcontract) are necessary for the stability, completion, and safe and proper design (to the extent required by the Subcontract), execution and completion of the Works.
- (c) The Subcontractor shall ensure that the completion of the Works shall comply with all applicable Laws and Permits relating to the Works and shall satisfy all performance and/or output requirements stipulated in the Contractor's Requirements.
- (d) The Subcontractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction, for all Temporary Works (including any specialist calculations, third party approvals and Permits, compliance with the Design Documents) and for each item of Plant and Materials as is required for the item to be in accordance with the Subcontract.
- (e) The Subcontractor shall, whenever required by the Contractor's Representative, submit details of the arrangements and methods which the Subcontractor proposes to adopt for the design (to the extent required by the Subcontract), execution and completion of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Contractor's Representative.
- (f) Without prejudice to or derogation from any other warranties or undertakings given by the Subcontractor elsewhere in this Subcontract and/or any warranties or undertakings which may be implied as a matter of applicable Law, the Subcontractor warrants and undertakes to the Contractor that:
- (i) It will exercise the skill, care and diligence reasonably to be expected of an appropriately qualified contractor with experience in carrying out such obligations for projects of a similar type, nature and complexity to the Works;
 - (ii) it will perform the Works in accordance with the requirements of the Subcontract, including all applicable Laws and Permits and the requirements of all Authorities;
 - (iii) the Works shall be carried out and constructed in accordance with the Contractor's Requirements and the Design Documents and on Taking Over, the Works shall be fit for the purpose or function specified in the Subcontract; and
 - (iv) With regard to those parts of the Works where the Subcontractor is responsible for design, when the Works are completed, such parts shall be fit for such purposes for which the part or parts are intended as specified in the Subcontract;
 - (v) To the extent the Subcontractor is responsible for design, the design and specification of the Works shall comply in all respects with the Specification and with regard to those parts of the Works where the Subcontractor is responsible for the design, any designs in the Specification relating to those parts shall be the responsibility of the Subcontractor as if they had been prepared by the Subcontractor;
 - (vi) any review undertaken by, or on behalf of the Contractor, of any of the Design Documents, shall not relieve the Subcontractor from any obligation or responsibility under this Subcontract.

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- (g) The Subcontractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect its obligation to design (to the extent required by the Subcontract), execute and complete the Works in accordance with this Subcontract.
 - (h) The Subcontractor agrees that it is not entitled to any extension of the Time for Completion, or any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price or additional Costs or make any claim against the Contractor arising from the assumption of risk and responsibility taken by the Subcontractor for the Works, including the matters specified in this Clause 4.1 (Subcontractor's General Obligations).
 - (i) The Subcontractor warrants that, prior to executing the Subcontract, the Subcontractor has exercised Best Practice in having reviewed all drawings, schematic, designs, calculations and specifications set out in or referred to in the Subcontract in order to identify any designs set out therein which are not capable of being constructed by an Experienced Subcontractor in accordance with the provisions of the Subcontract ("Design Errors") and prior to executing the Subcontract, has notified to the Contractor any such Design Errors that an Experienced Subcontractor could, taking account of Best Practice, be expected to find. The Subcontractor agrees that it is not entitled to any extension of the Time for Completion, or any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price or additional Costs or make any claim against the Contractor with regards to Design Errors.
 - (j) The Subcontractor shall enter into a collateral warranty in favour of the Contractor, Employer or any Beneficiary as may be directed by the Contractor's Representative at the same time as execution of the Subcontract, in the form set out in Annexure 16 (Form of Collateral Warranty) or such other form and terms as the Contractor may reasonably require.
 - (k) The Subcontractor herewith confirms that it is not entitled to any increased costs as a result of an introduction / changes of a value added tax or similar tax charged as a percentage of the turnover of an enterprise in Abu Dhabi and/or the United Arab Emirates.

4.2 Buildability Issues

- (a) The Subcontractor confirms that it will conduct a thorough plan check and constructability review (including for Buildability Issues) and will satisfy itself with the adequacy (including completeness, co-ordination and constructability, acting always in accordance with Good Industry Practice) of all Design Documents and that the Design Documents will be sufficient to complete construction of the Works in accordance with the Subcontract and are fit for the purpose intended in the Subcontract.
- (b) As part of its plan check and constructability review, the Subcontractor will conduct and assess the completeness of the Design Documents, determine and identify items that the Subcontractor considers in its professional opinion could lead to a cost impact on the tenders for the Sub-Subcontractor work, analyzed and optimized work sequencing of major construction activities and accounted for the concurrent construction activities of other projects (including all infrastructure works in close proximity).
- (c) The Subcontractor shall immediately notify the Contractor's Representative of any Buildability Issues or inadequacies in any Design Document, shall propose rectification of such inadequacy, and shall implement the final approved rectifications. The Subcontractor is not entitled to any extension of the Time for Completion, or any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price or additional Costs arising from Buildability Issues or inadequacies in the Design Documents, and the Subcontractor is deemed to have allowed for such Buildability Issues and inadequacies in its programme and the Subcontract Price.

4.3 Performance Security

- (a) The Subcontractor shall obtain (at its cost) a Performance Security for the proper performance of the balance of its obligations under the Subcontract.

The Performance Security shall be an unconditional bank guarantee in the forms provided in Annexure 12 (Form of Advance Payment Security) in the amounts and currencies stated in the Subcontract Particulars.
- (b) The Subcontractor shall deliver the Performance Security to the Contractor within the time specified in the Subcontract Particulars and shall send a copy to the Contractor's Representative.
- (c) The Performance Security shall be issued by a bank or financial institution located in Abu Dhabi and approved by the Contractor and each shall have a long term unsecured credit rating at least equivalent or higher than the rating specified in the Subcontract Particulars.
- (d) Notwithstanding any other provisions of the Subcontract, the Subcontractor shall not be entitled to any payments under this Subcontract until the Performance Security has been delivered to the Contractor.
- (e) The Subcontractor shall ensure that the Performance Security is valid and enforceable until the Subcontractor has executed and completed the Works in accordance with the Subcontract and remedied any defects.
- (f) If the terms of the Performance Security specify its expiry date, and the Subcontractor has not become entitled to receive the Performance Certificate by the date twenty-eight (28) days prior to the expiry date, the Subcontractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.
- (g) In addition to the Contractor's rights under Clause 4.3(h), the Contractor shall be entitled to make a claim under the Performance Security:
 - (i) in accordance with the terms of the Performance Security;
 - (ii) when such right is provided under the Subcontract; or
 - (iii) where the Contractor, acting reasonably, considers that the Subcontractor has defaulted in the performance of its obligations under the Subcontract, including where the Contractor reasonably considers that there has been:
 - (A) a failure by the Subcontractor to extend the validity of the Performance Security as described in the preceding paragraph or the Subcontractor fails to increase the amount of the Performance Security to the amount stated in the Subcontract Particulars, in either of which events the Contractor may claim the full amount of the Performance Security;
 - (B) a failure by the Subcontractor to pay the Contractor an amount due, as either agreed by the Subcontractor or determined under Clause 3.9 (Determinations), Clause 9.6 (Delay Damages) or Clause 20 (Claims and Dispute Resolution), within seven (7) days after this agreement or determination;
 - (C) a failure by the Subcontractor to remedy a default within five (5) days after receiving the Contractor's notice requiring the default to be remedied; or
 - (D) circumstances which entitle the Contractor to termination under Clause 15.2 (Termination by).
- (h) If the Performance Security becomes invalid or the Contractor has reasonable grounds for believing that the Performance Security is about to become invalid, or an Insolvency Event has or is about to occur in relation to the financial institution providing the Performance Security, or the long term unsecured credit rating of the financial institution providing the Performance Security falls below the rating specified in the Subcontract Particulars, then the Subcontractor shall, within twenty-eight (28) days of the Contractor's request, provide alternative Performance Security, to the

Contractor's satisfaction. If the Subcontractor fails to provide alternative Performance Security to the Contractor's satisfaction, the Contractor shall be entitled to make a claim for the full value of the Performance Security.

- (i) The Contractor shall return the Performance Security to the Subcontractor within twenty-three (23) days after issuance of the Performance Certificate or, if a dispute arises under the Subcontract, after the final determination of the dispute, whichever occurs later.

4.4 Subcontractor's Representative

- (a) The Subcontractor shall at all times have a Subcontractor's Representative and the Subcontractor shall give its Subcontractor's Representative all authority necessary to act on the Subcontractor's behalf under the Subcontract.
- (b) Unless the Subcontractor's Representative is named in the Subcontract, the Subcontractor shall, prior to the Commencement Date, submit to the Contractor's Representative for consent the name and particulars of the person the Subcontractor proposes to appoint as Subcontractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Subcontractor's Representative, the Subcontractor shall similarly submit the name and particulars of another suitable person for such appointment.
- (c) The Subcontractor shall not, without the prior consent of the Contractor's Representative, revoke the appointment of the Subcontractor's Representative or appoint a replacement.
- (d) The whole time of the Subcontractor's Representative shall be given to directing the Subcontractor's performance of the Subcontract. If the Subcontractor's Representative is to be temporarily absent from the Site during the design (to the extent required by the Subcontract), execution and completion of the Works for a period in excess of twenty (20) consecutive days, a suitable replacement person shall be appointed, subject to the Contractor's Representative's prior consent, and the Contractor's Representative shall be notified accordingly.
- (e) The Subcontractor's Representative shall, on behalf of the Subcontractor, receive instructions under Clause 3.7 (Instructions of the Contractor's Representative).
- (f) The Subcontractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Contractor's Representative has received prior notice signed by the Subcontractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.
- (g) The Subcontractor's Representative and all these persons shall be fluent in the language for communications defined in Clause 1.4 (Law and Language).

4.5 Co-operation

- (a) The Subcontractor shall, as specified in the Subcontract or as instructed by the Contractor's Representative, allow appropriate opportunities for carrying out work to:
 - (i) the Employer and / or Contractor's Personnel;
 - (ii) any Other Subcontractors; and
 - (iii) the personnel of any legally constituted public Authorities,who may be employed in the execution on or near the Site of any work not included in the Subcontract and any such instruction shall not constitute a Variation.
- (b) Services for these personnel and Other Subcontractors may include the use of Subcontractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Subcontractor.
- (c) If, under the Subcontract, the Contractor is required to give to the Subcontractor possession of any foundation, structure, plant or means of access in accordance with Design Documents, the Subcontractor shall submit such documents to the Contractor's Representative in the time and manner stated in the Contractor's Requirements.

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- (d) The Subcontractor shall co-operate fully and pro-actively with, and co-ordinate its activities with Other Subcontractors so as not to obstruct, disrupt or delay work being performed by such Other Subcontractors.
 - (e) The Subcontractor acknowledges that the Contractor and / or the Employer (or Affiliates of the Contractor) will engage those specific (and categories of) Other Subcontractors identified in the Subcontract Particulars, or subsequently notified to the Subcontractor, who may be employed in the execution and completion of works or services on or near the Site and that the Subcontractor reasonably foresees the activities and/or works and services of those Other Subcontractors.
 - (f) The Subcontractor shall attend the Contractor's project meetings at the time and venues specified by the Contractor's Representative, the Contractor or the Contractor's project manager. The Subcontractor shall ensure that the Subcontractor's Representative attends all such meetings, together with all of the Subcontractor's other personnel and/or the Sub-Subcontractor's personnel as are necessary to resolve the issues raised in any agenda for such meetings.
 - (g) The Subcontractor shall not be entitled to any extension of the Time for Completion, or any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price or any additional Costs arising from or in relation to complying with its obligations under this Clause 4.5 (Co-operation) and acknowledges and agrees that it has factored in such obligations into its programme and the Subcontract Price.

4.6 Setting Out

- (a) The Subcontractor shall set out the Works in relation to original points, lines and levels of reference specified in the Subcontract or notified by the Contractor's Representative. The Subcontractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.
- (b) The Subcontractor shall verify the accuracy of all original points, lines and levels of reference, whether specified in the Subcontract or notified by the Contractor's Representative, before they are used.
- (c) The Subcontractor shall not be entitled to any extension of the Time for Completion, or any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price or any additional Costs arising out of or in connection with any errors in original points, lines and levels of reference specified in the Subcontract or notified by the Contractor's Representative.

4.7 Safety Procedures

The Subcontractor shall develop a safety plan in accordance with Clause 7.6 (Health and Safety) and shall:

- (a) ensure compliance with all applicable safety Laws and regulations and requirements of any Authorities or instructions by the Contractor;
- (b) take care for the safety of all persons engaged by the Subcontractor for the Works on the Site;
- (c) keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons;
- (d) provide fencing, lighting warning signs, guarding and watching of the Works where necessary or required by the Contractor's Representative or any Authorities until completion and Taking Over under Clause 11 (Contractor's Taking Over); and
- (e) provide any Temporary Works (including roadways, footways, guards dewatering (if any) and fences) which may be necessary, because of the design (to the extent required by the Subcontract), execution and completion of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

4.8 Quality Assurance

- (a) The Subcontractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Subcontract. The system shall be in

accordance with the details stated in the Subcontract and be subject to the review and approval of the Contractor's Representative. The Subcontractor, Subcontractor's Personnel and Sub-Subcontractors shall adhere to the quality assurance system. The Contractor's Representative shall be entitled to audit any aspect of the system.

- (b) Details of all procedures and compliance documents shall be submitted to the Contractor's Representative for information before each execution stage is commenced. When any document of a technical nature is issued to the Contractor's Representative, evidence of the prior approval by the Subcontractor shall be apparent on the document itself.
- (c) Compliance with the quality assurance system shall not relieve the Subcontractor of any of its duties, obligations or responsibilities under the Subcontract.

4.9 Sufficiency of the Subcontract Price, Time for Completion

- (a) The Subcontractor shall be deemed to:
 - (i) have satisfied itself as to the correctness and sufficiency of the Design Documents, its obligations under the Subcontract, the Contractor's Requirements, the Subcontract Price and the Time for Completion; and
 - (ii) have based the Subcontract Price and the Time for Completion on the, data, interpretations, necessary information, inspections and examinations.
- (b) The Subcontract Price covers all the Subcontractor's obligations under the Subcontract and all things necessary for the proper design (to the extent required by the Subcontract), execution and completion of the Works in accordance with the Subcontract and the remedying of any defects.

4.10 Unforeseen Difficulties

- (a) The Subcontractor is deemed to have made all investigations and inspections and obtained all necessary information to assess the risks, difficulties, contingencies and other circumstances that may influence or affect the Works, including the cost and time for completing the Works in accordance with the Subcontract.
- (b) Except as otherwise provided under Clause 9.4 (Extension of Time for Completion) and Clause 14.3 (Adjustments to the Subcontract Price), the Subcontractor assumes all risks related to, and waives any right to claim an adjustment in the Time for Completion, the programme under Clause 9.3 (Programme), and/or the Subcontract Price and/or any additional Costs on account of, any risks, difficulties, contingencies or other circumstances affecting the Works.

4.11 Rights of Way and Facilities

The Subcontractor shall bear all costs and charges for special and/or temporary rights-of-way which it may require, including those for access to the Site. The Subcontractor shall also obtain, at its risk and cost, any additional facilities outside the Site which it may require for the purposes of the Works.

4.12 Avoidance of Interference

- (a) The Subcontractor shall not interfere unnecessarily or improperly with:
 - (i) the convenience of the public, or
 - (ii) the access to and use and occupation of all roads, waterways and footpaths, irrespective of whether they are public or in the possession of the Contractor or of others.
- (b) The Subcontractor shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

4.13 Access Route

- (a) The Subcontractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Subcontractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Subcontractor's traffic or by the Subcontractor's Personnel. These efforts shall include the proper use of appropriate vehicles, vessels and routes and any other steps which may be

reasonably necessary to prevent damage by Subcontractor's traffic or by Subcontractor's Personnel.

- (b) Except as otherwise stated in this Subcontract:
- (i) the Subcontractor shall (as between the Parties) be responsible for any maintenance which may be required for its use of access routes and, if requested by the Contractor, for the remedying of damages to any road or bridge caused by the Subcontractor's traffic or by the Subcontractor's Personnel;
 - (ii) the Subcontractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant Authorities for its use of routes, signs and directions;
 - (iii) the Contractor shall not be responsible for any claims which may arise from the use or otherwise of any access route;
 - (iv) the Contractor does not guarantee the suitability or availability of particular access routes; and
 - (v) Costs due to non-suitability or non-availability, for the use required by the Subcontractor, of access routes shall be borne by the Subcontractor.

4.14 Transport of Goods and equipment

Unless otherwise stated in this Subcontract:

- (a) the Subcontractor shall give the Contractor's Representative not less than twenty-three (23) days' notice of the date on which any Goods and/or equipment will be delivered to the Site;
- (b) the Subcontractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods, all equipment and other things required for the Works; and
- (c) the Subcontractor shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport.

4.15 Subcontractor's Equipment

- (a) The Subcontractor shall be responsible for all Subcontractor's Equipment. When brought on to the Site, all Subcontractor's Equipment shall be deemed to be exclusively intended for the design (to the extent required by the Subcontract), execution and completion of the Works. The Subcontractor shall not remove from the Site any major items of Subcontractor's Equipment without the consent of the Contractor's Representative. However, consent shall not be required for vehicles transporting Goods or Subcontractor's Personnel off Site, except as required in Clause 4.16 (Environment).
- (b) The Subcontractor shall be responsible for all equipment delivered by him to the Site and shall be responsible for the equipment's receipt at the Site, installation and integration into the Works and commissioning. All equipment shall be deemed to be exclusively intended for the design (to the extent required by the Subcontract), execution and completion of the Works. The Subcontractor shall not remove from the Site any items of equipment without the consent of the Contractor's Representative.

4.16 Environment

In addition to the requirements provided in the Contractor's Requirements, the Subcontractor shall carry out its obligations under the Subcontract in an environmentally responsible manner and in accordance with all environmental Laws, Environment Agency Abu Dhabi (EAD) requirements, as well as carry out any EAD-required permitting and no objection certificate (NOC) procedures and the requirements of all other relevant Authorities including Permits.

4.17 Electricity, Water and Gas

- (a) The Subcontractor shall, except as stated below, be responsible for the provision of all power, water, gas and other services Subcontractor, Subcontractor's Personnel or Sub-Subcontractors may require.
- (b) The Subcontractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas, air-conditioning and other services as may be available on the Site at its cost, and of which details and prices are either stated in the Subcontract Particulars or advised to the Subcontractor by the Contractor or by Authorities. The Subcontractor shall, at its risk and cost, provide any apparatus necessary for its use of these services and for measuring the quantities consumed.
- (c) The quantities consumed and the amounts due and payable by the Subcontractor for such services shall be agreed or determined by the Contractor's Representative in accordance with Clause 3.9 (Determinations). The Subcontractor shall pay these amounts to the Contractor (directly, by offset, or by collection on the Performance Security, at the Contractor's sole discretion).

4.18 Contractor's Equipment

- (a) The Contractor may make the Contractor's Equipment (if any) available for the use of the Subcontractor in the design (to the extent required by the Subcontract), execution and completion of the Works in accordance with the details, arrangements and prices stated in the Contractor's Requirements. Unless otherwise stated in the Contractor's Requirements:
 - (i) the Contractor shall be responsible for the Contractor's Equipment; except that
 - (ii) the Subcontractor shall be responsible for each item of Contractor's Equipment whilst any of the Subcontractor's Personnel is operating it, driving it, directing it or in possession or control of it.
- (b) The appropriate quantities and the amounts due (at the prices stated in the Contractor's Requirements) for the use of Contractor's Equipment shall be agreed or determined by the Contractor's Representative in accordance with Clause 3.9 (Determinations). The Subcontractor shall pay these amounts to the Contractor (directly, by offset, or by collection on the Performance Security, at the Contractor's sole discretion).

4.19 Progress Reports

- (a) Weekly and monthly progress reports shall be prepared by the Subcontractor and submitted to the Contractor's Representative. The number of copies of each progress report submitted to Contractor's Representative is specified in the Subcontract Particulars.
 - (i) In respect of weekly reports, these shall be submitted before 4pm each Wednesday and shall cover monitoring of key events, key decisions and logs and other information reasonably requested by the Contractor's Representative.
 - (ii) In relation to monthly reports, the first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter within five (5) days after the last day of the period to which it relates.
- (b) Reporting shall continue until the Subcontractor has completed all work which is known to be outstanding at Taking Over as stated in the Taking-Over Certificate for the Works.
- (c) Each (i) weekly report shall in the form attached as Annexure 9 (Form of Daily / Weekly Progress Report) hereto and (ii) each monthly report shall be in the form attached as Annexure 10 (Form of Monthly Progress Report) hereto, and shall be reviewed by the Contractor's Representative prior to final submission and may also include:

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- (i) charts and detailed descriptions of progress, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each Major Sub-Subcontractor;
 - (ii) photographs showing the status of manufacture and of progress of the Works;
 - (iii) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (A) commencement of manufacture;
 - (B) Subcontractor's inspections;
 - (C) Tests; and
 - (D) shipment and arrival at the Site;
 - (iv) the details described in Clause 7.9 (Records of Subcontractor's Personnel and);
 - (v) copies of quality assurance documents, test results and certificates of Materials;
 - (vi) list of Variations, variation proposals requested by the Contractor's Representative which are in the process of being prepared and/or considered, list of notices given under Clause 20.1 (Subcontractor's Claims);
 - (vii) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
 - (viii) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Subcontract, and the measures being (or to be) adopted to overcome delays;
 - (ix) notice of any claims which the Subcontractor anticipates making in the following month;
 - (x) detailed programming information showing the timing and sequencing of construction activities to be carried out in the following three (3) months;
 - (xi) a summary of the current Subcontract Price;
 - (xii) a summary of all disputes that are not resolved or determined under the Subcontract; and
 - (xiii) any other matters set out in the Subcontract and other information reasonably required by the Contractor and notified to the Subcontractor in advance of the relevant monthly report,

provided always that nothing in any progress report shall constitute notice of a claim within the meaning of Clause 20.1 (Subcontractor's Claims).

4.20 Security of the Site

Unless otherwise stated in this Subcontract:

- (a) the Subcontractor shall be responsible for preventing unauthorised entry onto the Site;
- (b) n/a;
- (c) the Subcontractor shall develop a Site security plan for approval by the Contractor's Representative that outlines security roles, responsibilities and contains security procedures;
- (d) n/a;
- (e) the Subcontractor shall comply with all Abu Dhabi Police (private security business department) regulations (or such other regulations) in relation to the correct maintenance of records and incident logs;
- (f) if requested by the Contractor's Representative, the Subcontractor shall give to the Contractor's Representative a list of names and addresses of all persons who are or

may be at any time concerned with the Works or any part thereof, specifying the capacities in which they are so concerned, and giving such other particulars as the Contractor's Representative may reasonably require; and

- (g) where security passes are required for admission to the Site, the Subcontractor shall submit to the Contractor's Representative a list of the names of the relevant employees and other persons issued or to be issued with passes, and any other information the Contractor's Representative reasonably requires.
- (h) the cost of issuing security passes shall be advised by the Contractor to the Subcontractor and deducted from monthly payments. All security passes shall be returned on the demand of the Contractor's Representative and in any case when the Works are Taken Over.

4.21 Subcontractor's Operations on Site

- (a) The Subcontractor shall confine its operations to the Site, and to any additional off-Site areas which may be obtained by the Subcontractor and agreed by the Contractor's Representative as working areas. The Subcontractor shall take all necessary precautions to keep Subcontractor's Equipment and Subcontractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.
- (b) The Subcontractor shall not use any part of the Site for any purpose not connected with the design (to the extent required by the Subcontract), execution and completion of the Works without the prior approval of the Contractor. The Subcontractor shall not destroy, damage or pull down any plant, wall or building outside the area where the Works are being performed, but within the Site, without the prior consent of the Contractor.
- (c) During the design (to the extent required by the Subcontract), execution and completion of the Works, the Subcontractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Subcontractor's Equipment or surplus materials. The Subcontractor shall, on a daily basis, clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.
- (d) Upon the issue of a Taking-Over Certificate, the Subcontractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Subcontractor's Equipment, surplus material, wreckage, rubbish and Temporary Works.
- (e) The Subcontractor shall leave that part of the Site and the Works in a clean and safe condition. However, with the prior written consent of Contractor, Subcontractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Subcontractor to fulfil its obligations under the Subcontract, so long as such Goods remain within the areas of the Site designated by Contractor in its written consent. The Subcontractor shall be solely responsibility and liable for any such Goods.

4.22 Separable Portions

- (a) If Separable Portions are described in the Subcontract Particulars, or nominated under Clause 4.22(b), the Subcontractor shall execute the Works in accordance with the Separable Portions in the Subcontract Particulars, or as agreed or determined under Clause 4.22(c) (as applicable). The interpretations and application of the expressions:
 - (i) Time for Completion;
 - (ii) Taken Over;
 - (iii) Taking-Over Certificate;
 - (iv) Tests on Completion;
 - (v) delay damages; and
 - (vi) Defects Notification Period,

apply separately to each Separable Portion and references in the relevant definitions and Clauses to 'the Works', 'the Permanent Works' and 'the Temporary Works' mean those parts of the Works, the Permanent Works and the Temporary Works comprised in the relevant Separable Portion. The Defects Notification Period for each Separable Portion shall extend to the last day of the last Defects Notification Period for the whole of the Works.

- (b) In addition to any Separable Portions described in the Subcontract Particulars, the Contractor's Representative may request the Subcontractor to submit a proposal within a reasonable time specifying:
 - (i) a description of the proposed amendments to the sequence of the works along with proposed additional resources and materials necessary to accelerate the Works (if any);
 - (ii) the Subcontractor's proposal for any necessary modifications to the programme under Clause 9.3 (Programme) and to the Time for Completion for the whole of the Permanent Works;
- (c) On receipt of the Subcontractor's proposal under Clause 4.22(b), the Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) to agree or determine:
 - (i) the portion of the Works relevant to that Separable Portion;
 - (ii) the proposed Separable Portion release date of the Works relevant to that Separable Portion;
 - (iii) the Time for Completion relevant to that Separable Portion;
 - (iv) Tests on Completion and Tests after Completion relevant to that Separable Portion;
 - (v) the Defects Notification Period relevant to that Separable Portion; and
 - (vi) respective amounts for delay damages relevant to that Separable Portion, having regard to the proportion of delay damages attributable to the Separable Portion.

4.23 Prior Work

Where the Subcontractor has undertaken any services or works in connection with the Works prior to the Signature Date (including any work the Works listed in Annexure 8):

- (a) the Subcontractor warrants and undertakes to the Contractor that such services or works have been carried out in accordance with the requirements of the Subcontract and confirms and accepts that all the warranties, obligations and liabilities of the Subcontractor under or in connection with the Subcontract apply to such services or works;
- (b) the Subcontractor shall not be entitled to any extension of the Time for Completion, or any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price or any additional Costs arising from or in relation to such services or works; and
- (c) the Subcontractor agrees that it is not entitled to make any claims against the Contractor in respect of such services and works.

4.24 Other Agreements

- (a) If the Contractor's Representative or the Contractor provides the Subcontractor with copies of any agreements (with confidential details blanked out where appropriate) made or expected to be made between the Employer or Contractor (or any Affiliate of the Employer / Contractor relating to the Project) and third parties including Other Subcontractors, then to the extent that the provisions of such agreements relate to the Works and/or the Subcontractor's obligations under the Subcontract, the Subcontractor shall:
 - (i) not by any act or omission place the Employer / Contractor in breach of such agreements; and

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- (ii) not be entitled to any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price or any additional Costs arising from or in relation to any delays or disruption that result from the Subcontractor's obligation to comply with this Clause 4.24 (Other Agreements).
 - (b) If the Subcontractor finds an inconsistency or discrepancy between the Subcontract and such other agreements, the Subcontractor shall immediately notify the Contractor in writing. Upon such notification, the Contractor shall issue a clarification or instruction as necessary to resolve such inconsistency or discrepancy and Subcontractor shall proceed in accordance with such clarification or instruction.

4.25 Prohibited Materials

The Subcontractor shall not specify for use or permit the use in connection with the Works of any Prohibited Materials. The Subcontractor shall promptly notify the Contractor in writing if he becomes aware or has reason to suspect or believe that any Prohibited Materials have been or will be used in connection with the Works for any reason. The Subcontractor shall, when requested and in any event prior to Taking Over, issue to the Contractor and to such persons as the Contractor may require a certificate that no Prohibited Materials have been specified for use or permitted to be used in the design (to the extent required by the Subcontract), execution and completion of the Works.

4.26 Registered or Licensed

The Subcontractor must ensure that it, and the Subcontractor's Personnel and Sub-Subcontractors, are at all times registered and licensed as required by all applicable Laws and any Authority to execute the Works.

4.27 Prohibited Acts

- (a) Without limiting the Subcontractor's general obligations under the Subcontract, the Subcontractor must:
 - (i) not commit any Prohibited Acts; and
 - (ii) ensure that none of the Subcontractor's Personnel or any Sub-Subcontractor commits any Prohibited Acts.
- (b) The Subcontractor represents that it has not committed any Prohibited Act in connection with its entry into the Subcontract and covenants that it will not commit any Prohibited Act in connection with the Subcontract.

5. Design

5.1 Contractor's Requirements

- (a) The Subcontractor has contributed to and shall be deemed to have scrutinised, prior to the Signature Date, the Contractor's Requirements. The Subcontractor shall be responsible for the execution of the Works and for the accuracy of such Contractor's Requirements, except as stated in Clause 5.1(c).
- (b) The Contractor shall not be responsible for any error, inaccuracy or omission of any kind in the Contractor's Requirements and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated in Clause 5.1(c).
- (c) The Contractor shall be responsible for the correctness of any definition of the intended purpose of the Works or any part or parts thereof contained in the Contractor's Requirements.

5.2 Design Phases

- (a) The Contractor's Requirements contain (inter alia) the Contractor's objectives for the execution for the Works.
- (b) The Subcontractor shall be responsible for the compliance with the Design Documents including:
 - (i) Concept Design;
 - (ii) Schematic Design; and

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- (iii) Detailed Design.
 - (c) The Subcontractor shall also be responsible for ensuring that all Works are compliant, consistent and compatible with the Design Documents (as relevant) and the Contractor's Requirements and free of errors, omissions, ambiguities, inconsistencies, inadequacies or other defects.
 - (d) The Subcontractor shall be responsible for ensuring that any information, drawings, data and/or documentation supplied by the Subcontractor to the Contractor is compliant, consistent and compatible with the Contractor's Requirements.
 - (e) If the Subcontractor commences construction of any portion of the Works for which the submission of information, drawings, data and other documentation is required before such submission has been reviewed and accepted in accordance with the Submittal Procedure and/or the Contractor's Requirements and this Clause 5.2, it shall do so at its own risk and the respective portion of the Works may be rejected by the Contractor. The construction of such portions of the Works shall be in accordance with the accepted submissions.

5.3 Technical Standards and Regulations

- (a) The execution of the Works and the completed Works shall comply with all Authority technical standards (as a minimum), other standards specified in the Contractor's Requirements, Permits and all applicable Laws. In the event of any conflict or inconsistency between the standards referred to in this Clause 5.3(a), the Subcontractor shall ensure that the execution of the Works and the completed Works shall comply with the most stringent of those standards.
- (b) References in the Subcontract to published standards shall be understood to be references to the edition applicable on the date notified by the Contractor, unless stated otherwise.
- (c) If changed or new applicable standards come into force in Abu Dhabi after the date on which the Contractor's Requirements were accepted, the Subcontractor shall give notice to the Contractor and (if appropriate) submit proposals for compliance. In the event that:
 - (i) the Contractor determines that compliance is required; and
 - (ii) the proposals for compliance constitute a Variation,then the Contractor shall instruct a Variation in accordance with Clause 13 (Variations and Adjustments).

5.4 As-built Documents

- (a) The Subcontractor shall prepare and keep up-to-date a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed, as may be required by the Contractor and/or any relevant Authority, which shall include:
 - (i) the depths of various elements of foundation in relation to finish ground floor datum;
 - (ii) horizontal and vertical locations of underground services, utilities and appurtenances, referenced to permanent surface improvements;
 - (iii) the location of internal services, utilities and appurtenances and accessible features of the structure;
 - (iv) site changes to dimensions and detail;
 - (v) changes made and/or confirmed by Variation Orders;
 - (vi) any other details not in original Contractor's Requirements; and
 - (vii) any other matters specified as being required by the Contractor's Requirements.
- (b) The Subcontractor shall also ensure that specifications and addenda are clearly marked up to record (amongst other things):

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- (i) the manufacturer, trade name, catalogue number and supplier of each item of Plant and/or equipment actually installed; and
 - (ii) changes made and/or confirmed by Variation Orders.
 - (c) These records shall be kept on the Site and shall be used exclusively for the purposes of the Works and the Project. Three (3) copies shall be supplied to the Contractor prior to the commencement of the Tests on Completion.
 - (d) In addition, the Subcontractor shall supply to the Contractor as-built drawings of the Works, showing all Works as executed, and submit them to the Contractor for review and acceptance in accordance with the process for review and acceptance set out in the Contractor's Requirements and Submittal Procedure with such changes to those provisions as are necessary to relate to the as-built drawings. The as-built drawings will comply with the details set out in the Subcontract Particulars.
 - (e) Prior to the issue of any Taking-Over Certificate, the Subcontractor shall supply to the Contractor the specified numbers and types of copies of the relevant as-built drawings, in accordance with the Subcontract Particulars. The Works shall not be considered to be completed for the purposes of taking over under Clause 11 (Contractor's Taking Over) until the Contractor receives these documents.
 - (f) The Subcontractor shall submit to the Contractor updated as-built drawings upon the rectification of any defects notified to the Subcontractor during the Defects Notification Period for the Contractor's review.

5.5 O&M Manuals & Training

- (a) Prior to commencement of the Tests on Completion, the Subcontractor shall supply to the Contractor provisional operation and maintenance manuals in sufficient detail for the Contractor and/or Employer and/or any relevant Authority to operate, maintain, dismantle, reassemble, adjust and repair any Goods.
- (b) The Works shall not be considered to be completed for the purposes of taking over under Clause 11 (Contractor's Taking Over) until the Contractor has received final operation and maintenance manuals in such detail, and any other manuals specified in the Subcontract Particulars for these purposes.
- (c) The Subcontractor shall carry out training of Employer's and / or Contractor's Personnel and / or third parties defined by the Contractor to the extent specified in the Contractor's Requirements. If the Subcontract specifies training which is to be carried out before Taking Over, the Works shall not be considered to be completed for the purposes of taking over under Clause 11 (Contractor's Taking Over) until this training has been completed.

6. Subcontracting

6.1 Subcontractors Generally

- (a) The Subcontractor shall not subcontract the whole of the Works. The Subcontractor shall not subcontract any part of the Works to any Sub-Subcontractor without the prior written consent of the Contractor.
- (b) The Subcontractor shall be responsible for the acts, omissions or defaults of any Sub-Subcontractor, its agents or employees, as if they were the acts, omissions or defaults of the Subcontractor.
- (c) If requested by the Contractor, the Subcontractor shall also provide a draft of a proposed subcontract with a Major Sub-Subcontractor (and any tender documentation relevant to the proposed subcontract package) in sufficient time to enable the Contractor to review the same to ensure that such subcontract contains provisions required by this Clause 6.1 (Subcontractors Generally) and/or Clause 6.2 (Content of all Subcontracts).
- (d) If the Contractor gives notice to the Subcontractor that the proposed subcontract does not contain provisions required by this Clause 6.1 (Subcontractors Generally), the Subcontractor shall amend the subcontract and resubmit it to the Contractor. Such notice from the Contractor shall be sent within seven (7) days of receipt of the proposed subcontract.

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- (e) The Subcontractor shall not be entitled to any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price or any additional Cost arising from the Contractor's review (or lack of review) or from the Subcontractor complying with its obligations under this Clause 6.1 (Subcontractors Generally) and/or Clause 6.2 (Content of all Subcontracts).
 - (f) The Subcontractor shall give the Contractor's Representative not less than eight (8) days' notice of the intended date of commencement of each Sub-Subcontractor's work and the actual date of commencement of such work on the Site. The Subcontractor shall, in good faith, take into account any reservations or other inputs the Contractor may provide in respect of such proposed subcontract in accordance with Clause 6.1(c).
 - (g) The Subcontractor is responsible for the payment of all amounts due to each Sub-Subcontractor pursuant to the terms of the relevant subcontracts (the subcontracts with the Sub-Subcontractors of the Subcontractor are hereinafter referred to as the "**Subcontracts**"). In case of the novation or transfer of a subcontract to the Employer or the Contractor, the Subcontractor must provide a confirmation of its "chief executive officer" (or equivalent) to the Contractor stating that the concerned Sub-Subcontractor has received all payments due and payable at the time of such novation or transfer.

6.2 Content of all Subcontracts

The Subcontractor shall ensure that each subcontract includes the following provisions:

- (a) a provision entitling the Subcontractor to novate or transfer the subcontract to the Contractor or its nominee in the event of termination under Clause 15.2 (Termination by) and the Subcontractor shall include a novation agreement in its subcontract in the relevant form set out in Annexure 15 (Forms of Novation Agreement) to effect such transfer;

a provision requiring the Sub-Subcontractor to enter into a collateral warranty in favour of the Contractor, Employer or any Beneficiary as may be directed by the Contractor's Representative at the same time as execution of the relevant subcontract, in the form set out in Annexure 16 (Form of Collateral Warranty) or such other form and terms as the Contractor may reasonably require;
- (b) a provision entitling the Subcontractor to remove and/or replace any employees of a Sub-Subcontractor on similar terms and with similar consequences mutatis mutandis to the Contractor's rights under this Clause 6.2 (Content of all Subcontracts); and
- (c) a provision confirming that the Sub-Subcontractor shall not be entitled to any increased costs as a result of an introduction of a value added tax or similar tax charged as a percentage of the turnover of an enterprise in Abu Dhabi and/or the United Arab Emirates,

provided however, the obligation of the Subcontractor under Clause 6.2(c) shall be deemed satisfied if (x) such a provision is included in any "request for proposal" or other tender documents issued by the Subcontractor in connection with the bidding process for such subcontract and (y) prior to the execution of such subcontract, the Subcontractor has demonstrated, to the satisfaction of the Contractor, that it expended its best efforts in negotiations with such Sub-Subcontractor to include such provision in the subcontract.

6.3 Termination of Subcontracts

- (a) Subject to Clause 6.3(b), no subcontract with a Major Sub-Subcontractor shall be terminated by the Subcontractor without the prior written consent of the Contractor (not to be unreasonably withheld).
- (b) Clause 6.3(a) does not apply in the case where a Major Sub-Subcontractor has breached a provision of its subcontract with the Subcontractor and this gives the Subcontractor a clear and unequivocal right to terminate the subcontract. In such case (and all other situations where the Subcontractor intends to terminate a

subcontract), the Subcontractor shall provide prior written notice to the Contractor of the Subcontractor's intention to terminate the subcontract.

7. Staff and Labour

7.1 Engagement of Staff and Labour

The Subcontractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport in compliance with all applicable Laws.

7.2 Persons in the Service of Contractor

The Subcontractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's and / or Contractor's Personnel.

7.3 Labour Laws

- (a) The Subcontractor shall comply with all the relevant labour Laws applicable to the Subcontractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
- (b) The Subcontractor shall require its employees to obey all applicable Laws, including those concerning safety at work.

7.4 Working Hours

- (a) Subject to applicable Laws, no work shall be carried out on the Site on locally recognised days of rest unless the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Subcontractor shall immediately advise the Contractor's Representative.
- (b) Where the Subcontractor carries out work in the vicinity of any residential area outside of the normal working hours stated in the Subcontract Particulars, the Subcontractor shall adopt, where necessary, the use of quiet construction equipment and/or shall employ the quietest practicable working methods.

7.5 Facilities for Staff and Labour

- (a) The Subcontractor shall provide and maintain all necessary accommodation and welfare facilities for the Subcontractor's Personnel. .
- (b) The Subcontractor shall not permit any of the Subcontractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

7.6 Health and Safety

- (a) The Subcontractor shall at all times take all precautions to maintain the health and safety of the Subcontractor's Personnel in accordance of the HSE Manuel (Annexure 17) with all applicable health and safety Laws and the requirements of all Authorities.
- (b) In collaboration with local health Authorities, the Subcontractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Subcontractor's and Contractor's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- (c) The Subcontractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents, regular safety inspections, hazard identification and risk assessments.
- (d) This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the design (to the extent required by the Subcontract), execution and completion of the Works, the Subcontractor shall provide whatever is required by this person to exercise this responsibility and authority.
- (e) The Subcontractor shall submit for the Contractor's Representative's approval, ten (10) days prior to commencement of the Works at the Site, a proposed safety programme covering the following items:
 - (i) designation of safety supervision;

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- (ii) reporting procedures and forms for works;
 - (iii) established criteria for employee clothing and protective equipment;
 - (iv) safety policies and procedures for all employees in all phases of construction requiring use of safety devices;
 - (v) policies and procedures for maintaining the Works and the Site in a neat, orderly, sanitary and safe condition;
 - (vi) provision of suitable equipment and training of employees to minimize fire hazards, fight fires and act in Emergencies;
 - (vii) instruction of new employees in safe working practices, monitoring of employee actions to detect unsafe practices, and holding of regular meetings to instruct and discuss safety programme; and
 - (viii) provision of suitable work equipment for work to be undertaken which is serviced, maintained and inspected as per the manufacturer's operating instructions. Operators of such equipment are to receive suitable instruction and training from a competent training provider.
- (f) Upon the Contractor's Representative's approval of the safety programme the Subcontractor shall, for the full term of the Subcontract, operate the safety programme, maintain accurate records of safety activities and accidents, and submit safety and accident reports to the Contractor's Representative on forms approved by the Contractor and the Contractor's Representative.
 - (g) The Subcontractor shall maintain such records and make such reports concerning safety, health and welfare and persons and damage to property as the Contractor's Representative may from time to time prescribe.
 - (h) The Subcontractor shall report to the Contractor's Representative details of any accident on or about the Site or in connection with the design (to the extent required by the Subcontract), execution and completion of the Works, as soon as possible and, in any event within twenty(20) hours after its occurrence.
 - (i) The Subcontractor shall also report such accident to the appropriate Authority whenever such report is required by the Laws. In the case of any fatality or serious accident, the Subcontractor shall in addition notify the Contractor's Representative immediately by the quickest available means.
 - (j) Any non-compliance by the Subcontractor of the systems and procedures outlined in this Clause 7.6 (Health and Safety) will be advised by the Contractor's Representative to the Subcontractor. The manner in which this is conveyed will be equal to the severity of the issue and will be either a verbal instruction, written site instruction, corrective action request process or a suspension of the Works.
 - (k) The time period to rectify shall also be dependent on the severity of the non-compliance. Where the issue is not rectified in the defined timescale the next level of action will be taken up to and including suspension of the Works.

7.7 Subcontractor's Superintendence

- (a) Throughout the design (to the extent required by the Subcontract), execution and completion of the Works, and as long thereafter as is necessary to fulfil the Subcontractor's obligations, the Subcontractor – in the event the Sub-Subcontractors are engaged - shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.
- (b) Superintendence shall be given by a sufficient number of persons having appropriate experience constructing works similar to the Works and knowledge of the language for communications specified in Clause 1.4 (Law and Language) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe design (to the extent required by the Subcontract), execution and completion of the Works.

7.8 Subcontractor's Personnel

- (a) The Subcontractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Contractor's Representative may require the Subcontractor to remove (or cause to be removed) any person employed on the Site or Works, including the Subcontractor's Representative if applicable, who in the opinion of the Contractor's Representative (acting reasonably and in good faith):
 - (i) persists in any misconduct or lack of care;
 - (ii) carries out duties incompetently or negligently;
 - (iii) fails to conform with any provisions of the Subcontract; or
 - (iv) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.
- (b) If appropriate, the Subcontractor shall then appoint (or cause to be appointed) a suitable replacement person.
- (c) The Subcontractor shall ensure that the Subcontractor's Personnel are provided with the required residence visas and work permits as required by all relevant Laws. The Subcontractor shall be responsible for the return of all Subcontractor's Personnel to the place where they were recruited or to their domicile of import on the cessation of their employment in relation to the Works.
- (d) In the event of the death in Abu Dhabi of any of the Subcontractor's Personnel (or members of their families), the Subcontractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

7.9 Records of Subcontractor's Personnel and equipment

The Subcontractor shall submit to the Contractor's Representative details showing the number of each class of Subcontractor's Personnel and of each type of Subcontractor's Equipment on the Site. Details shall be submitted each day and at the end of each calendar month, in a form approved by the Contractor's Representative, until the Subcontractor has completed all Works which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

7.10 Disorderly Conduct

- (a) The Subcontractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Subcontractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.
- (b) The Subcontractor shall dismiss, or cause the dismissal, of any Subcontractor's Personnel:
 - (i) that is guilty of disorderly conduct;
 - (ii) that is guilty of dishonesty or attempted dishonesty in relation to the Contractor, Employer or any Employer's and / or Contractor's Personnel or commits a Prohibited Act;
 - (iii) who disobeys applicable Laws, rules, regulations or requirements applicable to the Works; or
 - (iv) who causes or attempts to cause trouble or unrest amongst the labour force.

7.11 Supply of Water

The Subcontractor shall provide and maintain on the Site a readily available, continuous and appropriate supply of drinking and other water for the use of Subcontractor's Personnel. The Subcontractor shall take all necessary measures to avoid the dehydration of its staff and labour on Site, including the provision of appropriate drinks and/or dietary supplements.

7.12 Arms and Ammunition

The Subcontractor shall not bring onto or store on the Site, give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same.

7.13 Festivals and Religious Customs

The Subcontractor shall, in all dealings with Subcontractor's Personnel, have due regard to all recognised festivals, days of rest and religious or other customs. The Subcontractor shall not be entitled to any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract price or any additional Costs arising from or in relation to compliance with this Clause 7.13 (Payment on Termination).

7.14 Alcoholic Liquor or Drugs

The Subcontractor shall not import, sell, give, barter or otherwise allow the consumption of, or dispose of, any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by any Sub-Subcontractors or Subcontractor Personnel.

7.15 Epidemics / Pandemics

In the event of any outbreak of illness of an epidemic or pandemic nature, the Subcontractor shall comply with and carry out such regulations, reporting procedures, orders and requirements as may be made by any Authority for the purpose of dealing with and overcoming the same.

7.16 Sanitary Facilities

- (a) The Subcontractor shall provide and maintain sanitary facilities for the use of Subcontractor's Personnel at such places around the Site as shall be approved by the Contractor's Representative and the Authorities and shall cause all Subcontractor's Personnel to use such facilities.

7.17 Political Activities

The Subcontractor will not participate in and shall not allow its agents, employees or Sub-Subcontractors or any of their agents or employees participate in any political or quasi political activities while they are resident in or visiting the United Arab Emirates.

8. Plant, Materials and Workmanship

8.1 Manner of Execution

- (a) The Subcontractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other design (to the extent required by the Subcontract), execution and completion of the Works:
 - (i) in the manner (if any) specified in the Subcontract;
 - (ii) in a proper workmanlike and careful manner, in accordance with Good Industry Practice; and
 - (iii) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Subcontract.
- (b) All Materials and workmanship used in connection with the Works shall be in accordance with the requirements of the Subcontract and applicable Laws and shall be fit for the purposes for which they were intended.
- (c) Where the Contractor's Requirements or the Design Documents specify that a proprietary name should be used for any Plant and/or Materials, the Contractor's Representative shall not be required to accept any substitute Plant and/or Material which the Subcontractor proposes to be equivalent in nature to the specified Plant and/or Material. The specified Plant and/or Material may only be changed at the sole discretion of the Contractor or the Contractor's Representative. For the avoidance of doubt the Subcontractor shall not be entitled to any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme) and/or any adjustment to the Subcontract Price and/or any additional Costs resulting from any such decision by the Contractor or the Contractor's Representative to use either the proprietary Plant and/or Material or any substitute Plant and/or Material which the Subcontractor proposes to be equivalent in nature to the specified Plant and/or Material.
- (d) The Subcontractor shall not be entitled to any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme) and/or any

adjustment to the Subcontract Price and/or any additional Costs resulting from any failure of the Sub-subcontractors to fulfil its obligations under the Subcontracts.

8.2 Samples

- (a) The Subcontractor shall submit the following samples of Materials, and relevant information, to the Contractor's Representative for approval prior to using the Materials in or for the Works:
 - (i) manufacturer's standard samples of Materials and samples specified in the Contractor's Requirements or the Design Documents, all at the Subcontractor's cost;
 - (ii) the items listed in Annexure 11 (Samples Requirements); and
 - (iii) additional samples instructed as a Variation under Clause 13.2.
- (b) Each sample shall be labelled as to origin and intended use in the Works.
- (c) The Subcontractor shall submit all samples of Materials and relevant information to the Contractor's Representative in accordance with Submittal procedure and any Samples Programme.
- (d) At least seventeen (17) days in advance of the commencement of its submissions of samples of Materials and relevant information, the Subcontractor shall produce and provide to the Contractor and Contractor's Representative a copy of its proposed Samples Programme for review.
- (e) The periods for review included in the Samples Programme shall be fair and reasonable periods (not being less than the period referred to in the Subcontract Particulars) based upon and taking account of the batching, timing, sequence and volume of samples which the Subcontractor will be expecting the Contractor and the Contractor's Representative to review at any given time.
- (f) By submitting samples and relevant Material information, the Subcontractor represents that it has determined and verified Materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Works and of the Subcontract.
- (g) The Subcontractor shall not be relieved of responsibility for deviations from requirements of the Subcontract by the Contractor's Representative's review of any samples and relevant Material information.
- (h) In the event that no response is received from the Contractor's Representative within the review period specified in the Samples Programme, the Subcontractor shall send a notice to the Contractor's Representative requesting the Contractor's Representative to review the relevant samples within eleven (11) days of the date of the notice. In the event that no response is received from the Contractor's Representative within such eleven (11) day period, the Subcontractor may proceed with construction of each part of the Works based on the relevant samples, but Contractor's or Contractor's Representative's lack of comments shall in no event relieve the Subcontractor of its responsibility to comply with the requirements of the Subcontract.

8.3 Inspection

- (a) The Contractor's Personnel and / or the Employer's Personnel and any other persons authorised by the Contractor shall at all reasonable times:
 - (i) have full access to all parts of the Site and to all places from which natural Materials are being obtained; and
 - (ii) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.
- (b) The Subcontractor shall give the Contractor's Personnel and any other persons authorised by the Contractor full opportunity to carry out these activities, including

providing access, facilities, permissions and safety equipment. No such activity shall relieve the Subcontractor from any obligation or responsibility under the Subcontract.

- (c) The Subcontractor shall give advance notice to the Contractor's Representative whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Contractor's Representative and any other persons authorised by the Contractor shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Subcontractor that the Contractor's Representative does not require to do so. If the Subcontractor fails to give the notice, the Subcontractor shall, if and when required by the Contractor's Representative, uncover the work and thereafter reinstate and make good, all at the Subcontractor's cost.
- (d) In addition, if the Contractor's Representative believes that the work is defective, the Subcontractor shall, if and when required by the Contractor's Representative, uncover the work and thereafter reinstate and make good, all at the Subcontractor's cost, except that such costs to uncover and reinstate shall be at the cost of the Contractor if there were no defect in the Works.

8.4 Testing

- (a) This Clause 8.4 (Testing) shall apply to all tests specified in the Subcontract. All tests shall be performed at laboratories approved by the Contractor's Representative. Where tests are to be performed on Site, the Subcontractor shall provide all apparatus, assistance, documents and other information, electricity, water, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Subcontractor shall agree, with the Contractor's Representative, the time, place and all other details for the specified testing of any Plant, Materials and other parts of the Works.
- (b) The Subcontractor shall give the Contractor's Representative written confirmation of the time and place for the each test at least ten (10) days in advance of each test performed on Site and at least twenty-three (23) days in advance of each test performed off-Site.
- (c) If the Contractor or the Contractor's Representative does not attend at the time and place agreed, the Subcontractor may proceed with the tests, unless otherwise instructed by the Contractor or the Contractor's Representative, and the tests shall then be deemed to have been made in the Contractor's and the Contractor's Representative's presence.
- (d) The Subcontractor shall promptly forward to the Contractor's Representative duly certified reports of the tests. When the specified tests have been passed, the Contractor's Representative shall endorse the Subcontractor's test certificate, or issue a certificate to the Subcontractor, to that effect. If the Contractor's Representative has not attended the tests, the Contractor shall be deemed to have accepted the readings as accurate. Any such endorsement or deemed acceptance does not in any way limit the Subcontractor's obligations under this Subcontract or at Law.

8.5 Rejection

- (a) If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Subcontract, the Contractor's Representative may reject the Plant, Materials or workmanship by giving notice to the Subcontractor, with reasons. The Subcontractor shall then promptly make good the defect and ensure that the rejected item complies with the Subcontract.
- (b) If the Contractor's Representative requires any Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Contractor and / or the Employer to incur additional costs, the Subcontractor shall pay these costs to the Contractor (directly, by offset, or by collection on the Performance Security, at the Contractor's sole discretion).
- (c) The Subcontractor shall not be entitled to any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme), and/or any

adjustment to the Subcontract Price or any additional Costs arising from or in relation to any defective workmanship, Plant or Materials, any rejection and/or any retesting contemplated by this Clause 8.5 (Rejection).

8.6 Remedial Work

- (a) Notwithstanding any previous test or certification, the Contractor's Representative may instruct the Subcontractor to:
 - (i) remove from the Site and replace any Plant or Materials which is not in accordance with the Subcontract;
 - (ii) remove and re-execute any other work which is not in accordance with the Subcontract; and
 - (iii) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.
- (b) The Subcontractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under 8.6(c) (Remedial Work).
- (c) If the Subcontractor fails to comply with the instruction, the Contractor shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Subcontractor would have been entitled to payment for the work, the Subcontractor shall pay to the Contractor all costs arising from this failure (directly, by offset, or by collection on the Performance Security, at the Contractor's sole discretion).
- (d) The Subcontractor shall not be entitled to any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price or any additional Costs arising from or in relation to complying with any such instruction under this Clause 8.6 (Remedial Work).

8.7 Ownership of Plant and Materials

Each item of Plant and Materials shall, to the extent consistent with the Laws of the United Arab Emirates, become the property of the Contractor, free from encumbrances, when the Subcontractor has received payment of the value of the Plant and Materials under Clause 9.9 (Payment for Plant and Materials in Event of Suspension), provided always that the Subcontractor remains responsible for the care, custody, protection and the risk of loss (including insurance) of such Plant and Materials until they are incorporated into the Works and a Taking-Over Certificate is issued in respect of the Works (or any part) that include such Plant and/or Materials or until such time as they become the property of the Contractor pursuant to this Clause 8.7 (Ownership of Plant and Materials), whichever is later.

8.8 Royalties

8.9 Unless otherwise agreed, the Subcontractor shall pay all royalties, rents and other payments for:

- (a) natural Materials obtained from outside the Site;
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Subcontract; and
- (c) all other royalties, rents and other payments which may be payable to third parties in respect of the Works.

9. Commencement, Delays and Suspension

9.1 Commencement of Work

- a) Notwithstanding any other provision of the Subcontract, the Contractor may, in its absolute discretion, issue to the Subcontractor a Notice to Commence, giving the Subcontractor not less than seven (7) Days' notice of the Commencement Date.
- b) Notwithstanding any other provision of the Subcontract, the Contractor is not bound to issue a Notice to Commence.

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- c) Upon the Commencement Date, the Subcontractor shall commence the Works, and thereafter, the Subcontractor shall proceed with the Works with due expedition and without delay.

9.2 Time for Completion

The Subcontractor shall execute and complete the whole of the Works (or a Separable Portion as the case may be), within the Time for Completion for the whole of the Works (or Separable Portion, as the case may be), including:

- (a) achieving the passing of the Tests on Completion; and
- (b) completing all work which is stated in the Subcontract as being required for the Works or Separable Portion to be considered to be completed for the purposes of Taking Over under Clause 11.1 (Taking Over of the Works and Separable Portions).

9.3 Programme

- (a) On the Signature Date, or such other time agreed between the Parties, the Subcontractor shall submit a detailed programme to the Contractor's Representative showing how the Subcontractor will design (to the extent required by the Subcontract), execute and complete the Works within the Time for Completion. An indicative programme of the Works is attached hereto as Annexure 5 (Working Programme).
- (b) The programme shall be a critical path method schedule that complies with the requirements of this Clause 9.3 (Programme). Each programme shall include:
 - (i) the order in which the Subcontractor intends to execute the Works or Separable Portion (as the case may be) highlighting all critical activities and the actual and forecasted start and finish dates for each stage of procurement, manufacture of Plant and/or Materials, inspection, Permits, delivery to Site, construction, erection, testing and commissioning;
 - (ii) all periods for reviews, comments and submissions required pursuant to the Subcontract;
 - (iii) the sequence and timing of inspections and Test on Completion and Tests after Completion and any other tests specified in the Subcontract; and
 - (iv) a supporting report which includes:
 - (A) a detailed description of the methods which the Subcontractor intends to adopt, and of the major stages, in the design (to the extent required by the Subcontract), execution and completion of the Works;
 - (B) details showing the Subcontractor's reasonable estimate of the number of each class of the Subcontractor's Personnel and of each type of Subcontractor's Equipment required on the Site for each major stage. This information shall be presented in the form of two (2) resource histograms (personnel and equipment) and shall clearly identify 'fixed cost' and 'time related' cost items, their individual monthly rates multiplied (x) by the month(s) required on the site to provide (=) item by item and total preliminary costs for the project;
 - (C) detailed cash flow forecast (monthly and cumulative amounts) identifying advance payments (if any), retention statements, gross and net payment amounts; and
 - (D) any other information or requirements specified in the Subcontract Particulars.
- (c) Unless the Contractor's Representative, within twenty-four (24) days after receiving a programme, gives notice to the Subcontractor stating the extent to which it does not comply with the Subcontract, the Subcontractor shall proceed in accordance with the programme, subject to its other obligations under the Subcontract.
- (d) The Contractor's Personnel shall be entitled to rely upon the programme when planning their activities.

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- (e) If, at any time, the Contractor's Representative gives notice to the Subcontractor that a programme fails (to the extent stated) to comply with the Subcontract or to be consistent with actual progress and the Subcontractor's stated intentions, the Subcontractor shall proceed to revise and reissue the programme in accordance with this Clause 9.3 (Programme), taking into account and incorporating any response received from the Contractor's Representative.
 - (f) The maximum interval between receipt of the Contractor's Representative's comments by the Subcontractor and resubmission of the programme shall be ten (10) days following the Contractor's Representative's first response and five (5) days following any additional response or responses thereafter.
 - (g) Any review undertaken for or on behalf of the Contractor of any submitted programme shall not relieve the Subcontractor from its obligation to comply with the requirements of the Subcontract.
 - (h) The Subcontractor shall promptly give notice to the Contractor's Representative of specific probable future events or circumstances which may adversely affect the Works, increase the Subcontract Price or delay the design (to the extent required by the Subcontract), execution and completion of the Works.
 - (i) The Contractor's Representative may require the Subcontractor to submit an estimate of the anticipated effect of the future event or circumstances.
 - (j) The Contractor may direct, in writing, in what order and at what time the various stages or portions of the Works shall be carried out and sequenced.
 - (k) Following a notice from the Contractor directing in what order and at what time the various stages or portions of the Works shall be carried out and sequenced, the Subcontractor shall proceed to revise and reissue the programme in accordance with this Clause 9.3 (Programme), taking into account such direction.
 - (l) Only if the Subcontractor suffers critical delay as a result of a direction under Clause 9.3(k) (Programme) in relation to the order and timing of the various stages or portions of the Works and/or sequencing, shall it be entitled to claim, subject to Clause 20.1 (Subcontractor's Claims) an extension of the Time for Completion to the extent permitted under Clause 9.4 (Extension of Time for Completion).
 - (m) After receiving this notice in accordance with Clause 20.1 (Subcontractor's Claims), the Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) and this Clause 6.1 (Subcontractors Generally) to agree or determine these matters.

9.4 Extension of Time for Completion

- (a) Subject to Clause 20.1 (Subcontractor's Claims) and Clause 9.4(b) - 9.4(d) (inclusive), the Subcontractor shall only be entitled to an extension of the Time for Completion, as applicable, if and to the extent that achievement of Taking Over for the purposes of Clause 11.1 (Taking Over of the Works and Separable Portions), as applicable, is or will be critically delayed beyond the Time for Completion by one or more of the following causes:
 - (i) a Variation (unless an adjustment to the Time for Completion, as applicable, has been agreed under Clause 13.2 (Variation Procedure));
 - (ii) a cause of delay giving an entitlement to extension to the Time for Completion under Clause 3.1 (Right of Access to the Site), Clause 9.3 (Program), Clause 9.8 (Consequences of Suspension), Clause 11.3 (Interference with Tests on Completion), Clause 16.1 (Subcontractor's Entitlement to Suspend Work), Clause 17.4 (Consequences of Contractor's Risks) and Clause 19.4 (Consequences of Force Majeure) of this Subcontract; or
 - (iii) acts or omissions of the Contractor or the Contractor's Personnel that constitute a material breach of the Contractor's obligations under this Subcontract.
- (b) The Subcontractor shall not be entitled to an extension to the Time for Completion, as applicable, unless the Subcontractor can demonstrate each of the following, to the reasonable satisfaction of the Contractor's Representative:

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- (i) that the delay was on the critical path of the programme of the Works and in this respect the Subcontractor shall include a critical path analysis in any submission for an extension to the Time for Completion, as applicable, to the level of detail (if any) requested by the Contractor's Representative;
 - (ii) that the delay specifically will cause the Subcontractor to complete the Works after the Time for Completion;
 - (iii) that, during the delay, the Subcontractor was unable to proceed with other portions of the Works so as not to cause a delay to the Time for Completion; and
 - (iv) that the Subcontractor has taken all reasonable steps to mitigate the delay and associated costs and losses caused by the delay.
 - (c) If the Subcontractor is unable to demonstrate the requirements in subparagraphs 9.4(b)(i) through 9.4(b)(iv), the Subcontractor shall not be entitled to any extension to the Time for Completion in respect of such delay.
 - (d) The Subcontractor shall not be entitled to an extension to the Time for Completion if the applicable event within 9.4(a)(i) to 9.4(a)(iii) (inclusive):
 - (i) was caused or contributed to by the Subcontractor, any Subcontractor Personnel, any Sub-Subcontractor (or any Affiliate of the Subcontractor who is an Other Subcontractor under a separate contract with the Contractor (or an Affiliate of the Contractor) on or near the Site); or
 - (ii) relates to a delay to any other works that the Subcontractor may be carrying out for the Contractor (or an Affiliate of the Contractor) pursuant to other contracts or is under any other contract for which the Subcontractor is not entitled to an extension of time under the terms of such other contract.
 - (e) If the Subcontractor considers itself to be entitled to an extension to the Time for Completion the Subcontractor shall provide notice to Contractor's Representative in accordance with the notice procedures and requirements specified in Clause 20.1 (Subcontractor's Claims). If the Subcontractor fails to comply with the requirements of Clause 20.1 (Subcontractor's Claims), the Subcontractor shall not be entitled to any extension to the Time for Completion.
 - (f) After receiving notice in accordance with Clause 20.1 (Subcontractor's Claims), the Contractor or Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) to agree or determine these matters.
 - (g) Despite any other provisions of the Subcontract, whether or not the Subcontractor has made, or is entitled to make, a claim for an extension to the Time for Completion, the Contractor (but not the Contractor's Representative) may, in its sole and absolute discretion, at any time make a fair and reasonable extension to the Time for Completion. The Contractor is not required to exercise this discretion for the benefit of the Subcontractor.
 - (h) Notwithstanding any other provisions of the Subcontract, if two or more delay events occur, one of which is an event described within 9.4(a)(i) to 9.4(a)(iii) (inclusive) and the other(s) constitute event that are not described within 9.4(a)(i) to 9.4(a)(iii) (inclusive), the effects of which are felt at the same time, then during such period of concurrency, the Subcontractor shall not be entitled to an extension to the Time for Completion nor any adjustment to the Subcontract Price or any additional Costs.

9.5 Rate of Progress

- (a) If, at any time:
 - (i) actual progress is too slow to complete the Works within the Time for Completion; or
 - (ii) progress has fallen (or will fall) behind the current programme under Clause 9.3 (Programme),other than as a result of a cause listed within 9.4(a)(i) to 9.4(a)(iii) (inclusive), then the Contractor's Representative may instruct the Subcontractor to submit, under Clause 9.3 (Programme), a revised programme and supporting report describing the revised

methods which the Subcontractor proposes to adopt in order to comply with obligations to complete the Works within the Time for Completion.

- (b) Unless the Contractor's Representative notifies otherwise, the Subcontractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Subcontractor's Personnel and/or Goods, at the risk and cost of the Subcontractor.
- (c) If the Subcontractor fails to adopt the revised methods or fails to rectify progress, the Contractor may take such action it considers appropriate to rectify that breach or mitigate the effects of that breach.
- (d) If such breach or the revised methods cause the Contractor and / or the Employer to incur additional costs, the Subcontractor shall pay (directly, by offset, or by collection on the Performance Security, at the Contractor's sole discretion) these costs to the Contractor, in addition to delay damages (if any) under Clause 9.6 (Delay Damages).
- (e) The Contractor may, at any time, in writing:
 - (i) request a proposal from the Subcontractor; or
 - (ii) instruct the Subcontractor,to accelerate or decelerate the Works for any reason (including, in the case of acceleration, as an alternative to granting an extension of the Time for).
- (f) Instructions to accelerate or decelerate the Works under Clause 9.5(e) shall be dealt with under the Variation Procedure under Clause 13.2 (Variation Procedure).

9.6 Delay Damages

- (a) If the Subcontractor fails to comply with Clause 9.2 (Time for Completion), the Subcontractor shall pay delay damages to the Contractor in the amounts calculated pursuant to the Subcontract Particulars and such delay damages become due and payable as they accrue, however, the total amount of delay damages shall not exceed the maximum amount of delay damages stated in the Subcontract Particulars.
- (b) Such delay damages shall be the only damages due from the Subcontractor for such default, other than in the event of termination under Clause 15.2 (Termination by) prior to completion of the Works. These damages shall not relieve the Subcontractor from its obligation to complete the Works, or from any other obligations under the Subcontract.
- (c) The Contractor may recover payment of such delay damages from the Subcontractor directly or by offset at the Contractor's sole discretion.

9.7 Suspension of Work

- (a) The Contractor's Representative may at any time instruct the Subcontractor to suspend progress of part or all of the Works. During such suspension, the Subcontractor shall protect, store and secure such part or the Works against any deterioration, loss or damage and comply with instructions regarding demobilization and re-mobilization.
- (b) The Contractor's Representative may, at its sole discretion, also notify the Subcontractor of the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Subcontractor, the following Clauses 9.8 (Consequences of Suspension), 9.9 (Payment for Plant and Materials in Event of Suspension) and 9.10 (Prolonged Suspension) shall not apply.

9.8 Consequences of Suspension

- (a) Only if the Subcontractor suffers critical delay and/or incurs Cost from complying with the Contractor's Representative's instructions under Clause 9.7 (Suspension of Work) and/or from resuming the work Clause 9.11 (Resumption of Work), shall it be entitled to claim, subject to Clause 20.1 (Subcontractor's Claims):
 - (i) an extension of the Time for Completion to the extent permitted under Clause 9.4 (Extension of Time for Completion); and

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- (ii) payment of any such Cost to the extent permitted under Clause 14.3 (Adjustments to the Subcontract Price), which shall be instructed as a Variation.
 - (b) After receiving notice under Clause 20.1 (Subcontractor's Claims), the Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) to agree or determine these matters.
 - (c) The Subcontractor shall not be entitled to an extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme), and/or any adjustment to the Subcontract Price and/or any additional Costs resulting from Subcontractor's making good the consequences of the Subcontractor's faulty performance, workmanship or materials, or of the Subcontractor's failure to protect, store or secure in accordance with Clause 9.7 (Suspension of Work).

9.9 Payment for Plant and Materials in Event of Suspension

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

- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than sixty-five (65) days (applies only to the deliveries from abroad); and
- (b) the Subcontractor has marked the Plant and/or Materials as the Contractor's (or Employer's) property in accordance with the Contractor's Representative's instructions.

9.10 Prolonged Suspension

- (a) If the suspension under Clause 9.7 (Suspension of Work) has continued for more than the number of days specified in the Subcontract Particulars, the Subcontractor may request the Contractor's Representative's permission to proceed.
- (b) If the Contractor's Representative does not give permission within sixty-five (65) days after being requested to do so, the Subcontractor may, by giving notice to the Contractor's Representative, treat the suspension as an omission under Clause 13 (Variations and Adjustments) of the affected part of the Works.
- (c) If the suspension affects the whole of the Works, the Subcontractor may give notice of termination under Clause 16.2 (Termination by).

9.11 Resumption of Work

After the permission or instruction to proceed is given, the Subcontractor and the Contractor's Representative shall jointly examine the Works and the Plant and Materials affected by the suspension. The Subcontractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

10. Tests on Completion

10.1 Subcontractor's Obligations

- (a) The Subcontractor shall carry out the Tests on Completion in accordance with this Clause 10 (Tests on Completion) and Clause 8.4 (Testing), after providing the documents required under this Subcontract.
- (b) The Subcontractor shall give to the Contractor's Representative not less than twenty-four (24) days' notice of the date after which the Subcontractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within twenty (20) days after this date, on such day or days as the Contractor's Representative shall instruct. The Tests for Completion shall be performed in accordance with the sequence and conditions specified in Contractor's Requirements.
- (c) In considering the results of the Tests on Completion, the Contractor's Representative shall make allowances for the effect of any use of the Works by the Contractor on the performance or other characteristics of the Works.
- (d) As soon as the Works, or a Separable Portion, have, in the reasonable opinion of Subcontractor, passed any Tests on Completion, the Subcontractor shall submit a certified report of the results of these Tests to the Contractor's Representative.

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- (e) The Works, or Separable Portion, shall not be considered to have passed the Tests on Completion until such time as the Contractor's Representative shall endorse the Subcontractor's test certificate, or issue a certificate to him, to that effect.

10.2 Delayed Tests

- (a) If the Tests on Completion are being unduly delayed by the Subcontractor, the Contractor's Representative may by notice require the Subcontractor to carry out the Tests within twenty (20) days or within other period instructed by the Contractor (however, not less than ten (10) days) after receiving the notice. The Subcontractor shall carry out the Tests on such day or days within that period as the Subcontractor may fix and of which Subcontractor shall give notice to the Contractor's Representative.
- (b) If the Subcontractor fails to carry out the Tests on Completion within such twenty (20) day period or other period as instructed by the Contractor as per item (a) above, the Contractor's Personnel may proceed with the Tests at the risk and cost of the Subcontractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Subcontractor and the results of the Tests shall be accepted as accurate.

10.3 Retesting

If the Works, or a Separable Portion, fail to pass the Tests on Completion, Clause 8.5 (Rejection) shall apply, and the Contractor's Representative or the Subcontractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

10.4 Failure to Pass Tests on Completion

- (a) If the Works, or a Separable Portion, fail to pass the Tests on Completion repeated under Clause 10.3 (Retesting), the Contractor's Representative shall be entitled to:
 - (i) order further repetition of Tests on Completion under Clause 10.3 (Retesting);
 - (ii) if the failure deprives the Contractor of substantially the whole benefit of the Works or Separable Portion, reject the Works or Separable Portion (as the case may be), in which event the Contractor shall have the same remedies as are provided in subparagraph (c) of Clause 12.4 (Failure to Remedy Defects); or
 - (iii) issue a Taking-Over Certificate, if the Contractor so requests.
- (b) In the event of Clause 10.4(a)(iii) (Failure to Pass Tests on Completion), the Subcontractor shall proceed in accordance with all other obligations under the Subcontract, and the Subcontract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Contractor as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Subcontract, the Contractor may require the reduction to be:
 - (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued; or
 - (ii) determined and paid under Clause 3.9 (Determinations).

11. Contractor's Taking Over

11.1 Taking Over of the Works and Separable Portions

- (a) Except as stated in Clause 10.4 (Failure to Pass Tests on Completion), the Works shall be Taken Over by the Contractor when:
 - (i) the Works have been completed in accordance with the Subcontract, including the requirements specified in the definition of 'Taken Over' and including the matters described in Clause 9.2 (Time for Completion); and
 - (ii) a Taking-Over Certificate for the Works has been issued in accordance with this Clause 11 (Contractor's Taking Over) and
 - (iii) the Employer has issued the relevant taking-over certificate to the Contractor for the relevant works under the Main Contract.

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- (b) The Subcontractor may apply by notice to the Contractor's Representative for a Taking-Over Certificate not earlier than sixteen (16) days before the Works will, in the Subcontractor's opinion, be complete and ready for Taking Over. If the Works are divided into Separable Portions, the Subcontractor may similarly apply for a Taking-Over Certificate for each Separable Portion.
 - (c) When applying for a Taking-Over Certificate, the Subcontractor must provide evidence with such notice that all sums due and payable by Subcontractor to Contractor, as at the date of such notice, have been paid in full to the Contractor.
 - (d) Subject to Clause 11.1(e), the Contractor's Representative shall, within thirty-eight (38) days after receiving the Subcontractor's application:
 - (i) subject to the issuance of the relevant taking over certificate by the Employer under Main Contract issue the Taking-Over Certificate to the Subcontractor, in the form set out in Annexure 13 (Form of Taking-Over Certificate) stating:
 - (A) the date on which the Works or Separable Portion met the requirements specified in the definition of 'Taken Over'; and
 - (B) any minor outstanding work or defects in the Works or relevant Separable Portion requiring completion or rectification by Subcontractor after Take Over of such Works or Separable Portion; or
 - (ii) reject the application, giving reasons and specifying the work required to be done by the Subcontractor to enable the Taking-Over Certificate to be issued. The Subcontractor shall then complete this work before issuing a further notice under this Clause 11.1 (Taking Over of the Works and Separable Portions).
 - (e) If the Contractor's Representative does not proceed in accordance with Clause 11.1(d)(i) or 11.1(d)(ii) (as applicable) within the stated period, the Subcontractor shall issue a notice to the Contractor's Representative requesting the Contractor's Representative to respond within a further fifteen (15) Days of such notice.

11.2 Taking Over and Use of Parts of the Works

- (a) The Contractor's Representative may, at the sole discretion of the Contractor, issue a Taking-Over Certificate for any part of the Permanent Works.
- (b) The Contractor shall not, except as provided in Clause 11.4 (Early Access for Other Subcontractors), or Clause 11.2(c), use any part of the Works (other than as a temporary measure which is either specified in the Subcontract or agreed by both Parties) unless and until the Contractor's Representative has issued a Taking-Over Certificate for this part.
- (c) If the Contractor or Employer requires access or use of a part or parts of the Works or a Separable Portion before the issuance of a Taking-Over Certificate, the Subcontractor shall continue to have the risk in and to take full responsibility for the care of such part or parts of the Works or Separable Portion and all outstanding work in respect of the Works prior to the issue of the relevant Taking-Over Certificate.
- (d) If the Subcontractor incurs Cost as a result of the Contractor or Employer using a part of the Works, other than such use as is specified in Clause 11.2(b) or agreed by the Subcontractor and except as provided in Clauses 11.4 (Early Access for Other Subcontractors), the Subcontractor shall be entitled to claim, subject to Clause 20.1 (Subcontractor's Claims), payment of any such Cost to the extent permitted under Clause 14.3 (Adjustments to the Subcontract Price), which shall be included in the Subcontract Price.
- (e) After receiving notice under Clause 20.1 (Subcontractor's Claims), the Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) and this Clause 11.2 (Taking Over and Use of Parts of the Works) to agree or determine these matters.

11.3 Interference with Tests on Completion

- (a) If the Subcontractor is prevented, other than in accordance with the Subcontract, for more than thirty-eight (38) days, from carrying out the Tests on Completion by a

cause for which the Contractor is responsible, the Subcontractor shall carry out the Tests on Completion as soon as practicable.

- (b) Only if the Subcontractor suffers critical delay and/or incurs Cost as a result of such prevention from carrying out the Tests on Completion, shall it be entitled to claim, subject to Clause 20.1 (Subcontractor's Claims):
 - (i) an extension of the Time for Completion to the extent permitted under Clause 9.4 (Extension of Time for Completion); and
 - (ii) payment of any such Cost to the extent permitted under Clause 14.3 (Adjustments to the Subcontract Price), which shall be treated as a Variation.
- (c) After receiving notice under Clause 20.1 (Claims and Dispute Resolution), the Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) and this Clause 11.3 (Taking Over and Use of Parts of the Works) to agree or determine these matters.

11.4 Early Access for Other Subcontractors

- (a) The Subcontractor must provide to the Contractor all information in relation to the Works reasonably necessary to assist the Contractor's Personnel to allow Other Subcontractors, to enter the Site and to plan and perform their obligations under their respective subcontracts.
- (b) The Contractor shall provide details of any work or services to be performed by Other Subcontractors (if relevant), including where such early access is required by such Other Subcontractors to plan and perform their obligations under their respective subcontracts.
- (c) The Subcontractor must notify the Contractor in a prompt manner whether in the Subcontractor's opinion any early access by any Other Subcontractors, , will have any effect of the methods or sequence of construction of the Works or the performance and/or quality of the Works.
- (d) The works and services by Other Subcontractors will be carried out by Other Subcontractors unless the Contractor elects to issue a Variation to the Subcontractor in accordance with Clause 13.2 (Variation Procedure) to carry out those parts of the Other Subcontractor's Works. The Contractor is not obliged to engage the Subcontractor to carry out any part of the works for Other Subcontractors.
- (e) If the works and services by Other Subcontractors are carried out prior to the issue of the Taking-Over Certificate:
 - (i) the Subcontractor must assist the Contractor in order to allow the Other Subcontractors access to those areas of the Site and the Works necessary to allow the Other Subcontractor's works to be carried out;
 - (ii) the Subcontractor remains in control of and assumes full responsibility for the Works during the time all works by Other Subcontractors are being carried out; and
 - (iii) in the event of the Contractor request the Subcontractor and all the Other Subcontractors must enter into a co-ordination agreement prior to the works or services by Other Subcontractors commencing on the Site if they have not already commenced prior to the Commencement Date.
- (f) The Subcontractor shall not be entitled to an extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme) and/or any adjustment to the Subcontract Price and/or additional Costs resulting from Subcontractor's compliance with the requirements of this Clause 11.4 (Early Access for Other Subcontractors).

12. Defects Liability

12.1 Completion of Outstanding Work and Remedying Defects

- (a) To ensure that the Works, and each Separable Portion, are in the condition required by the Subcontract (fair wear and tear excepted) by the expiry date of the Defects Notification Period, the Subcontractor shall:

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- (i) complete any work which is outstanding or which requires rectification on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Contractor's Representative; and
 - (ii) execute all work required to remedy defects, deficiencies or damage caused or contributed to by the Subcontractor to the Works, as may be notified by (or on behalf of) the Contractor on or before the expiry date of the Defects Notification Period.
- (b) If a defect or deficiency appears or damage caused or contributed to by the Subcontractor occurs, the Subcontractor shall be notified accordingly, by (or on behalf of) the Contractor, and Subcontractor shall promptly commence completion or rectification of such work.

12.2 Cost of Remedying Defects

- (a) All work referred to in Clause 12.1(a)(i) shall be executed at the risk and cost of the Subcontractor.
- (b) All work referred to in Clause 12.1(a)(ii) shall be executed at the risk and cost of the Subcontractor, except to the extent that such work is attributable to any breach of Subcontract by the Contractor.

12.3 Extension of Defects Notification Period

- (a) With respect to any part of the Works that requires completion or rectification under Clause 12.1 (Completion of Outstanding Work and Remedying Defects), the Defects Notification Period shall, if such rectification occurs during the period from the date of completion of the whole of the Works until the expiry of the Defects Notification Period, be extended for an additional one (1) year from the date of the completion or rectification of such part or component, provided that the Defect Notification Period shall not be extended beyond the period stated in the Subcontract Particulars.
- (b) Upon completion or rectification of such part or component, the Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) to determine the date of expiry of the Defects Notification Period.

12.4 Failure to Remedy Defects

- (a) If the Subcontractor fails to remedy any defect or damage within a reasonable time or if a defect requires remedy to commence urgently, a date may be fixed by (or on behalf of) the Contractor, on or by which the defect or damage is to be remedied. The Subcontractor shall be given reasonable notice of this date (with due consideration of the urgency of the defect).
- (b) If the Subcontractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Subcontractor under Clause 12.2 (Cost of Remedying Defects), the Contractor may (at its option):
 - (i) carry out the work itself or by others, in a reasonable manner and at the Subcontractor's cost; and the Subcontractor shall pay to the Contractor the costs incurred by the Contractor and / or the Employer in remedying the defect or damage;
 - (ii) require the Contractor's Representative to agree or determine a reasonable reduction in the Subcontract Price in accordance with Clause 3.9 (Determinations); or
 - (iii) if the Works are unable to be used or operated and/or if the defect, deficiency or damage deprives the Contractor and / or the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Subcontract as a whole, or in respect of such major part which cannot be put to the intended use.

Without prejudice to any other rights, under the Subcontract or otherwise, the Contractor shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning salvageable Plant and Materials to the Subcontractor.

Such entitlement shall not prejudice or affect any other right of the Contractor under the Subcontract or under applicable Law.

12.5 Further Tests

- (a) If the work of remedying of any defect or damage may affect the performance of the Works, the Contractor's Representative may require the repetition of any of the tests described in the Subcontract. The requirement to repeat a test shall be made by notice within thirty-five (35) days after the defect or damage is remedied.
- (b) These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Clause 12.2 (Cost of Remedying Defects), for the cost of the remedial work.

12.6 Right of Access

- (a) The Subcontractor acknowledges that access to the completed Works after the issue of a Taking-Over Certificate to carry out work under this Clause 12 (Defects Liability) will be strictly controlled by the Contractor and / or the Employer and that there will be conditions imposed on the Subcontractor in relation to its access, supervision, security and Subcontractor's Personnel.
- (b) The conditions of access:
 - (i) may include restrictions on the hours and methods of work; and
 - (ii) will be advised in writing to the Subcontractor by the Contractor's Representative prior to the commencement of any work.
- (c) The Subcontractor must:
 - (i) comply with any conditions advised by the Contractor or the Contractor's Representative under this Clause 12.6 (Right of Access);
 - (ii) avoid any disturbance or damage to the finished Works and any property stored or placed in the finished Works when carrying out any work under this Clause 12 (Defects Liability); and
 - (iii) comply with any other Project-specific access requirements specified in the Subcontract Particulars.

12.7 Subcontractor to Search

The Subcontractor shall, if required by the Contractor's Representative, search for the cause of any defect, under the direction of the Contractor's Representative. If the defect is to be remedied at the cost of the Subcontractor under Clause 12.2 (Cost of Remedying Defects), the Cost of the search plus reasonable profit (including also the costs reasonably arisen by the Employer) shall also be at Subcontractor's risk and cost.

12.8 Performance Certificate

- (a) Performance of the Subcontractor's obligations shall not be considered to have been completed until the Contractor's Representative has issued the Performance Certificate, in the form specified in Annexure 14 (Form of Performance Certificate), to the Subcontractor, stating the date on which the Subcontractor completed its obligations under the Subcontract.
- (b) The Contractor's Representative shall issue the Performance Certificate within thirty-eight (38) days after the latest of the expiry of the last Defects Notification Period, or as soon thereafter as the Subcontractor has supplied all documents and completed and tested all the Works, including remedying all defects notified under Clause 12.1 (Completion of Outstanding Work and Remedying Defects) before the last Defects Notification Period expired.

12.9 Unfulfilled Obligations

- (a) After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time.
- (b) Unfulfilled obligations at that time include, for the avoidance of doubt, the provision of collateral warranties under Clause 12.11 (Collateral Warranties) which are requested

by the Contractor and / or the Employer after the issue of the Performance Certificate. For the purposes of determining the nature and extent of unperformed obligations, the Subcontract shall be deemed to remain in force.

12.10 Clearance of Site

- (a) Upon receiving the Taking-Over Certificate, the Subcontractor shall remove any remaining Subcontractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.
- (b) If all these items have not been removed within twenty-five (25) days after the Subcontractor receives a copy of the Taking-Over Certificate, the Contractor and / or the Employer may sell or otherwise dispose of any remaining items. The Contractor and / or the Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.
- (c) Any balance of the moneys from the sale shall be paid to the Subcontractor. If these moneys are less than the Contractor's costs, the difference will be a debt due and payable by the Subcontractor to the Contractor and the Subcontractor must pay the outstanding balance to the Contractor immediately.

12.11 Collateral Warranties

The Subcontractor shall, within ten (10) days of the Contractor's written request from time to time to do so, and in any event prior to Taking Over, procure a collateral warranty from those Sub-Subcontractors specified in the Subcontract Particulars (or from any other Sub-Subcontractor if requested by the Contractor) in favour of one or more Beneficiaries in the respective form set out in Annexure 16 (Form of Collateral Warranty) with only such amendments as the Contractor's Representative shall, acting reasonably, approve.

- (a) Such collateral warranties shall be validly executed by the Subcontractor, and, in the case of any collateral warranties to be provided by any Sub-Subcontractor, by the Sub-Subcontractor as well.
- (b) Without limiting the foregoing, the Subcontractor shall provide the Contractor, as a precondition to Taking Over, with all collateral warranties from Sub-Subcontractors for all items of Plant, Material and equipment installed as part of the Works.
- (c) The obligation for the provision of such collateral warranties shall continue notwithstanding termination of the Subcontract or of the Subcontractor's employment under the Subcontract for any reason whatsoever including (without limitation) breach by the Contractor.
- (d) However, any such agreement provided after such termination shall be amended by the Contractor so as to refer to the fact and date of such termination, to omit any obligations to continue to exercise skill, care and diligence after such termination, and to omit any provision enabling a third party to assume the position of the Contractor.
- (e) The Subcontractor agrees that:
 - (i) It is fully responsible and liable to Contractor for its warranty and rectification obligations and liability under this Subcontract for all Works, regardless of the provision of any Sub-Subcontractor collateral warranties; and
 - (ii) it is jointly and severally liable with such Sub-Subcontractor with respect to such collateral warranty.

12.12 Latent defects

- (a) Notwithstanding the expiry of the Defects Notification Period or the issue of a Performance Certificate, the Subcontractor is responsible for remedying at its cost and expense any Latent Defect, as well as any damage to the Works caused by such Latent Defect, which appears or occurs at any time during the period of ten (10) years from the date on which the Performance Certificate is issued by the Contractor.
- (b) The Contractor must give the Subcontractor written notice of any such Latent Defect or damage and give the Subcontractor such access to the Permanent Works as may be reasonable in all the circumstances for such purposes and be in accordance with

Clause 12.6 (Right of Access). The Contractor shall specify a date in its notice by which the Subcontractor must remedy such Latent Defect.

- (c) If the Subcontractor fails to remedy the Latent Defect or damage by this notified date, the Contractor may carry out the work itself or by others, in a reasonable manner and at the Subcontractor's cost and the Subcontractor shall pay to the Contractor the costs reasonably incurred by the Contractor and / or the Employer in remedying the Latent Defect or damage.
- (d) This Clause 12.12 (Latent defects) does not relieve the Subcontractor from any of its obligations or liabilities under or in connection with the Subcontract or otherwise at Law.

13. Variations and Adjustments

13.1 Right to Vary

- (a) The Contractor or the Contractor's Representative may, at any time prior to issuing the Taking-Over Certificate for the Works or a Separable Portion, either:
 - (i) issue written instructions requiring the implementation of a Variation with immediate effect (**Variation Order**); or
 - (ii) request the Subcontractor to submit a proposal for the implementation of a proposed Variation.
- (b) The Subcontractor shall execute and be bound by each Variation Order.
- (c) Each of the following may constitute a Variation:
 - (i) the Contractor changes the Design Documents which leads to the changes in the Works;
 - (ii) changes to the quantities of any item of work included in the Subcontract (however, such changes do not necessarily constitute a Variation);
 - (iii) changes to the quality and other characteristics of any item of work;
 - (iv) changes to the levels, positions and/or dimensions of any part of the Works;
 - (v) omission of any part of the Works, which the Contractor may carry out itself or through third parties; or
 - (vi) any other circumstances expressly stated in the Subcontract to be a Variation,but none of the above shall constitute a Variation for the purposes of this Clause 13 (Variations and Adjustments) if instructed as a result of the Subcontractor's breach of Subcontract or failure to perform any of its obligations under the Subcontract.
- (d) The Subcontractor shall not implement any Variations, including any alteration and/or modification of the Permanent Works, and shall not claim for any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme), and/or any increase in Costs or adjustment to the Subcontract Price in relation to the same, unless and until a Variation Order is issued pursuant to Clause 13.2 (Variation Procedure).

13.2 Variation Procedure

- (a) If the Contractor or the Contractor's Representative requests a proposal for a Variation, the Subcontractor shall respond in writing within ten (10) days, either by giving reasons why he cannot comply with the proposed Variation (if this is the case) or by submitting:
 - (i) a description of the proposed work to be performed to implement the proposed Variation, including any technical and performance related ramifications of the proposed Variation and any consequential amendments required to the Subcontract;
 - (ii) any effect on the timing of the proposed Variation as it relates to the then current programme and the Time for Completion, together with any effect on the number of Subcontractor's Personnel necessary to implement the proposed Variation;

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- (iii) the Subcontractor's assessment as to whether the proposed Variation will cause critical delay to Taking Over of the Works pursuant to Clause 11.1 (Taking Over of the Works and Separable Portions) and if so the period of extension of the Time for Completion which the Subcontractor anticipates that it will be entitled to if the proposed Variation were instructed by the Contractor's Representative as a Variation;
 - (iv) the Subcontractor's assessment of the likely Cost of implementing the proposed Variation broken down by reference to construction, Materials, Plant, Temporary Works, each calculated on rates and/or prices contained in the Subcontract or, if not contained in the Subcontract, justifying such rates and prices, including anticipated quantities and unit prices, and the Subcontractor's assessment of the Subcontract Price which ought to be made to reflect the Cost breakdown and analysis; and
 - (v) any other information reasonably requested by the Contractor or the Contractor's Representative to support the Contractor's Representative's determination.
 - (b) The Subcontractor shall not defer, delay or suspend any part of the Works whilst the Contractor evaluates and/or the Parties discuss the Subcontractor's proposal. Notwithstanding a Subcontractor's proposal, the Contractor may elect to instruct the Subcontractor to proceed with a Variation immediately. In such case, the instruction must be in writing, must state "*Instruction under Clause 13.2(b) to proceed immediately with a Variation*" and the valuation of such Variation shall be calculated in accordance with Clause 13.2(g).
 - (c) If the Contractor accepts the Subcontractor's proposal, a Variation Order, reflecting the Subcontractor's proposal and any requirements for the recording of Costs, shall be issued by the Contractor (and signed by the "Managing Director" (or other equivalent officer) of the Contractor) to the Subcontractor, who shall acknowledge receipt by signing such Variation Order. Any adjustments to the Time for Completion or Subcontract Price shall be reflected by a Variation Order or amendment signed by the Contractor and the Subcontractor.
 - (d) If the Contractor rejects the Subcontractor's proposal, the Contractor may issue a Variation Order requiring the implementation of the proposed Variation or a modified or alternate Variation. If the Subcontractor suffers critical delay and/or incurs Cost as a result of such Variation, shall it be entitled to claim, subject to Clause 20.1 (Subcontractor's Claims):
 - (i) an extension of the Time for Completion to the extent permitted under Clause 9.4 (Extension of Time for Completion); and
 - (ii) payment of additional Costs to the extent permitted under Clause 14.3 (Adjustments to the Subcontract Price), which shall be included in the Subcontract Price.
 - (e) Such rejection of the Subcontractor's proposal under Clause 13.2(d) shall not be permitted unless the Contractor submits to the Subcontractor at least three offers from qualified third party contractors and thus demonstrates that the price submitted by the Subcontractor, for the same work set out in the Subcontractor's proposal, is more than ten per cent (10%) higher than the average of the offers collected by the Contractor, provided that the ten per cent (10%) represent the overhead expenses and profit of the Subcontractor which is acknowledged by the Contractor for the purposes of this Clause 13.2(e).
 - (f) After receiving notice under Clause 20.1 (Subcontractor's Claims), or if the Contractor's Representative elects to request the Subcontractor to proceed under Clause 13.2(b), the Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) and this Clause 13.2 (Variation Procedure) to agree or determine these matters.
 - (g) Each Variation shall be evaluated by the Contractor's Representative by using the agreed prices for similar elements of the Works as specified in the Subcontract, however, if such prices are not applicable and it is not practicable to deduce prices for the Variation, then the Variation shall be valued at fair and reasonable prices.

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- (h) If the Contractor rejects the Subcontractor's proposal but the Parties are able to agree upon a modified proposal, the Contractor may issue a Variation Order signed by the "Managing Director" (or other equivalent officer) of the Contractor reflecting such points of Agreement (which shall be binding upon the Parties) and identifying those points which shall be resolved in accordance with the Subcontractor's rights under Clause 20.1 (Subcontractor's Claims), Clause 9.4 (Extension of Time for Completion), Clause 14.3 (Adjustments to the Subcontract Price).
 - (i) The Subcontractor shall, when required by the Contractor's Representative or the Contractor, provide for inspection, reproduction and/or audit the original paper and electronic records and documents relating to the items the subject of a Variation, including quotations, invoices, vouchers, accounts or receipts in substantiation, agreements, purchase orders, and any other documents relating to the performance or value of such works.
 - (j) If the Subcontractor proceeds to implement a Variation which is not the subject of a formal and duly approved Variation Order signed by the "Managing Director" (or other equivalent officer) of the Contractor without seeking and obtaining written confirmation in accordance with the details of this Clause 13.2 (Variation Procedure), it does so entirely at its own risk and the Subcontractor shall be barred from subsequently claiming that the instruction in question constituted a Variation and shall have no claim to any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Program), and/or any additional Cost or adjustment to the Subcontract Price.

13.3 Adjustments for Changes in Legislation

The Subcontract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the signature date, which materially affects the Subcontractor in the performance of its obligations under the Subcontract.

13.4 Adjustments for Changes in Cost

No adjustment of the Subcontract Price nor any additional Costs shall be made and no extension of the Time for Completion or modification to the programme under Clause 9.3 (Programme), shall be granted in respect of any rise or fall in the cost or the availability of Plant, Materials, labour or any other matters which affect the Subcontractor's cost or time of executing the Works.

14. Subcontract Price and Payment

14.1 The Subcontract Price

The Parties agree that:

- (a) the Subcontract Price is the fixed price, lump sum amount stated in the Subcontract Particulars and is subject to adjustment only in accordance with Clause 14.3 (Adjustments to the Subcontract Price) of the Subcontract; and
- (b) the Subcontractor shall pay all taxes, duties and fees required to be paid by it under the Subcontract, and the Subcontract Price shall not be adjusted for any of these taxes, duties and fees.

14.2 Breakdown of Subcontract Price

- (a) The Subcontractor shall submit, prior to the Commencement Date, the following information concerning the Subcontract Price:
 - a) a breakdown of all lump sums included in the Subcontractor's tender for the Works; and
 - b) a breakdown of all unit rates and prices contained in the priced Bill of Quantities,
- (b) showing full details of the costs of labour, Materials, Plant, design (if any) and other charges, together with full details of any contribution to the Subcontractor's overheads (whether site overheads or otherwise) and profit which may be included in such lump sums, rates and prices.

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- (c) The Contractor shall have the right to request, and the Subcontractor shall provide to the Contractor as soon as practicable (and not later than 7 days after such request), further breakdowns in greater detail of such lump sums, rates and prices.
 - (d) In the case of any preliminary items of expenditure in the Bill of Quantities the Subcontractor shall indicate by an appropriate key letter:
 - 1. those items requiring adjustment based on the quantities of work carried out (Letter Q);
 - 2. those items requiring adjustment based on the time required to carry out the work (Letter T); and
 - 3. those items of expenditure which are of a once-for-all or fixed character and independent of quantities or time (Letter F).

In the case of preliminary or general or contingency or lump sum items, the Subcontractor has indicated precisely all categories of expenditure contemplated by those items which are not included in his other rates and prices. Preliminary items for which the Subcontractor has given no key letter shall be deemed to be fixed.

14.3 Adjustments to the Subcontract Price

- (a) The Subcontractor shall only have the right to payment of any Cost and/or an adjustment to the Subcontract Price in the event any one or more of the following occurrences materially and adversely affects the Subcontractor's actual Cost of performance of the Works, but only to the extent the Subcontractor complies with the requirements of this Clause 14.3 (Adjustments to the Subcontract Price) and Clause 20 (Claims and Dispute Resolution):
 - (i) a Variation Order (unless an adjustment to the Subcontract Price has been agreed under Clause 13.2 (Variation Procedure));
 - (ii) acts or omissions of the Contractor that constitute a material breach of the Contractor's obligations under this Subcontract;
 - (iii) prior to the Commencement Date, the discovery of any adverse Site Condition not known as of the Signature Date and which (x) is inconsistent with the Subcontractor's Site Assumptions and (y) has a material adverse impact on the ability of the Subcontractor to complete the Works in accordance with the requirements of the Subcontract.
- (b) The Subcontractor accepts that no other occurrences shall give the Subcontractor a right to seek additional Costs or adjustment to the Subcontract Price.
- (c) The Subcontractor shall not be entitled to any adjustment to the Subcontract Price or any additional Costs in the circumstances described in Clause 14.3(a) unless and until the Subcontractor provides all documentation necessary for the Contractor or the Contractor's Representative to determine the factors necessitating the additional Costs and substantiates the additional Cost, which substantiation may include detailed estimates showing the Subcontractor's cost accounting (including an itemisation of the work items and associated resources and costs for each item), and detailed cost records, daily time sheets, invoices, receipts and any other documents relating to the performance or value of such work.

14.4 Application for Payments

- (a) No later than thirty (30) days prior to the achievement of any Payment Milestone (if applicable as per Annexure 6, if not stated, after the end of each month), the Subcontractor shall provide written notice of the date of anticipated achievement of such Payment Milestone to the Contractor's Representative.
- (b) The Subcontractor shall submit a Statement in six (6) copies to the Contractor's Representative within two (2) days after the completion of a Payment Milestone, in a form approved by the Contractor's Representative, showing in detail the amounts to which the Subcontractor considers itself to be entitled, together with supporting documents which shall include the report on the progress up to the completion of such Payment Milestone in accordance with Clause 4.19 (Progress Reports).

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- (c) The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Subcontract Price is payable, in the sequence listed:
 - (i) the value of the Works executed up to the completion of such Payment Milestone (including Variations but excluding items described in Clause 14.4(c)(ii));
 - (ii) any other additions or deductions which may have become due under the Subcontract or otherwise, including those under Clause 20 (Claims and Dispute Resolution); and
 - (iii) a statement signed by the project director of the Subcontractor certifying the accuracy of the Statement, including the amount of the payment request and the supporting documentation.
 - (d) For the avoidance of doubt, the dates for completion of Payment Milestones set forth in Annexure 6 (Payment Milestone) are indicative and the Subcontractor shall have no right to receive any payment in respect of any Payment Milestone till such time that the applicable Payment Milestone is actually achieved.

14.5 Issue of Interim Payment Certificates

- (a) No amount will be certified or paid until the Contractor has received:
 - (i) and approved the Performance Security;
 - (ii) evidence of the Subcontractor's compliance with all Programme deliverables as required under Clause 9.3 (Programme);
 - (iii) evidence of the Subcontractor's compliance with the safety programme as required under Clause 7.6 (Health and Safety); and
 - (iv) evidence of the insurances required to be provided by the Subcontractor in accordance with Clause 18 (Insurance).
- (b) Thereafter the Contractor's Representative shall, within thirty-five (35) days after receiving a Statement and supporting documents, issue to the Contractor an Interim Payment Certificate which shall state the amount which the Contractor's Representative fairly determines to be due, with supporting particulars. For the avoidance of doubt, the Contractor's Representative may withhold issuing such Interim Payment Certificate until all requirements in the Financing Agreements relating to such payment (including, if applicable, the requirement of Financiers' independent evaluator certifying the achievement of the applicable Payment Milestone) have been satisfied.
- (c) The Contractor's Representative shall be entitled to withhold an Interim Payment Certificate if the Subcontractor has failed to provide the necessary information required under Clauses 14.4(c)(i) through 14.4(c)(iii).
- (d) In addition to the Contractor's right to withhold disputed amounts in a Statement, if any part of the Permanent Works is not in accordance with the Subcontract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed, the Contractor may withhold an amount as may be reasonably necessary to protect the Contractor and / or Employer from loss it has or may incur due to:
 - (i) any breach by the Subcontractor of any term or provision of this Subcontract;
 - (ii) the assessment of any fines or penalties against the Contractor and / or Employer as a result of the Subcontractor's failure to comply with Laws;
 - (iii) any other costs or liabilities which the Contractor and / or Employer has incurred or will incur for which the Subcontractor is responsible; or
 - (iv) any other reason for which the Contractor is entitled to withhold payment under this Subcontract.
- (e) The Contractor's Representative may in any Payment Certificate make any correction or modification that should properly be made to rectify any errors in any previous Payment Certificate. A Payment Certificate and payment by the Contractor shall not

be deemed to indicate the Contractor's or the Contractor's Representative's acceptance, approval, consent or satisfaction.

14.6 Payment

- (a) The Contractor shall pay to the Subcontractor:
- (i) the amount certified in each Interim Payment Certificate within the number of days specified in the Subcontract Particulars after the Contractor's Representative receives the Statement and supporting documents and after the Employer has made the payment for the relevant works under the Main Contract; and
 - (ii) the amount certified in the Final Payment Certificate within the number of days specified in the Subcontract Particulars after the Contractor receives this Payment Certificate and after the Employer has made the payment for the relevant works under the Main Contract,
- however, if the Contractor disputes any portion of the Statement or the amount certified by the Contractor's Representative, the Contractor shall be entitled to withhold payment of such disputed amounts, by providing notice to the Subcontractor of any items which are disputed stating the reasons for the dispute, and the Contractor shall pay all undisputed amounts to the Subcontractor in accordance with the foregoing.
- (b) Payment of any amount to the Subcontractor shall not be taken or construed as an acceptance or acknowledgment that the Works are necessarily in accordance with the Contract.
- (c) Save for the final payment, if the amount due to the Subcontractor is less than the sum set out in the Subcontract Particulars (the "**Minimum Payable Amount**") then such sum shall not be paid unless and until the amount due exceeds the Minimum Payable Amount.

14.7 Retention

- (a) The Contractor shall be entitled to deduct and withhold retention, calculated by applying the percentage of retention stated in the Subcontract Particulars the amount gross value of work for each Interim Payment Certificate, until the amount retained by the Contractor reaches the limit of Retention Money stated in the Subcontract Particulars.
- (b) No Retention Money shall be released on the issue of the Taking Over Certificate for substantial completion.
- (c) When the Taking Over Certificate has been issued for the Works and the whole of the Works have passed any Tests Prior to Completion, the first half of any Retention Money shall be released to the Contractor.
- (d) Promptly after the expiry of the Defects Notification Period, the outstanding balance of any Retention Money shall be released to the Contractor.
- (e) However, if any work remains to be executed or defect, deficiency or damage remedied under Clause 12 (Defects Liability), the Contractor shall be entitled to withhold the estimated cost of this work until such work has been carried out and completed and/or the defect, deficiency or damage remedied.

14.8 Rights to Set off

The Contractor shall be entitled to set off any amount due and payable to it (or to any Affiliate of the Contractor) by the Subcontractor (or an Affiliate of the Subcontractor) under this Subcontract or any other subcontract the Subcontractor (or an Affiliate of the Subcontractor) has entered into with the Contractor (or an Affiliate of the Contractor) against any amount certified in a Payment Certificate or due and payable under a separate agreement between

the Subcontractor (or an Affiliate of the Subcontractor) and the Contractor (or an Affiliate of the Contractor).

14.9 Statement at Completion

- (a) Within eighty-(80) days after receiving the Taking-Over Certificate for the Works, the Subcontractor shall submit to the Contractor's Representative six (6) copies of a Statement at completion with supporting documents, in accordance with Clause 14.4 (Application for Payments), showing:
 - (i) the value of all work done in accordance with the Subcontract up to the date stated in the Taking-Over Certificate for the Works;
 - (ii) any further sums for which the Subcontractor considers to be due; and
 - (iii) an estimate of any other amounts which the Subcontractor considers will become due to him under the Subcontract. Estimated amounts shall be shown separately in this Statement at completion.
- (b) The Contractor's Representative shall then certify in accordance with Clause 14.5 (Issue of Interim Payment Certificates).

14.10 Application for Final Payment Certificate

- (a) Within fifty(50) days after receiving the Performance Certificate, the Subcontractor shall submit, to the Contractor's Representative, six (6) copies of a draft final statement with supporting documents showing in detail in a form approved by the Contractor's Representative:
 - (i) the value of all work done in accordance with the Subcontract;
 - (ii) any further sums which the Subcontractor considers to be due to him under the Subcontract or otherwise;
 - (iii) a statement signed by the "chief executive officer" (or equivalent) of the Subcontractor that all Sub-Subcontractors have been paid in respect of payments made by the Contractor to the Subcontractor under previous Payment Certificates; and
 - (iv) a statement signed by the project director of the Subcontractor certifying the accuracy of the statement, including the amount of the payment request and the supporting documentation.
- (b) If the Contractor or Contractor's Representative disagrees with or cannot verify any part of the draft final statement, the Subcontractor shall submit such further information as the Contractor or Contractor's Representative may reasonably require and shall make such changes in the draft as may be agreed between the Parties.
- (c) The Subcontractor shall then prepare and submit to the Contractor's Representative the final statement as agreed by the Parties. This agreed statement is referred to in this Subcontract as the "Final Statement".
- (d) However if, following discussions between the Contractor's Representative and the Parties and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Contractor's Representative shall deliver to the Contractor (with a copy to the Subcontractor) an Interim Payment Certificate for the agreed parts of the draft final statement.
- (e) Thereafter, if the dispute is finally resolved under Clause 20 (Claims and Dispute Resolution), the Subcontractor shall then prepare and submit to the Contractor (with a copy to the Contractor's Representative) a Final Statement.

14.11 Discharge

When submitting the Final Statement, the Subcontractor shall submit a written discharge in a form approved by the Contractor which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Subcontractor under or in connection with the Subcontract.

This discharge may state that it becomes effective when the Subcontractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

14.12 Issue of Final Payment Certificate

- (a) Within thirty-five (35) days after receiving the Final Statement and written discharge in accordance with Clause 14.10 (Sufficiency of the Subcontract Price, Time for Completion) and Clause 14.11 (Discharge), the Contractor's Representative shall issue, to the Contractor, the Final Payment Certificate which shall state:
 - (i) the amount which is finally due to Subcontractor under the Subcontract; and
 - (ii) after giving credit to the Subcontractor for:
 - (A) all amounts previously paid by the Contractor;
 - (B) all sums to which the Contractor is entitled to payment from the Subcontractor under the Subcontract; and
 - (C) all sums which the Contractor is entitled to withhold from payments to the Subcontractor under the Subcontract, the balance (if any) due from the Contractor to the Subcontractor or from the Subcontractor to the Contractor, as the case may be.

For the avoidance of doubt, the Contractor's Representative may withhold issuing the Final Payment Certificate until all requirements in the Financing Agreements relating to such payment (including, if applicable, the requirement of Financiers' independent evaluator certifying the achievement of the applicable Payment Milestone) have been satisfied.

- (b) If the Subcontractor has not applied for a Final Payment Certificate in accordance with Clause 14.10 (Application for Final Payment Certificate) and Clause 14.11 (Discharge), the Contractor's Representative shall request the Subcontractor to do so. If the Subcontractor fails to submit an application within a period of twenty-five (25) days, the Contractor's Representative shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

14.13 Cessation of Contractor's Liability

- (a) Upon making payment on the amount agreed by Contractor and certified in the Final Payment Certificate, the Contractor shall not be liable to the Subcontractor for any matter or thing under or in connection with the Subcontract or the design (to the extent required by the Subcontract), execution and completion of the Works, except to the extent that the Subcontractor shall have included an amount expressly for it:
 - (i) in the Final Statement; and also
 - (ii) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Clause 14.9 (Statement at Completion).
- (b) However, this Clause 14.13 (Cessation of Contractor's Liability) shall not limit the Contractor's liability under its indemnification obligations, or the Contractor's liability in any case of fraud, deliberate default or reckless misconduct by the Contractor.

14.14 Currencies of Payment

- (a) The Subcontract Price shall be paid in United States Dollars.
- (b) Payment of the damages specified in the Subcontract Particulars shall be made in United States Dollars.

14.15 Payments to Contractor

With respect to any amounts payable by the Subcontractor to the Contractor under this Subcontract, the Contractor, at its absolute discretion, may:

- (a) invoice the Subcontractor for such amounts owed to the Contractor, and within twenty-five (25) days of the Subcontractor's receipt of such invoice, the Subcontractor shall pay the Contractor such invoiced amounts;
- (b) withhold such amounts owed to the Contractor from amounts that are otherwise due and payable to Subcontractor; or
- (c) draw such amounts owed to the Contractor against the Performance Security.

15. Termination by Contractor

15.1 Notice to Correct

- (a) If the Subcontractor fails to carry out any obligation under the Subcontract, the Contractor or Contractor's Representative may by notice require the Subcontractor to make good the failure and to remedy it within a reasonable time specified in such notice.
- (b) Without limiting the foregoing, the Contractor may request the Subcontractor to submit a revised programme and a supporting cure plan in accordance with Clause 9.5 (Rate of Progress) describing the revised methods which the Subcontractor proposes to adopt in order to cure the breach and complete the Works within the Time for Completion.
- (c) Unless the Contractor or the Contractor's Representative notifies otherwise, the Subcontractor must adhere to the cure plan and remedy the failure at the risk and cost of the Subcontractor.
- (d) If the Subcontractor fails to cure the breach or otherwise fails to adhere to the cure plan, the Contractor may take any action it considers appropriate to rectify that breach or mitigate the effects of that breach.
- (e) If such breach causes the Contractor and / or Employer to incur additional costs, the Subcontractor must pay these costs to the Contractor, in addition to delay damages (if any) under Clause 9.6 (Delay Damages). In addition, the Contractor may exercise its right under Clause 15.2 (Termination by Contractor).

15.2 Termination by Contractor

- (a) In addition to the Contractor's termination rights stated other provisions of this Subcontract, the Contractor is entitled to terminate the Subcontract without the need for a court order if the Subcontractor:
 - (i) fails to comply with Clause 4.3 (Performance Security) with a notice under Clause 15.1 (Notice to Correct);
 - (ii) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Subcontract;
 - (iii) without reasonable excuse fails:
 - (A) to proceed with the Works in accordance with Clause 9 (Commencement, Delays and Suspension); or
 - (B) to comply with a notice issued under Clause 8.5 (Rejection) or Clause 8.6 (Remedial Work), within twenty-eight (28) days after receiving it;
 - (iv) assigns or otherwise transfers (or seeks to assign or transfer) the Subcontract in breach of the Subcontract;
 - (v) suffers an Insolvency Event;
 - (vi) fails to comply with Clause 4.27 (Prohibited Acts);
 - (vii) suspends the Works, otherwise than as permitted under the Subcontract;
 - (viii) fails to pay any sum due and payable to the Contractor within the required time under the Subcontract (and the amount available to be drawn under the Performance Security is less than such payable amount);
 - (ix) receives a notice from the Contractor's Representative stating, in the Contractor's Representative's reasonable opinion, that the Subcontractor has become liable to pay the maximum amount of delay damages referred to in Clause 9.6 (Delay Damages); or
 - (x) fails to maintain any of the insurances required pursuant to Clause 18 (Insurance) of this Subcontract.
 - (xi) in case of termination of the Main Contract between the Employer and the Main Contractor irrespectively of the reason.

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- (b) If Clause 15.2(a) (Termination by) applies, the Contractor may, upon giving ten (10) days' notice to the Subcontractor, terminate the Subcontract and expel the Subcontractor from the Site. However, in the case of Clauses 15.2(a)(v) and 15.2(a)(vi), the Contractor may by notice terminate the Subcontract immediately.
 - (c) Additionally, the Contractor is entitled to terminate the Subcontract for convenience subject to prior written 14-days-notice. The Contractor's election to terminate the Subcontract shall not prejudice any other rights of the Contractor, under the Subcontract or otherwise.
 - (d) After a notice of termination under this Clause 15.2 (Termination by) has taken effect, the Subcontractor shall promptly:
 - (i) cease all further work, except for such work as may have been instructed by the Contractor for the protection of life or property or for the safety of the Works, and vacate the Site;
 - (ii) deliver to the Contractor all Records, all Permits and other documents to be provided under the Subcontract by the Subcontractor;
 - (iii) deliver to the Contractor any required Goods and remove all other Goods from the Site, except as may be necessary for safety and leave the Site or as may be otherwise instructed by the Contractor; and
 - (iv) if requested by the Contractor, novate or transfer any subcontract to the Contractor or Employer.
 - (e) After termination, the Contractor may complete the Works and/or arrange for any other entities to do so. The Contractor and these entities may then use any Goods and other documents made by or on behalf of the Subcontractor.
 - (f) Upon termination, the Contractor may take possession of Subcontractor's Equipment or Temporary Works, and when such items are no longer needed by the Contractor or other persons or entities completing the Works, the Contractor shall give notice that the Subcontractor's Equipment and Temporary Works will be released to the Subcontractor at or near the Site.
 - (g) The Subcontractor shall promptly arrange their removal, at the risk and cost of the Subcontractor. However, if by this time the Subcontractor has failed to make a payment due to the Contractor, these items may be sold by the Contractor in order to recover this payment. Any balance of the proceeds shall then be paid to the Subcontractor.

15.3 Valuation at Date of Termination

As soon as practicable after a notice of termination under Clause 15.2 (Termination by) has taken effect, the Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) to agree or determine the value of the Works and any other sums due to the Subcontractor for work executed in accordance with the Subcontract through the date of termination.

15.4 Payment after Termination

After a notice of termination under Clause 15.2 (Termination by) has taken effect, the Contractor may:

- (a) withhold further payments to the Subcontractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Contractor and / Employer, have been established; and/or
- (b) recover from the Subcontractor any losses and damages incurred by the Contractor and any extra costs of completing the Works, after allowing for any sum due to the Subcontractor under Clause 15.3 (Valuation at Date of Termination). After recovering any such losses, damages and extra costs, the Contractor shall pay any balance to the Subcontractor.

15.5 UAE Civil Code

The Subcontractor expressly acknowledges and agrees that it consents to the Contractor's entitlement to terminate the Subcontract pursuant Clauses 12.4(b) (Failure to Remedy

Defects) and 15 (Termination by) in accordance with the meaning of consent and mutual consent as contemplated under the UAE Civil Code. The Contractor is entitled to exercise such recourse without the need to obtain a court order in accordance with the UAE Civil Code.

16. Suspension and Termination by Subcontractor

16.1 Subcontractor's Entitlement to Suspend Work

- (a) If the Contractor's Representative fails to certify in accordance with Clause 14.5 (Issue of Interim Payment Certificates) or the Contractor fails to comply with Clause 14.6 (Payment), the Subcontractor may, after giving not less than forty-five(45) days' notice to the Contractor, suspend work (or reduce the rate of work) unless and until the Subcontractor has received the Payment Certificate or payment of all undisputed amounts, as the case may be and as described in the notice.
- (b) The Subcontractor's action shall not prejudice its entitlements to termination under Clause 16.2 (Termination by).
- (c) If the Subcontractor subsequently receives such Payment Certificate or payment (as described in the relevant Clause and in the above notice) before giving a notice of termination, the Subcontractor shall resume normal working as soon as is reasonably practicable.
- (d) Only if the Subcontractor suffers critical delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Clause 16.1 (Subcontractor's Entitlement to Suspend Work), shall it give notice to the Contractor's Representative and shall be entitled subject to Clause 20 (Claims and Dispute Resolution) to:
 - (i) an extension the Time for Completion to the extent permitted under Clause 9.4 (Extension of Time for Completion); and
 - (ii) payment of any such Costs to the extent permitted under Clause 14.3 (Adjustments to the Subcontract Price), which shall be included in the Subcontract Price.
- (e) After receiving notice under Clause 20.1 (Subcontractor's Claims), the Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) and this Clause 16.1 (Subcontractor's Entitlement to Suspend Work) to agree or determine these matters.

16.2 Termination by Subcontractor

- (a) The Subcontractor shall be entitled to terminate the Subcontract if:
 - (i) the Subcontractor has lawfully exercised its right to suspend under Clause 16.1 (Subcontractor's Entitlement to Suspend Work) and such period of suspension has exceeded 70 (70) days;
 - (ii) a prolonged suspension by the Contractor affects the whole of the Works as described in Clause 9.10 (Prolonged Suspension); or
 - (iii) the Contractor becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.
- (b) If Clause 16.2(a) (Termination by) applies, the Subcontractor may give notice to the Contractor of its intention to terminate the Subcontract specifying the reason for such termination.
- (c) If the event or circumstance described in the notice is still subsisting on the twenty-eighth (28th) day after the date of such notice, the Subcontractor may, upon giving a further twenty eighth (28) days' notice to the Contractor, terminate the Subcontract. However, in the case of Clause 16.2(a)(iii), the Subcontractor may by notice terminate the Subcontract immediately.
- (d) The Subcontractor's election to terminate the Subcontract shall not prejudice any other rights of the Subcontractor, under the Subcontract or otherwise.

16.3 Cessation of Work and Removal of Subcontractor's Equipment

After a notice of termination under Clause 16.2 (Termination by) or Clause 19.5 (Optional Termination, Payment and Release) has taken effect, the Subcontractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Contractor's Representative for the protection of life or property or for the safety of the Works;
- (b) hand over all Subcontractor's Documents and Permits (which shall be transferred into the name of the Contractor or its nominee (if applicable)) and other documents, Plant, Materials and other work, for which the Subcontractor has received payment;
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site; and
- (d) if requested by the Contractor, novate or transfer any subcontract to the Contractor.

16.4 Payment on Termination

After a notice of termination under Clause 16.2 (Termination by) has taken effect, the Contractor shall promptly:

- (a) return the Performance Security to the Subcontractor; and
- (b) pay the Subcontractor in accordance with Clause 19.5 (Optional Termination, Payment and Release).

16.5 UAE Civil Code

The Contractor expressly acknowledges and agrees that it consents to the Subcontractor's entitlement to terminate the Subcontract pursuant to Clauses, and this Clause 16 (Suspension and Termination by) in accordance of meaning of consent and mutual consent as contemplated under the UAE Civil Code. The Subcontractor is entitled to exercise such recourse without the need to obtain a court order in accordance with the UAE Civil Code.

17. Risk and Responsibility

17.1 Indemnities

The Subcontractor shall indemnify and hold harmless the Contractor, its Affiliates, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever; and
- (b) damage to or loss of any property, real or personal (including of the Contractor and Employer),

arising out of or in the course of, or by reason of the design (to the extent required by the Subcontract), execution and completion of the Works and the remedying of any defects, except to the extent attributable to a wilful act or breach of the Subcontract by the Contractor, its Affiliates, the Contractor's Personnel, or any of their respective agents.

17.2 Subcontractor's Care of the Works

- (a) Subject to Clause 17.2(c), the Subcontractor shall take full responsibility for the care of the Works, the Goods from the Commencement Date. On issue of a Taking-Over Certificate for the whole of the Works (or if one is deemed to be issued under Clause 11.1 (Taking Over of the Works and Separable Portions)), responsibility for the care of the Works shall then pass to the Contractor.
- (b) Subject to Clause 17.2(c), if a Taking-Over Certificate is issued (or is so deemed to be issued) for any Separable Portion or part of the Works, responsibility for the care of the Separable Portion or part of the Works shall then pass to the Contractor.
- (c) After responsibility for the Works has accordingly passed to the Contractor, the Subcontractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed in accordance with this Subcontract.
- (d) If any loss or damage happens to the Works, Goods during the period when the Subcontractor is responsible for their care, from any cause not listed in Clause 17.3

(Contractor's Risks), the Subcontractor shall rectify the loss or damage at the Subcontractor's risk and cost, so that the Works, Goods conform with the Subcontract.

- (e) The Subcontractor shall be liable for any loss or damage caused by any actions performed by the Subcontractor or anyone acting on its behalf (including Subcontractor's Personnel and Sub-Subcontractors) after a Taking-Over Certificate has been issued. The Subcontractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Subcontractor was liable.

17.3 Contractor's Risks

The risks referred to in Clause 17.4 (Consequences of Contractor's Risks) below are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies within the United Arab Emirates;
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the United Arab Emirates;
- (c) riot, commotion or disorder within the United Arab Emirates by persons other than the Subcontractor's Personnel and other employees of the Subcontractor and Sub-Subcontractors;
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the United Arab Emirates, except as may be attributable to the Subcontractor's use of such munitions, explosives, radiation or radio-activity; and
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

17.4 Consequences of Contractor's Risks

- (a) If and to the extent that any of the risks listed in Clause 17.3 (Contractor's Risks) above results in loss or damage to the Works, Goods the Subcontractor shall promptly give notice to the Contractor's Representative and shall rectify this loss or damage to the extent required by the Contractor's Representative.
- (b) Only if the Subcontractor suffers critical delay from rectifying this loss or damage, the Subcontractor shall give a further notice to the Contractor's Representative and the Subcontractor shall be entitled to claim, subject to Clause 20.1 (Subcontractor's Claims), an extension of the Time for Completion to the extent permitted under Clause 9.4 (Extension of Time for Completion).
- (c) After receiving notice under Clause 20.1 (Subcontractor's Claims), the Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) and this Clause 17.4 (Consequences of Contractor's Risks) to agree or determine these matters.

17.5 Intellectual Property Rights

- (a) N/a.
- (b) By signing the Subcontract the Subcontractor is deemed to have given, commencing from the earlier of (x) the date of the Performance Certificate or (y) the termination of this Subcontract, to the Contractor a non-terminable, irrevocable, transferable, non-exclusive, royalty-free licence to copy, use, sub-license the Subcontractor's Documents, including making and using modifications of them. Such documents shall not, without the Contractor's consent, be copied, used or communicated to a third party by the Subcontractor, except as necessary for the sole purpose of performing its obligations under the Subcontract.
- (c) The Subcontractor hereby warrants to the Contractor that the use of the Subcontractor's Documents which have been or shall be produced by the Subcontractor or a Sub-Subcontractor shall not infringe the Intellectual Property Rights of any third party.
- (d) As between the Parties, the Contractor shall retain the Intellectual Property Rights in the Contractor's Requirements and other documents made by or on behalf of the Contractor. The Subcontractor may, at its cost, copy, use, and obtain communication

of these documents for the sole purpose of performing its obligations under the Subcontract. Such documents shall not, without the Contractor's consent, be copied, used or communicated to a third party by the Subcontractor, except as necessary for the sole purpose of performing its obligations under the Subcontract.

- (e) In this Clause 17.5 (Intellectual Property Rights), "infringement" means an infringement (or alleged infringement) of any Intellectual Property Right relating to the Subcontractor's Documents and the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.
- (f) Whenever a Party does not give notice to the other Party of any claim within twenty-eight (28) days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Clause 17.5 (Intellectual Property Rights).
- (g) The Subcontractor shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which arises out of or in relation to:
 - (i) the manufacture, use, sale or import of any Goods; or
 - (ii) any breach by the Subcontractor of Clause 17.5(c).
- (h) If the Contractor is entitled to be indemnified under this Clause 17.5 (Intellectual Property Rights), the Subcontractor may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The Contractor, at the request and cost of the Subcontractor, assist in contesting the claim. The Contractor shall not make any admission which might be prejudicial to the Subcontractor, unless the Subcontractor failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by the Contractor.

17.6 Limitation of Liability

- (a) The Subcontractor's liability to the Contractor under, or arising out of, this Subcontract and at Law (subject to applicable Law), is limited to the amount specified in the Subcontract Particulars, provided that such limitation shall not in any case apply:
 - (i) under Clause 17.5 (Intellectual Property Rights);
 - (ii) under Clause 17.1 (Indemnities), in respect of any claim or loss in relation to bodily injury, sickness, disease or death, of any person;
 - (iii) to any liability for Prohibited Acts;
 - (iv) under any other provisions of this Subcontract or the UAE Civil Code which expressly impose a greater liability; or
 - (v) in the event of the Subcontractor's fraud, negligence, wilful misconduct or illegal or unlawful acts.
- (b) The Parties agree that the Subcontractor's limitation of liability in Clause 17.6(a) is reasonable and has been negotiated in good faith and such limitation of liability is intended by the Parties to be enforceable to the fullest extent permitted by applicable Law.
- (c) The Parties agree that if any part or all of this Clause 17.6 (Limitation of Liability) is determined to be invalid or unenforceable in any respect under applicable Law, then Clause 21.2 (Severability) shall apply to sever part of, or all of, this Clause 17.6 (Limitation of Liability) and it will not affect or impair the legality, validity or enforceability of any other part or provision of this Subcontract.

18. Insurance

18.1 General Requirements for Insurances

- (a) In this Clause 18 (Insurance), "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Clause.
- (b) The insurances to be effected and maintained under this Clause 18 (Insurance) are more particularly defined by reference to Schedule 4 (Insurance). Schedule 4 has priority vis-à-vis the present Clause 18. If according to Schedule 4 some of the insurances are not applicable, the provisions of Schedule 4 shall apply. If no insurances are defined in Schedule 4 as "not applicable", the provisions of the

present Clause 18 shall apply. Wherever the Subcontractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Contractor before the Commencement Date. Such agreement regarding the terms of insurance shall take precedence over the provisions of this Clause 18 (Insurance).

- (c) If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause 18 (Insurance):
 - (i) the Subcontractor shall act under the policy on behalf of these additional joint insured except that the Contractor shall act for Contractor's Personnel;
 - (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer; and
 - (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.
- (d) Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.
- (e) The relevant insuring Party shall, within the respective periods stated in Schedule 4 (Insurance) (calculated from the Commencement Date), submit to the other Party:
 - (i) evidence that the insurances described in this Clause 18 (Insurance) have been effected; and
 - (ii) copies of the policies for the insurances described in Clause 18.2 (Insurance for Works) and Clause 18.3 (Insurance against Injury to Third Party Persons and Damage to Third Party Property).
- (f) When each premium is paid, the insuring Party shall submit evidence of payment to the other Party within twelve (12) days of such premium payment. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Contractor's Representative.
- (g) Each Party shall comply with the conditions stipulated in each of the insurance policies and each Party shall ensure that their respective representatives (and, where applicable, subcontractors) shall comply with the conditions.
- (h) The Subcontractor shall keep the Contractor and the insurers informed of any relevant changes to the design (to the extent required by the Subcontract), execution and completion of the Works and ensure that insurance is maintained in accordance with this Clause 18 (Insurance).
- (i) The Subcontractor shall indemnify the Contractor for any loss which the Contractor may suffer by reason of the Contractor not being able to recover under the insurances effected by the Contractor as a result of the Subcontractor's act, omission, neglect, default, including any misrepresentation, non-disclosure, want of due diligence or breach of any declaration, condition or warranty contained in the relevant insurance policy.
- (j) The Subcontractor must at any time following a reasonable request, provide evidence to the Contractor that the insurances required to be arranged by the Subcontractor under the Subcontract have been effected and are being maintained and must, within the period stated in Schedule 4 (Insurance) from the date of execution of the Subcontract, provide the insurance policies to the Contractor.
- (k) The Subcontractor shall be liable for all deductibles stated in Clause 18.2 (Insurance for Works) to 18.6 (Additional insurances).
- (l) The Subcontractor shall take out its required Insurances with reputable, licensed insurers approved by the Contractor, such approval not to be unreasonably withheld, and who are licensed to write insurance in the location within which the activity takes place.
- (m) Neither Party shall make any material alteration to the terms of any insurance required to be effected by such Party under the terms of this Subcontract, without the

prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

- (n) If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Subcontract, or fails to provide satisfactory evidence and copies of policies in accordance with this Clause 18 (Insurance), the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Subcontract Price shall be adjusted accordingly.
- (o) Nothing in this Clause 18 (Insurance) limits the obligations, liabilities or responsibilities of the Subcontractor or the Contractor, under the other terms of the Subcontract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Subcontractor and/or the Contractor in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Subcontract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.
- (p) Payments by one Party to the other Party shall be subject to Clause (Contractor's Claims) or Clause 20 (Claims and Dispute Resolution), as applicable.

18.2 Insurance for Works

- (a) The insuring Party shall insure the Works and Materials on the Site for not less than the full reinstatement costs plus the costs of demolition, removal of debris and professional fees, the cover for which is more particularly defined in Schedule 4 (Insurance).
- (b) The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Subcontractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Subcontractor in the course of any other operations (including those under Clause 12 (Defects Liability)).
- (c) Unless otherwise stated in Schedule 4, insurances under this Clause 18.2 (Insurance for Works):
 - (i) will be effected and maintained by the Contractor or Main Contractor as insuring Party;
 - (ii) n/a;
 - (iii) will cover all loss and damage from any cause subject to exclusions and restrictions forming part of policies commonly used to cover such risks;
 - (iv) will also cover loss or damage to a part of the Works which is attributable to the use or occupation by the Contractor of another part of the Works, and loss or damage from the risks listed in Clause 17.3(e) (Contractor's Risks), excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in Schedule 4 (Insurance) (if an amount is not so stated, this sub-paragraph shall not apply); and
 - (v) may however exclude loss of, damage to, and reinstatement of:
 - (A) a part of the Works which is in a defective condition due to a defect in materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described 18.2(c)(v)(B));
 - (B) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect materials or workmanship;

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- (C) a part of the Works which has been Taken Over by the Contractor, except to the extent that the Subcontractor is liable for the loss or damage; and
 - (D) Materials while they are not in the United Arab Emirates.
- (d) N/a.

18.3 Insurance against Injury to Third Party Persons and Damage to Third Party Property

- (a) The insuring Party shall insure against each Party's liability for any loss, damage, death to or bodily injury which may occur to any physical third party property (except things insured under Clause 18.2 (Insurance for Works) or to any third party person (except persons insured under Clause 18.4 (Personnel)), which may arise out of the Subcontractor's performance of the Subcontract and occurring before the issue of the Performance Certificate.
- (b) This insurance shall be for a limit per occurrence of not less than the amount stated in Schedule 4 (Insurance), with no limit on the number of occurrences. If an amount is not stated in Schedule 4 (Insurance), this Clause 18.3 (Insurance against Injury to Third Party Persons and Damage to Third Party Property) shall not apply.
- (c) The insurances specified in this Clause 18.3 (Insurance against Injury to Third Party Persons and Damage to Third Party Property):
 - (i) shall be effected and maintained by the Subcontractor as insuring Party;
 - (ii) shall be in the joint names of the Parties; and
 - (iii) may however exclude liability to the extent that it arises from:
 - (A) the Contractor's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works;
 - (B) damage which is an unavoidable result of the Subcontractor's obligations to execute the Works and remedy any defects; and
 - (C) a cause listed in Clause 17.3 (Contractor's Risks).
- (d) The Subcontractor must cover the cost of the deductible applicable to each and every occurrence relating to property damage under this Clause 18.3 (Insurance against Injury to Third Party Persons and Damage to Third Party Property).

18.4 Insurance for Subcontractor's Personnel

- (a) The Subcontractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Subcontractor or any other of the Subcontractor's Personnel.
- (b) The Contractor and the Contractor's Representative shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Contractor or of the Contractor's Personnel.
- (c) The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the design (to the extent required by the Subcontract), execution and completion of the Works. For a Sub-Subcontractor's employees, the insurance may be effected by the Sub-Subcontractor, but the Subcontractor shall be responsible for compliance with this Clause 18.4 (Insurance for Subcontractor's Personnel).
- (d) The Subcontractor must cover the cost of the deductible applicable to each and every occurrence under the insurance required by this Clause 18.4 (Insurance for Subcontractor's Personnel)

18.5 Professional Indemnity Insurance

- (a) The Parties agree that:
 - (i) the Subcontractor shall maintain professional indemnity insurance covering, *inter alia*, all its liability hereunder whether for breach of Subcontract,

negligence or otherwise in respect of defects or insufficiency in the Works upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully registered to carrying on such insurance business in the Emirate of Abu Dhabi and approved by the Contractor's Representative, in an amount and on the basis set out in Schedule 4 (Insurance) (or where no such level and basis is set out in Schedule 4 (Insurance), at a level and basis determined by the Contractor's Representative) for the period commencing on the Commencement Date and ending ten (10) years after the date of issue of the Performance Certificate,

- (ii) the Subcontractor shall immediately inform the Contractor if such insurance ceases to be available in order that the Subcontractor and the Contractor can discuss means of best protecting the respective positions of the Contractor and the Subcontractor in respect of the Works in the absence of such insurance,
 - (iii) the Subcontractor shall fully co-operate with any measures reasonably required by the Contractor, including (without limitation) completing any proposals for insurance and associated documents,
 - (iv) the Subcontractor shall provide the Contractor with a copy of the insurance certificate evidencing that such cover is being maintained immediately upon the Contractor's request, and
 - (v) the above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of the Subcontract, or termination of the Subcontractor's engagement under the Subcontract, in either case for any reason whatsoever, including breach by the Subcontractor or the Contractor.
- (b) The Subcontractor must cover the cost of the deductible applicable to each and every occurrence under the insurance required by this Clause 18.5 (Professional Indemnity Insurance).

18.6 Additional insurances

Notwithstanding anything contained in Clause 18 (Insurance), the Subcontractor shall effect and maintain such additional insurances in accordance with the Laws as may be required by the Contractor and as set out in Schedule 4 (Insurance).

19. Force Majeure

19.1 Definition of Force Majeure

- (a) In this Clause 19 (Force Majeure), "Force Majeure" means any Contractor's Risk referred to in Clauses 17.3(a) to 17.3(e) (inclusive) (Contractor's Risks) and/or natural catastrophic storms or floods, earthquake, hurricane, tornadoes, cyclones, typhoon, volcanic activity, lightning, epidemics, fires, explosions and any wilful and unjustifiable refusal of, or wilful and unjustifiable delay by, an Authority in the granting of a Permit for longer than the periods stipulated in a specific time schedule to be agreed between the Parties before the Commencement Date concerning the expected duration of the periods for obtaining certain Permits, provided that such event or circumstance, in each case:
- (i) could not reasonably have been provided against by the affected Party;
 - (ii) is beyond the affected Party's control and not due to its acts or omissions (or those for whom it is responsible); and
 - (iii) could not have been prevented, avoided or overcome by the affected Party through the exercise of due diligence.
- (b) Despite Clause 19.1(a), Force Majeure shall not include:
- (i) any shortage or late delivery of Materials or consumables which the Subcontractor is obliged to supply under the Subcontract and/or in connection with the Works;
 - (ii) any shortage of staff and labour;

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- (iii) any act, or delay in acting, of an Authority in relation to Permits (not contemplated in Clause 19.1(a)) and immigration approvals for the Subcontractor's staff and labour;
 - (iv) changes in market conditions; or
 - (v) an Insolvency Event occurring in relation to any Sub—Subcontractor
 - (vi) a Force Majeure event occurring in relation to any Sub-Subcontractor.

19.2 Notice of Force Majeure

- (a) If a Party is or will be prevented from performing all of its obligations under the Subcontract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 13 days after the Party became aware, (or should have become aware), of the relevant event or circumstance constituting Force Majeure.
- (b) The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.
- (c) Notwithstanding any other provision of this Clause 19.2 (Notice of Force Majeure), Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Subcontract, and Subcontractor's right to any adjustments to the Subcontract requirements shall be limited to those rights specified in Clause 19.4. (Consequences of Force Majeure).
- (d) In the event the Contractor requests the confirmation in respect of the occurrence of the Force Majeure event, the Subcontractor shall provide the Contractor with the relevant confirmation issued by the authorized authority (i.e. chamber of commerce) of the country where the Force Majeure event occurs within 10 days upon receipt of the relevant request.

19.3 Duty to Minimize Delay

- (a) Each Party shall at all times use all reasonable endeavours to minimize any delay in the performance of the Subcontract as a result of Force Majeure.
- (b) A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

19.4 Consequences of Force Majeure

- (a) If the Subcontractor is prevented from performing all of its obligations under the Subcontract by Force Majeure of which notice has been given under Clause 19.2 (Notice of Force Majeure), and suffers critical delay and/or incurs Cost by reason of such Force Majeure, the Subcontractor shall be entitled to claim, subject to Clause 20.1 (Subcontractor's Claims):
 - (i) an extension of the Time for Completion to the extent permitted under Clause 9.4 (Extension of Time for Completion); and
 - (ii) the Subcontractor shall not be entitled to recover any Cost or increase in the Subcontract Price.
- (b) After receiving notice under Clause 20.1 (Subcontractor's Claims), the Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) and this Clause 19.4 (Consequences of Force Majeure) to agree or determine these matters.

19.5 Optional Termination, Payment and Release

- (a) If the execution of substantially all the Works in progress is prevented for a continuous period of one hundred eighty (180) days by reason of Force Majeure of which notice has been given under Clause 19.2 (Notice of Force Majeure), or for multiple periods which total more than one hundred eighty (180) days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Subcontract. In this event, the termination shall take effect seven (7) days after the notice is given, and the Subcontractor shall proceed in accordance with Clause 16.3 (Cessation of Work and Removal of Subcontractor's Equipment).

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- (b) Upon such termination, the Contractor's Representative shall determine the value of the work done and issue a Payment Certificate which shall include:
 - (i) the amounts payable for any work carried out for which a price is stated in the Subcontract;
 - (ii) the Cost of Plant and Materials ordered for the Works which have been delivered to the Subcontractor, or of which the Subcontractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Contractor when paid for by the Contractor, and the Subcontractor shall place the same at the Contractor's disposal;
 - (iii) any other Cost or liability which in the circumstances was reasonably incurred by the Subcontractor in the expectation of completing the Works.

20. Claims and Dispute Resolution

20.1 Subcontractor's Claims

- (a) If the Subcontractor considers itself to be entitled to any extension of the Time for Completion and/or any additional Cost or adjustment to the Subcontract Price under the circumstances described in Clause 14.3 (Adjustments to the Subcontract Price), the Subcontractor shall give notice to the Contractor's Representative, describing the event or circumstance giving rise to the claim.
- (b) The notice shall be given as soon as practicable, and not later than twenty-seven(27) days after the Subcontractor became aware, or should have become aware, of the event or circumstance.
- (c) If the Subcontractor fails to give notice of a claim within such period of twenty-seven (27) days or if a notice of claim is submitted, but the Subcontract or Contractor requires a further notice including further documents or particulars and the Subcontractor fails to supply such further notice, documents and/or particulars as required by the Subcontract within the time prescribed by the Subcontract, the Time for Completion shall not be extended, the Subcontractor shall not be entitled to additional payment, and the Contractor shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Clause 20.1 (Subcontractor's Claims) shall apply.
- (d) The Subcontractor shall also submit any other notices which are required by the Subcontract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- (e) In the event that the Subcontractor has any right or entitlement to any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme), and/or any additional Cost or adjustment to the Subcontract Price or payment pursuant to this Clause 20.1 (Subcontractor's Claims) or otherwise in connection with the Subcontract, the Subcontractor shall in all cases take such steps (if any) which can reasonably be taken to eliminate or mitigate any such entitlement.
- (f) The Subcontractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Contractor's Representative.
- (g) Within twenty-five (25) days after the Subcontractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Subcontractor and approved by the Contractor's Representative, the Subcontractor shall send to the Contractor's Representative a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
 - (i) this fully detailed claim shall be considered as interim;
 - (ii) the Subcontractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Contractor's Representative may reasonably require; and
 - (iii) the Subcontractor shall send a final claim within twenty-five (25) days after the end of the effects resulting from the event or circumstance, or within such

other period as may be proposed by the Subcontractor and approved by the Contractor's Representative.

- (h) If the Subcontractor fails to give notice within such period of twenty-five (25) days described in Clause 20.1(g) (Subcontractor's Claims), the Time for Completion shall not be extended, the Subcontractor shall not be entitled to additional Cost or adjustment to the Subcontract Price, and the Contractor shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Clause 20.1 (Subcontractor's Claims) shall apply.
- (i) Within fifty (50) days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Contractor's Representative and approved by the Subcontractor, the Contractor's Representative shall respond with approval, or with disapproval and detailed comments.
- (j) The Contractor's Representative may also request any necessary further particulars, but shall nevertheless give its response on the principles of the claim within such time. If the Contractor's Representative fails to respond with approval, or with disapproval and detailed comments within such time, the Subcontractor shall issue a further notice to the Contractor's Representative with a copy to the "Chief Development Officer" within the Contractor's organisation, seeking a response within 15 (15) days of such notice from the Subcontractor.
- (k) Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Subcontract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Subcontractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.
- (l) The Contractor's Representative shall proceed in accordance with Clause 3.9 (Determinations) to agree or determine:
 - (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Clause 9.4 (Extension of Time for Completion); and/or
 - (ii) the additional payment (if any) to which the Subcontractor is entitled under Clause 14.3 (Adjustments to the Subcontract Price) of the Subcontract.
- (m) The requirements of this Clause 20.1 (Subcontractor's Claims) are in addition to those of any other Clause which may apply to a claim. If the Subcontractor fails to comply with this or another clause in relation to any claim, any extension of the Time for Completion, any modification to the programme under Clause 9.3 (Programme) and/or additional Costs or adjustment to the Subcontract Price shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Clause 20.1 (Subcontractor's Claims).

20.2 Horizontal Defences

The Subcontractor waives any and all rights to assert any and all defences which the Subcontractor may have to non-performance (or delay in performance) of its obligations under this Subcontract due to any non-performance (or delay in performance) of its obligations (including through any Sub-Subcontractors, or any Affiliate of the Subcontractor) under:

- (a) any subcontracts specified in the Subcontract Particulars; and
- (b) subcontracts signed after the date of this Subcontract, in either case between the Subcontractor (or any Affiliate of the Subcontractor) and the Contractor (or any Affiliate of the Contractor).

20.3 Amicable Settlement

- (a) If a dispute or difference arises between the Parties in connection with, or arising out of, the Subcontract or the execution or completion of the Works, including any dispute or difference as to any certificate, determination, instruction, opinion or valuation of the Contractor's Representative, either Party may give notice of the dispute to the other Party in writing.

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- (b) The Subcontractor's Representative and a representative of the Contractor shall, within twenty (20) days of such notice, hold a meeting in an effort to resolve the dispute or difference. Each Party shall use reasonable endeavours to settle the dispute or difference at such meeting.
 - (c) Unless settled amicably within such twenty (20) day period, and unless otherwise agreed by both Parties, either Party shall be entitled to escalate a dispute to senior members of each Party's organisation (who has authority to settle the dispute) by giving notice to the other Party with reference to this Clause 20.3 (Amicable Settlement). Each Party shall use reasonable endeavours to agree on a time and venue for such discussion to take place and shall procure that a senior member of that Party's organisation attends the discussion.

20.4 Arbitration

Unless settled amicably within forty (40) days of the notice of dispute under Clause 20.3 (Amicable Settlement) the dispute shall be referred to and finally resolved by arbitration under the DIFC-LCIA Rules, which are deemed to be incorporated by reference into this Clause 20.4 (Arbitration). For any such arbitration:

- (a) the number of arbitrators shall be three, one nominated by each Party and the two appointed arbitrators shall jointly nominate the third;
- (b) the seat, or legal place, of arbitration shall be the Dubai International Financial Centre in Dubai, United Arab Emirates; and
- (c) the language to be used in the arbitral proceedings shall be English.

21. Miscellaneous Provisions

21.1 Warranties as to capacity

- (a) The Contractor warrants that it has the power to execute, deliver and perform its obligations under the Subcontract and all necessary corporate and other action has been taken to authorise that execution, delivery and performance.
- (b) The Subcontractor warrants that:
 - (i) it has the power to execute, deliver and perform its obligations under the Subcontract and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (ii) it has obtained (or will obtain) from all relevant Authorities all licences, permissions and consents required in order for it to execute the Works and to otherwise perform all of its obligations under the Subcontract; and
 - (iii) it has the information technology, capability, experience, management expertise, financial resources, equipment, staff and other facilities necessarily required to execute the Works in a competent and expeditious manner and otherwise in accordance with the Subcontract.

21.2 Severability

The subject matter of the Subcontract is comprised of separately specified parts and provisions, and any provision (or part thereof) or provisions within the Subcontract which is (or are) determined by a court or other competent Authority to be illegal, invalid or unenforceable is (or are) severed to the extent of the illegality, invalidity or unenforceability, without affecting the remaining provision (or part thereof) or provisions of the Subcontract.

21.3 Counterparts

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

21.4 Independent Subcontractor

The Subcontractor is an independent contractor performing the Subcontract. The Subcontract does not create any partnership, joint venture or other joint relationship between the Contractor and the Subcontractor. Neither Party has the right, power or authority to enter into any agreement or commitment or act on behalf of or otherwise bind the other Party.

21.5 Privity

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

21.6 Waiver

- (a) None of the terms, provisions or conditions of the Subcontract are considered waived by the Contractor unless a waiver is given in writing by the Contractor.
- (b) Any waiver of the Contractor's rights, powers or remedies under the Subcontract must be dated and signed by an authorised representative of the Contractor granting such waiver, and must specify the right and the extent to which it is being waived.

21.7 Exercise of Rights

The Parties agree that the exercise of a right by either Party under or in connection with the Subcontract is deemed to have been exercised:

- (a) in a manner consistent with the requirements of good faith as required by Article 246 the Code; and
- (b) lawfully for the purposes of Article 106 of the Code.

21.8 Imports and Customs

In connection with the performance of the Subcontract, the Subcontractor acknowledges that the imports and customs Law and regulations of the United Arab Emirates apply to the furnishings and shipments of any products and components thereof to the United Arab Emirates. The Subcontractor specifically acknowledges that the aforementioned import and custom Laws and regulations of United Arab Emirates prohibit, among other things, the importation into the United Arab Emirates of certain products and components.

21.9 Rights cumulative

The rights, remedies and powers of each Party under or in connection with the Subcontract are in addition to any rights, remedies and powers provided by Law.

21.10 No variation

The Subcontract may not be varied except in writing signed by a duly authorised representative of each of the Parties.

21.11 Costs

Save as otherwise expressly provided under this Subcontract, each Party shall pay its own costs and expenses (including the fees and expenses of its agents, representatives, advisors, counsel and accountants) necessary for the negotiation, preparation, execution, delivery, performance of and compliance with this Subcontract.

21.12 Further Documentation

The Parties agree to execute any documents and to take any further steps as may be reasonably necessary in order to implement and give full effect to the Subcontract.

21.13 Obligations continuing

The warranty obligations, confidentiality obligations and other obligations or liabilities, which by their own terms survive the expiration or termination of this Subcontract, do not cease on the completion, expiry or termination of this Subcontract. In addition, the provisions in Clauses 15 (Termination by), 16 (Suspension and Termination by), 17 (Risk and Responsibility), 20 (Claims and Dispute Resolution) and 21 (Miscellaneous Provisions) shall survive the expiration or termination of this Subcontract.

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

EXECUTED for and on behalf of
VAMED Emirates LLC, as the Contractor

By: _____

Name: Shahnaz Chalmers

Title: General Manager

By: _____

Name: Alexander Eldib

Title: Procurement Manager

EXECUTED for and on behalf of
United Engineering Construction (UNEC), as the Subcontractor

By: _____

Name:

Title:

By: _____

Name:

Title:

Subcontract Particulars

Item Description	Clause No.	Data
Beneficiaries	1.1	Means any one or more of the following: <ul style="list-style-type: none"> (a) the Financiers; (b) Employer (c) Blue Apple Hospital LLC as Hospital Operator; and (d) any purchaser or transferee taking or intending to take an interest in the whole or any part of the Works at any time.
Subcontractor's Representative	1.1	The Subcontractor's Representative shall be an employee of the Subcontractor and shall be notified to the Contractor on or before the Commencement Date.
Defects Notification Period	1.1	The period from the completion of the relevant Works or Separable Portion as certified in a Taking-Over Certificate issued under Clause 11.1, until the date which is twelve (12) months after the date on which the whole of the Works are completed as certified in a Taking-Over Certificate issued under Clause 11.1.
Contractor's Representative	1.1	Alexander Eldib; Procurement Manager Tel: +971-2-4013444 Email: alexander.eldib@vamed.ae
Major Sub-Subcontractor	1.1	n/a
Advance Payment	1.1	An amount equal to AED 12,995,000.00 (Arab Emirates Dirhams Twelve Million, Nine Hundred and Ninety Five Thousand Only) Exclusive of VAT. (which represents ten (10%) of the Subcontract Price) The Amortization rate of 10% shall apply, for recovery of Advance Payment loan from each Interim Payment Certificate.
Other Subcontractors	1.1, 4.5(e), 11.4(a)	Other Subcontractors include, in particular: <ul style="list-style-type: none"> (a) Main Contractor; and (b) Blue Apple Hospital LLC as Hospital Operator.
Project	1.1	The development of a healthcare facility, to be known as the "Al Reem Island Integrated Health Care Center in Abu Dhabi" and to be located on Reem Island which will include: <ul style="list-style-type: none"> (a) a rehabilitation services ward (comprising both inpatient and outpatient facilities); (b) a family medical centre; and (c) a women and children hospital;
Commencement Date	1.1	To be specified in the Letter of Award

Item Description	Clause No.	Data
Separable Portions	1.1, 4.22(a)	n/a
Taken Over	1.1	<p>The following documents and information must be provided to the Contractor's Representative where applicable:</p> <ul style="list-style-type: none"> (a) each collateral warranty required under Clause 12.11; (b) training manuals; (c) operation & maintenance manuals as per below; and (d) 'as-built' drawings as per below.
Time for Completion	1.1	Four hundred sixty three (463) calendar days from the Commencement Date.
Agreed system of electronic transmission	1.3(a)	Emails and any other Project Information Management System provided by the Contractor such as Workflow, Aconex, Sharefile or others
Address for service of notices, communications etc.	1.3(b)	<p><u>Contractor:</u></p> <p>VAMED Emirates LLC</p> <p>Attention: Alexander Eldib</p> <p>Address: PO BOX 109038, Abu Dhabi-UAE</p> <p>Tel: +971-2-4013444</p> <p>Email: alexander.eldib@vamed.ae</p> <p><u>Subcontractor:</u></p> <p>United Engineering Construction (UNEC)</p> <p>Attention: Ahmad A. Muwahid</p> <p>Address: Al Fattan Plaza, Office 209; PO BOX 7510; Dubai-UAE</p> <p>Tel: +971-4-2828242</p> <p>Email: ahmad.muwahid@unec.ae</p>
Ruling language and language for communications	1.4(b)	English.
Priority of specific Subcontract Documents	1.5(a)	<p>Unless specified elsewhere in the Subcontract, the following shall be the priority of below listed Subcontract Documents, in descending order:</p> <ul style="list-style-type: none"> (i) The Subcontract Particulars (ii) The Subcontract Agreement (iii) Schedules 1 -10 Inclusive (iv) Annexures 5 - 18 inclusive (v) Annexure 2 – Design Study (Tender Drawings)

Item Description	Clause No.	Data
		(vi) Annexure 3 – 4 inclusive
		(vii) Schedule 1 - Bills of Quantities
Responsibility for Permits	1.10(c)	Clause 1.10(c) applies.
Time for access to and possession of Site	3.1(a)	On Commencement Date
Subcontractor's General Obligations	4.1 (f) (k)	The Subcontractor shall be entitled to any change in the rate of Value Added Tax (VAT) as specified under UAE Law.
Performance Security	4.3(a)	The value of the Performance Security shall be equal to <ul style="list-style-type: none"> (a) Ten percent. (10%) of the Subcontract Price until the date of issue of the last Taking-Over Certificate in accordance with Clause 11.1; and (b) Five percent. (5%) of the Subcontract Price thereafter.
Time for delivery of Performance Security	4.3(b)	Fourteen (14) days from signed Letter of Award
Bank or Financial institution long term credit rating	4.3(c) and 4.3(h)	The bank or financial institution located in Abu Dhabi and approved by the Contractor shall have a long term unsecured credit rating at least equivalent or higher than "A-" (S&P) or "A3" (Moody's).
Cost and details of electricity, water, gas, air-conditioning and any other services	4.17(b)	Included in Subcontractor's Contract Price.
Progress Reports - Number of copies	4.19(a)	Two (2) hardcopies and One (1) softcopy shall be submitted to the Contractor.
Details of as-built drawings	5.4(d)	as per Schedule 3
Numbers and types of copies of as-built	5.4(e)	one hard copy and one soft copy
Required manuals	5.5(b)	Three 3 hard copies for Plants only
Sample approval period	8.2(e)	Twenty-five (25) days.
Time for submission of programme	9.3	On the Signature Date.
Information or requirements to be included in the programme	9.3(b)(iv)(D)	N/a.

Item Description	Clause No.	Data
supporting report		
Delay Damages	9.6	Refer Schedule 5 – Milestones; subject to a maximum of ten percent (10%) of the Subcontract Price.
Prolonged suspension	9.10(a)	Seventy (70) days.
Maximum extension of Defects Notification Period	12.3	Thirty-six (36) months from the date on which the whole of the Works are completed as certified in a Taking-Over Certificate issued under Clause 11.1.
Project-specific access rules	12.6(c)(iii)	Not Applicable.
Collateral Warranties	0	The Subcontractor shall procure Collateral Warranties for all Sub-Subcontracts with value above AED 5 million
Subcontract Price	14.1	The Subcontract Price is a fixed lump sum amount of AED 129,950,000.00 (Arab Emirates Dirhams One Hundred Twenty Nine Million, Nine Hundred and Fifty Thousand Only) Exclusive of VAT.
Additional Charges due to Value Added Tax (VAT) at 5% of Contract Price		Additional charges payable due to VAT shall be AED 6,497,500.00 (Arab Emirates Dirhams Six Million, Four Hundred and Ninety Seven Thousand, Five Hundred Only)
Breakdown of Subcontract Price	14.2 (a)	Omitted as per schedule 6
	(b)	Omitted as per schedule 6
	(c)	Omitted as per schedule 6
Adjustments to the Subcontract Price	14.3(iv)	Add - For any changes in legislation materially affecting the Subcontract Works.
Number of days for Contractor to pay Subcontractor amount in Interim Payment Certificate	14.6(a)(i)	Forty-five (45) days.
Number of days for Contractor to pay Subcontractor amount in Final Payment Certificate	14.6(a)(ii)	Forty-five (45) days.
Minimum Payable Amount	14.6	The Minimum Payable Amount for each Interim Payment Certificate, shall be AED 1,000,000.00 (AED One Million)

Item Description	Clause No.	Data
Retention	14.7	Retention percentage of ten (10%) percent shall apply to each Interim Payment Certificate The limit of Retention shall be 10% of the Subcontract Price
Currencies of Payment	14.14 (a)(b)	All Payments to be made in UAE Dirhams.
Limitation of Liability	17.6	One hundred percent. (100%) of the Subcontract Price, as defined and determined in accordance with this Subcontract, but such limitation is subject to the carve outs in Clause 17.6(a).
Professional Indemnity Insurance	18.5	"In case the Subcontractor subcontracts the services for the Design Component/Elements as per Schedule 9 to another subcontractor, such subcontracting shall be subject to the Contractor's approval. In case the approved subcontractor provides the professional indemnity insurance with the cover as per the clause 18.5 and Schedule 9, subject to the Contractor's written confirmation the obligations of the Subcontractor in respect of the Professional Indemnity Insurance shall be deemed fulfilled".
Milestones	Schedule 5	Refer to Schedule 5 – Milestones, for Milestones dates (and/or periods) and applicable Delay Damages
Plant and Materials on Site	Schedule 8	Percentage of invoice value to be paid for Plant and Materials on Site, shall be 80%

Schedule 1. Pricing Information (Bills of Quantities)

Schedule 2. Separable Portions (Not Applicable)

Schedule 3. Submittal Procedure

Schedule 4. Insurance

S.N.	Type of Insurance policy	Insuring Party
1	Insurance for the Works (usually called Construction/Contractor's all Risk policy	Contractor (VAMED Engineering GmbH)
2	Third Party Liability	Subcontractor
3	Professional Indemnity	Subcontractor
4	Plant and Machinery	Subcontractor
5	Workmen's compensation	Subcontractor
6	Automobile & Marine	Subcontractor

Schedule 5. Milestones

The Subcontractor shall complete the whole of the Works in accordance with the Time for Completion of the Subcontract and the dates (and/or periods) specified in the Milestone Schedule below

Milestone No.	Milestone Description	Completion Milestone Date**	Liquidated Damages Applicable
1	Commencement Date	23-Dec-18	
2	Engineering and Mobilization (Pre-Construction)	20-Jan-19	
3	Structural - Block A	27-Oct-19	AED 10,000 per day
4	Structural - Block B	31-Oct-19	
5	Structural - Blocks D & C	26-Nov-19	
6	External Block Works (Shell) For Block A	30-Nov-19	
7	Façade & Envelope A	21-Jan-20	AED 10,000 per day
8	Façade & Envelope B	15-Feb-20	
9	Façade & Envelope D & C	15-Feb-20	
10	Roof Waterproofing Works - All Blocks	01-Feb-20	
11	Snagging and De-snagging Works	27-Feb-20	
12	De-Mobilization & Handover	15-Mar-20	AED 75,000.- per day

**For clarity, achievement of a Milestone, means the stage in the design (to the extent required by the Subcontract), execute and complete the Works and remedy any defects in accordance with the Subcontract, when evidence of Milestone achievement has occurred to the Contractor's satisfaction in accordance with the Subcontract, and includes:

- (a) the scope of works related the Milestone are complete in accordance with the requirements on the Subcontract;
- (b) any test required to be successfully performed and all duly certified reports of such tests have been forwarded to the Contractor;
- (c) all other documents and information specified in this Subcontract related to the Milestone are delivered to the Contractor's Representative; and

all applicable Laws regarding the use and occupation of the Works or services related to the Milestone and all Permits to be obtained by the Subcontractor have been obtained and passed onto the Contractor's Representative.

Schedule 6. Tender Addenda

Schedule 7. Responsibility Matrix

Schedule 8. Plant and Materials on Site

1. It is a condition precedent to entitlement for payment of Plant and Materials on Site and intended for the Works that such Plant and Materials are listed under Schedule 8.
2. Each Statement shall include an amount for Plant and Materials which are at the Site for incorporation in the Permanent Works, and a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works.
3. The Contractor shall determine and certify each addition if the following conditions are satisfied:
 - a) the Subcontractor has kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
 - b) the relevant Plant and Materials have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration, and appear to be in accordance with the Subcontract.
 - c) The additional amount to be certified shall be the equivalent of eighty (80) per cent of the Contractor's determination of the cost of the Plant and Materials, taking account of the documents mentioned in this paragraph 3a (Plant and Materials on Site and Intended for the Works) and of the contract value of the Plant and Materials. For the avoidance of doubt, this additional amount shall not include any amount in respect of any Plant and Materials for which Advance Payment has been made.
4. The Currency of payment for this additional amount shall be the same as those in which payment will become due when the contract value is included in a Statement. At that time, the certification of any payment shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

Schedule 9. Subcontractors of Design Component/Elements

The Subcontractor's design obligations shall include, but not limited to, the design verification, development and detailing of the Works, and co-ordination of the construction details with the Contractor, Consultant (HDP), other contractors and suppliers.

The Subcontractor's attention is directed to the following key design obligations:

Specific Design Requirements

The Subcontractor is required to undertake design verification, development and detailing works required by the Technical Specifications and or the Contractor's Requirements for which the Subcontractor will be required to provide Professional Indemnity Insurance in accordance with Contract. The Subcontractor will be required to submit all design specifications, design drawings, shop drawings and design calculations to the Contractor for approval.

The Contractors design Components / Elements include but are not limited to:

- Precast Concrete Works
- Structural Steel elements and connections
- Entrance Plaza Canopy
- Car Park Roof Shade, structural steel supports and connections
- External Façade (Curtain wall) and Cladding works, anchoring and/or support system

Schedule 10. Overtime Rates for Contractor's / Employer's Representative Subcontractors / Contractor's / Employer's Representatives (or deputed assistants)

S.N.	Role Description	Overtime Rates (AED per hour excl. VAT)		
		Before 21.00pm	After 21.00pm and weekends	During holidays
1	Structural Civil Engineer (Resident Engineer)	450	540	720
2	Site Electrical Engineer	307	368	491
3	Site Mechanical Engineer	317	381	507
4	Civil Inspector	123	148	197
5	Electrical Inspector	123	148	197
6	Mechanical Inspector	123	148	197
7	Third Party Structural Re-inspection for ADM	AED 2,500.- per extra visit		

Annexure 2 Design Study (Tender Drawings)

Annexure 3**CSA Scope of Works & Quality
Description (Civil and Finishes Works
Specifications)**

**Annexure 4 Mechanical & Electrical (M&E)
(Specifications)**

Annexure 5 Working Programme

Annexure 6 Payment Milestones (Not Applicable)

Annexure 7 List of Exclusions

**Annexure 8 Scope of Preparation Works Done by
Subcontractor Until the Signing Date
(Not Applicable)**

Annexure 10 Form of Monthly Progress Report

Annexure 11 Samples Requirements

Annexure 12 Form of Advance Payment Security

Annexure 13 Form of Taking-Over Certificate

Annexure 14 Form of Performance Certificate

Annexure 15 Forms of Novation Agreement

Annexure 16 Form of Collateral Warranty

Annexure 17 Health and Safety

Annexure 18 Estidama Perl Check List