



# **CONSTRUCTION CONTRACT FOR MAJOR WORKS**

Version 1.1 | 2024





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# **CONSTRUCTION CONTRACT FOR MAJOR WORKS**

## **INSTRUMENT OF AGREEMENT**



# INSTRUMENT OF AGREEMENT

This **Contract** is made **BETWEEN**

**UNOPS**, an organ of the United Nations (hereinafter called the "**Employer**");

AND

[insert name], a [insert type of company, e.g., limited liability] company incorporated under the laws of [insert name of the country] and having its registered address at [insert address], [insert name of city and country] (hereinafter called the "**Contractor**").

**WHEREAS** the Employer intends to implement the Project [insert Project Title] and the Works known as [insert Works Title/Contract Title/Contract Number] as defined within this Contract are an integral part of the Project. The Works shall be executed by the Contractor, and the Employer has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein.

## THE EMPLOYER AND THE CONTRACTOR AGREE AS FOLLOWS:

- A. In the Contract, words and expressions shall have the same meanings as are respectively assigned to them in the [General Conditions of the Construction Contract for Major Works](#) hereinafter referred to.
- B. The following documents shall be deemed to form and be read and construed as part of this Contract:
  - (i) the Instrument of Agreement;
  - (ii) Schedule 1 [*Contract Details*];
  - (iii) the Particular Conditions (if any);
  - (iv) the General Conditions;
  - (v) the Specification;
  - (vi) the Drawings;
  - (vii) the Bill of Quantities (as applicable); and
  - (viii) the remaining Schedules.
- C. In consideration of the payments to be made by the Employer to the Contractor under the Contract, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein, in conformity with the provisions of the Contract.
- D. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and remedy any defects therein, such amounts as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

This Contract shall come into full force and effect on the date of the latest signature by the Parties (hereinafter called the "**Contract Effective Date**").

**SIGNED by**

Name:

Signature:

*for and on behalf of the Employer in the presence of*

Witness:

Name:

Address:

Date:

**SIGNED by**

Name:

Signature:

*for and on behalf of the Contractor in the presence of*

Witness:

Name:

Address:

Date:



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# **CONSTRUCTION CONTRACT FOR MAJOR WORKS**

## **GENERAL CONDITIONS OF CONTRACT**

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## LIST OF ABBREVIATIONS

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

# 1 GENERAL PROVISIONS

## 1.1 Definitions

---

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

**“Accepted Contract Amount”** is the amount accepted by the Parties as of the Contract Effective Date and stated in Schedule 1 [*Contract Details*] for the execution of Works and is to be paid/or adjusted in accordance with the Contract.

**“Advance Payment Certificate”** means a Payment Certificate issued by the Engineer for advance payment under Sub-Clause 14.2 [*Advance Payment*].

**“Advance Payment Security”** means the security (or securities) to be provided under Sub-Clause 14.2 [*Advance Payment*].

**“Affiliate”** means:

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

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

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

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

**“Auxiliary Works”** means those works that form, or will form, part of the Project set out in the Specification, that are connected to, or otherwise interface with, the Works, and will be designed, supplied, constructed, commissioned and/or tested by third parties under separate contractual arrangements with the Employer.

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

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

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

**"Commencement Date"** means the date by which the Contractor shall commence the execution of the Works (including, without limitation, mobilization and procurement) as notified under Sub-Clause 8.1 [*Commencement of Work*].

**"Complete"** has the meaning given in Sub-Clause 10.1 [*Taking Over*].

**"Compliance Verification System"** means the compliance verification system to be prepared and implemented by the Contractor for the Works in accordance with Sub-Clause 4.8 [*Quality Management and Compliance Verification Systems*].

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

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

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

**"Contract Price"** means the price for the execution of the Works defined in Sub-Clause 14.1 [*Contract Price*] and includes any adjustments to the price made in accordance with the Contract.

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

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

**"Contractor's Documents"** means all documents, drawings and sketches, maps, plans, photographs, specifications, calculations, digital files, reports, computer software, databases, manuals, as built documents, models, three-dimensional works pertaining to geography or topography or other architectural works, technical documents and any other Copyright Works prepared by or on behalf of the Contractor for the benefit of the Employer pursuant to the Contract. Additionally, Contractor's Documents shall comprise the documents: stated in the Specification; required to satisfy all permits, permissions, licences and other regulatory approvals which are the Contractor's responsibility under Sub-Clause 1.12 [*Compliance with Laws*]; and others as listed under Clause 10 [*Employer's Taking Over*] and Sub-Clause 4.1 [*Contractor's General Obligations*], where applicable.

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

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

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

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

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

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

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

**“Cost Plus Profit”** means Cost plus the applicable percentage for profit stated in Schedule 1 [*Contract Details*] (if not stated, five (5) per cent). Such percentage shall only be added to Cost, and Cost Plus Profit shall only be added to the Contract Price, where the Contractor is entitled under a Sub-Clause of these Conditions to payment of Cost Plus Profit.

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

**“Date of Completion”** means the date stated in the Taking-Over Certificate issued by the Engineer; or, if Sub-Clause 10.2 [*Taking Over of the Works and Sections*] applies, the date on which the Works or Section are completed in accordance with the Contract; or, if Sub-Clause 10.3 [*Taking Over of Parts of the Works*] or Sub-Clause 10.4 [*Interference with Tests on Completion*] applies, the date on which the Works or Section or Part are deemed to have been taken over by the Employer.

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

“**Daywork Schedule**” means the document included in Schedule 4.1.B [*Daywork Rates*] (if any), showing the amounts and manner of payments to be made to the Contractor for labour, materials and equipment used for daywork under Sub-Clause 13.5 [*Daywork*].

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

“**Defects List**” is the list of omissions, outstanding work and defects which are minor in nature and do not prevent the operation of the Works and are identified in the Taking-Over Certificate according to Sub-Clause 10.2 [*Taking Over of the Works and Sections*].

“**Defects Notification Period**” or “**DNP**” means the period for notifying defects and/or damage in the Works or a Section or a Part (as the case may be) under Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*], as stated in Schedule 1 [*Contract Details*] (with any extension under Sub-Clause 11.3 [*Extension of Defects Notification Period*]), calculated from the Date of Completion of the Works or Section or Part.

“**Delay Damages**” means the damages for which the Contractor shall be liable under Sub-Clause 8.7 [*Delay Damages*] for failure to comply with Sub-Clause 8.2 [*Time for Completion*] and any approved EOT.

“**Dispute**” means any situation where:

- (a) one Party makes a claim against the other Party (which may be a Claim, as defined in these Conditions, or a matter to be determined by the Engineer under these Conditions, or otherwise);
- (b) the other Party (or the Engineer under Sub-Clause 3.5 [*Agreement or Determination*]) rejects the claim in whole or in part; and
- (c) the first Party does not acquiesce by giving Notice of dissatisfaction in Sub-Clause 3.5 [*Agreement or Determination*];

provided however that a failure by the other Party (or the Engineer) to oppose or respond to the claim, in whole or in part, may constitute a rejection if, in the circumstances, the senior representatives or the arbitrator(s), as the case may be, deem it reasonable for it to do so. All disputes or disagreements include those arising out of or in connection with the formation, performance, interpretation, nullification, termination or invalidation of the Contract or the Works, or any other.

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

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

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

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

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

**“Employer’s Equipment”** means the apparatus, equipment, machinery, construction plant and/or vehicles (if any) to be made available by the Employer for the use of the Contractor in the execution of the Works under Sub-Clause 2.4 [*Employer-Supplied Materials, Employer’s Equipment and Employer’s Facilities*] but does not include Plant which has not been taken over by the Employer in accordance with Clause 10 [*Employer’s Taking Over*].

**“Employer’s Facilities”** means the facilities such as buildings, utilities and premises, to be made available by the Employer for use by the Contractor under Sub-Clause 2.4 [*Employer-Supplied Materials, Employer’s Equipment and Employer’s Facilities*] but does not include the facilities which have not been taken over in accordance with Clause 10 [*Employer’s Taking Over*].

**“Employer’s Personnel”** means the Engineer and the Engineer’s Assistants described in Sub-Clause 3.1 [*Engineer’s Duties and Authority*] and Sub-Clause 3.2 [*Delegation by the Engineer*] and all of the respective staff, labour and other employees of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer’s Personnel.

**“Employer-Supplied Materials”** means the materials (if any) to be supplied by the Employer to the Contractor under Sub-Clause 2.4 [*Employer-Supplied Materials, Employer’s Equipment and Employer’s Facilities*].

**“Engineer”** means the person appointed by the Employer to act as the Engineer for the purposes of the Contract and named in Schedule 1 [*Contract Details*], or any replacement person appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.4 [*Replacement of the Engineer*].

**“Engineer’s Assistant”** means the person assigned to be a resident engineer and/or consultants and/or inspectors appointed to inspect and/or test items of Plant and/or Materials and/or Works in accordance with Sub-Clause 3.2 [*Delegation by the Engineer*].

**“Extension of Time”** or **“EOT”** means an extension of the Time for Completion of the Works or a Section (as applicable) under Sub-Clause 8.4 [*Extension of Time for Completion*].

**“Final Completion Certificate”** means the certificate issued by the Employer under Sub-Clause 11.9 [*Final Completion Certificate*].

**“Final Payment Certificate”** means the Payment Certificate issued by the Engineer, under Sub-Clause 14.13 [*Issue of Final Payment Certificate*].

**“Final Statement”** means the Statement defined in Sub-Clause 14.11 [*Final Statement*].

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

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

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

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

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

**“Health and Safety Improvement Notice”** means a Notice to be issued under and in accordance with Sub-Clause 4.7 [*Health and Safety Procedures*].

**“Health and Safety Management Plan”** means the Contractor's Health and Safety Management Plan (as may be updated and/or revised from time to time) which is submitted in accordance with Sub-Clause 4.7 [*Health and Safety Procedures*].

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

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

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

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

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

**“Interim Payment Certificate” or “IPC”** means a Payment Certificate issued under Sub-Clause 14.6 [*Issue of Interim Payment Certificate*], other than the Final Payment Certificate and the Advance Payment Certificate.

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

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

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

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

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

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

**“Laws”** means:

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

**“Law Applicable to the Contract”** means the law referred to in Sub-Clause 21.3 (j) [*Arbitration*].

**“Materials”** means things of all kinds (other than Plant) whether on Site or otherwise allocated to the Contract and intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

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

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

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

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

**“Nominated Subcontractor”** means the person/entity nominated by the Employer and as stated in Schedule 3.6 [*Nominated Subcontractors*] and whom the Contractor shall procure and/or employ as a subcontractor to perform or supply certain parts of the Works under Sub-Clause 13.4 [*Provisional Sums*].

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

**“Notice of Claim”** means a Notice to be issued under and in accordance with Sub-Clause 20.1 [*Claims*].

**“Notice of the Engineer’s Determination”** means a Notice to be issued under and in accordance with Sub-Clause 3.5 [*Agreement or Determination*].

**“Notice to Correct”** means a Notice to be issued under and in accordance with Sub-Clause 15.1 [*Notice to Correct*].

**“Part”** means a part of the Works or part of a Section (as the case may be) which is used by the Employer and deemed to have been taken over under Sub-Clause 10.3 [*Taking Over of Parts of the Works*].

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

**“Parties”** means both the Employer and the Contractor.

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

**“Payment Certificate”** means a payment certificate issued under Clause 14 [*Contract Price and Payment*].

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

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

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

**“Programme”** means a fully detailed time programme, prepared and submitted by the Contractor, and any revision of such Programme, to which the Engineer has given (or is deemed to have given) a Notice of No-objection under Sub-Clause 8.3 [*Programme*].

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

- (a) pose a hazard to the health or safety of any person who may come into contact with the Works (whether during their construction or after their completion);
- (b) either by themselves or as a result of their use in a particular situation or in combination with other materials, would or are likely to have the effect of reducing the normal life expectancy of any other materials or structure in which the Materials are incorporated or to which they are affixed;
- (c) are or become generally known within the international or national building, construction or engineering industries to be deleterious (either to health and safety or to the durability of the Works);
- (d) contravene any relevant standard code of practice (or similar) issued from time to time by any relevant Authority; or
- (e) do not conform to the Specification or other plans or specifications for the Works.

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

**“Proscribed Practices”** means:

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

**“Provisional Sum”** means a sum (if any) which is specified in Schedule 3.4 [Valuation and Payment] as a provisional sum, for the execution of any part of the Works, a Section or for the supply of Plant, Materials or services under Sub-Clause 13.4 [Provisional Sums].

**“Quality Management System”** or **“QMS”** means the Contractor’s QMS (as may be updated and/or revised from time to time) in accordance with Sub-Clause 4.8 [Quality Management and Compliance Verification Systems].

**“Retention Money”** means the accumulated retention moneys which the Employer retains under Sub-Clause 14.3 [Contractor’s Statements] and pays under Sub-Clause 14.9 [Release of Retention Money].

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

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

**“Section”** means a part of the Works (if any) specified in Schedule 1 [Contract Details] or which the Engineer nominates as a Section under Sub-Clause 1.14 [Sections].

**“Security Interest”** includes any bill of sale, as defined in any law, mortgage, charge, lien, pledge, assignment, hypothecation, title retention arrangement, trust or power, as, or having effect as, a security for the payment of any monetary obligation or the observance of any other obligation.

**“Senior Representatives”** means personnel of the Parties identified as senior representatives and notified in writing by the Parties in the event of dispute resolution process in accordance with Sub-Clause 21.2 [Amicable Resolution].

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

**“Site Conditions”** means any conditions in relation to the Site including:

- (a) the form and nature of the Site, including ground surface conditions, subsurface geology and conditions and all other physical conditions and characteristics on, above or below the surface which shall affect the performance by the Contractor of its obligations under this Contract;
- (b) the general and local conditions for environment, meteorological, seismic activity, hydrological, hydrographic, climatic conditions, ocean and sub-sea conditions;

- (c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects;
- (d) the Laws, procedures and labour practices of the Country; and
- (e) the availability and quality of both permanent and temporary access, accommodation, facilities, personnel, labour, power, transport, water, waste disposal, storage of Materials and all other services and utilities necessary for the execution of the Works in accordance with the Contract.

**“Site Data”** the relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects.

**“Social and Environmental Management Plan”** means the Contractor's Social and Environmental Management Plan (as may be updated and/or revised from time to time), which is submitted in accordance with Sub-Clause 4.17 [*Social and Environment*].

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

**“Statement”** means a statement submitted by the Contractor as part of an application for a Payment Certificate, under Clause 14 [*Contract Price and Payment*].

**“Subcontractor”** means any person or entity named in the Contract as a subcontractor, or any person or entity appointed by the Contractor and consented by the Employer under Clause 5 [*Subcontracting*] as a subcontractor (designer or supplier of Materials, Plant and/or labour for a part of the Works), and the legal successors in title to each of these persons or entities.

**“Taking-Over Certificate”** means a certificate issued by the Engineer under Clause 10 [*Employer's Taking Over*]

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

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

**“Testing Plan”** means the plan to be prepared and submitted by the Contractor under Sub-Clause 7.4 [*Testing*].

**“Tests after Completion”** means the tests (if any) which are stated in the Specification and which are carried after the Works or a Section (as the case may be) are taken over under Clause 10 [*Employer's Taking Over*].

**“Tests on Completion”** means the tests which are specified in the Specification or agreed by the Parties or instructed as a Variation, and which are carried out before the Works or a Section (as the case may be) are taken over by the Employer under Clause 9 [*Tests on Completion*].

**"Time for Completion"** means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [*Time for Completion*], as stated in Schedule 1 [*Contract Details*], with any extension under Sub-Clause 8.4 [*Extension of Time for Completion*] calculated from the Commencement Date.

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

**"Variation"** means any change to the Works, which is instructed as a variation under Clause 13 [*Variations and Adjustments*].

**"Works"** means the Permanent Works and the Temporary Works, or either of them as appropriate.

**"year"** means a calendar year.

## 1.2 Interpretation

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- (a) In the Contract, except where the context requires otherwise:
- (i) words indicating one (1) gender include all genders;
  - (ii) words indicating the singular also include the plural and words indicating the plural also include the singular;
  - (iii) references to the word "including" (or "includes") means including, but not limited to;
  - (iv) where an expression is defined, another part of speech or grammatical form of that expression has the corresponding meaning;
  - (v) references to a number of days or period of time from a particular date, shall be calculated exclusive of that date;
  - (vi) "consent" means that the Employer, the Contractor or the Engineer (as the case may be) agrees to or gives permission for, the requested matter;
  - (vii) "may" means that the Party or person referred to has the choice of whether to act or not in the matter referred to;
  - (viii) "shall" means that the Party or person referred to has an obligation under the Contract to perform the duty referred to;
  - (ix) words indicating persons or parties shall be interpreted as referring to natural and legal persons (including corporations and legal entities) except where the context requires otherwise;
  - (x) "execute the Works", "executing the Works" or "execution of the Works" means, but not limited to, the construction and completion of the Works and the remedying of any defects (and shall be deemed to include design to the extent, if any, specified in the Contract);
  - (xi) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
  - (xii) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and

- (xiii) a reference to any Laws, legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under that legislation or legislative provision.
- (b) In any list in these Conditions, where the second-last item of the list is followed by "and", "or" or "and/or" then all of the list items going before this item shall also be read as if they are followed by "and", "or" or "and/or" (as the case may be).
- (c) The marginal words and other headings shall not be taken into consideration in the interpretation of these General Conditions.
- (d) All dates and periods shall be ascertained in accordance with the Gregorian calendar.
- (e) Where references are made in the Contract to industry or technical codes and standards in accordance with which the Works are to be executed, the edition or the revised version of such codes and standards current at the Base Date applies, unless otherwise specified.

## 1.3 Notices and Other Communications

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- (a) Wherever these Conditions provides for the giving of a Notice or the issuing, providing, sending, submitting or transmitting of another type of communication (including acceptance, acknowledgement, advising, agreement, approval, certificate, consent, decision, determination, discharge, instruction, Notice of Claim, No-objection, record(s) of meeting, permission, proposal, record, reply, report, request, Review, Statement, submission or any other similar type of communication), the Notice or other communication shall be:
  - (i) in writing;
  - (ii) identified as such with reference to the Clause or Sub-Clause under which it is issued;
  - (iii) marked to the attention of the relevant representative of the Parties as set out in Schedule 1 [*Contract Details*]; and
    - delivered at the address set out in Schedule 1 [*Contract Details*]; or
    - sent or transmitted as a document, signed, scanned and attached in an email to the email address set out in Schedule 1 [*Contract Details*] or transmitted by any form of agreed system of electronic transmission stated in Schedule 1 [*Contract Details*].
- (b) If a Party has notified in writing a change of address or email address, then the communication shall be thereafter delivered to the changed email address or changed address accordingly.
- (c) Notices and other forms of communications shall take effect from the time it is received unless a later time is specified in it.
- (d) Notices and other forms of communication are deemed to be received:
  - (i) in the case of a delivery, when delivered to the relevant address (against a written receipt); and

- (ii) in the case of a document attached to an email, upon receipt of the email in the inbox of the recipient's address, provided, no non-delivery notification was received by the sender.
- (e) For the avoidance of doubt, any Notice or other form of communications shall not be deemed to have been given or made under the Contract, if it is an email, other than as an attached document in accordance with Sub-Clause 1.3 (a) (iii), or in the form of meeting minutes.
- (f) Notices and other forms of communications shall not be unreasonably withheld or delayed. When a certificate or Notice is issued to a Party, a copy shall be sent to the Engineer and other Party (as relevant). All other communications shall be copied to the Parties and/or the Engineer as stated under these Conditions.

## **1.4 Language**

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

## **1.5 Priority of Documents**

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

## 1.6 Assignment or Novation

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- (a) The Contractor acknowledges and agrees that the Employer may, in its absolute discretion novate, assign, transfer and/or charge the benefit of, the Contract and/or any of its present or future rights and responsibilities, interest and/or benefits hereunder to any third party upon giving Notice thereof to the Contractor.
- (b) The Contractor acknowledges and agrees that it will, if required by the Employer, take all further actions necessary to give effect to the novation or assignments, transfer or charge in Sub-Clause 1.6 (a), including executing a novation or an assignment agreement(s).
- (c) The Contractor shall not be entitled, without the prior written consent of the Employer, to novate or assign to any third party its interest under the Contract or any right or benefit, arising under the Contract.

## 1.7 Care and Supply of Documents

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- (a) The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, one (1) copy of the Contract and of each subsequent Drawing or document, shall be supplied by the Employer to the Contractor, who may make or request further copies at the cost of the Contractor.
- (b) Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until the submission to the Engineer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer four (4) paper copies of the Contractor's Documents.
- (c) The Contractor shall keep, on the Site, a copy of:
  - (i) the Contract;
  - (ii) publications named in the Specification;
  - (iii) the Contractor's Documents;
  - (iv) the Drawings; and
  - (v) Variations, Notices and other communications given under the Contract.
- (d) The Employer's Personnel shall have the right of access at all reasonable times, to all documents listed in Sub-Clause 1.7 (c).
- (e) If a Party (or the Engineer) becomes aware of an error or defect of a technical nature in a document which was prepared for use in the execution of the Works, the Party (or the Engineer) shall promptly give a Notice to the Engineer and other Party (as relevant) of such error or defect, and the Engineer shall issue any necessary clarification or instruction.

## 1.8 Delayed Drawings or Instructions

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- (a) The Contractor shall give a Notice to the Engineer whenever the Works are likely to be delayed or disrupted if any necessary Drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable.

- (b) The Notice shall include details of the necessary Drawing or instruction, details of why and by when it should be issued, and details of the nature and amount of the delay or disruption likely to be suffered if Drawings or instructions are delayed or delivered late.
- (c) If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Employer or Engineer to issue the notified Drawing or instruction within a time which is reasonable and is specified in the Notice of Claim with supporting details, the Contractor shall be entitled, subject to Sub-Clause 20.3 [Contractor's Claims], to an EOT and/or payment of such Cost Plus Profit.
- (d) However, if and to the extent that the Employer or Engineer's failure was caused by any error or delay by the Contractor, including an error in, or delay in, the submission of any of the Contractor's Documents, the Contractor shall not be entitled to such EOT and/or payment of such Cost Plus Profit.

## **1.9 Ownership and licence to use Employer's and Contractor's Documents**

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- (a) All Employer's Documents shall remain the property of the Employer and shall be returned to the Employer prior to issue of the Final Completion Certificate. The Contractor agrees that it shall not acquire any rights in the Employer's Documents whether under this Contract or otherwise and shall not use or disclose the Employer's Documents other than for the sole and exclusive purpose of the performance of its obligations under or in connection with this Contract.
- (b) The Contractor grants the Employer a perpetual, non-exclusive, non-transferable, royalty-free, irrevocable licence to use, reproduce, modify and adapt the Contractor Background IPR for the purpose of the Contract.
- (c) The Contractor assigns to the Employer, absolutely all of the Contractor's rights, title and interest, including all IPR, in the Contractor's Documents and any other documentation which the Contractor creates and is required to provide to the Employer or the Engineer under the Contract, upon submission of the Contractor's Documents to the Engineer.
- (d) The Contractor agrees to do everything necessary or requested by the Employer to enable the Employer to own the IPR in the Contractor's Documents, including formally assigning those rights or assisting the Employer or its nominee in obtaining registration of those rights in its own name.
- (e) The Contractor agrees to do everything necessary or requested by the Employer to enable the Employer to use the Contractor's Documents and the IPR in the Contractor's Documents, including, granting or procuring in the name of the Employer, a perpetual, unrestricted, non-exclusive, irrevocable, transferable, royalty-free licence for the Employer to use all the IPR in the Contractor's Documents, on terms acceptable to the Employer, from all other contributing parties in the performance of the Contractor's obligations under this Contract with rights, title and interest in any documents or other Copyright Works forming the Contractor's Documents.
- (f) The Contractor warrants that use of the Contractor's Documents by the Employer in connection with the Project and the Works or otherwise shall not infringe any rights, including the IPR, of a third party.

- (g) The Contractor shall procure the assignment of all rights, title and interest in any documents and other Copyrights Works created by Subcontractors or other contributing parties in performance of its obligations under this Contract from those persons, to the Employer.
- (h) In the event of termination of the Contract, the Employer is entitled to receive the licence to use, for the purposes of completing the Works and/or arranging for any other entities to do so, or to receive the IPR for which the Contractor has received payment.
- (i) This Sub-Clause 1.9 shall survive the termination of the Contract.

## **1.10 Moral Rights**

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- (a) The Contractor shall procure at its own cost and risk from each Author express agreement that the Author will not enforce any Moral Rights the Author may have presently or in the future in the Contractor's Documents, including by executing any consents or waivers for Moral Rights required by the Employer.

## **1.11 Confidential Nature of Documents and Information**

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- (a) Information and data that is considered proprietary by either Party or that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the Contract, and that is designated as confidential ("Information"), shall be held in confidence by that Party and shall be in accordance with this Sub-Clause 1.11.
- (b) The Recipient shall:
  - (i) use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar Information that it does not wish to disclose, publish or disseminate; and,
  - (ii) use the Discloser's Information solely for the purpose for which it was disclosed.
- (c) Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Sub-Clause 1.11, the Recipient may disclose Information to:
  - (i) any other party with the Discloser's prior written consent; and,
  - (ii) the Recipient's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees officials, representatives and agents of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, provided that, for these purposes a controlled legal entity means:

- a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,
  - any entity over which the Party exercises effective managerial control; or,
  - for the employer, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.
- (d) Any information, including information, provided by or on behalf of the Employer to the Contractor constitutes property and archives of the United Nations within the meaning of the Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15 (1946), and Article II of the Convention on the Privileges and Immunities of the United Nations, including its Sections 2, 3 and 4, is applicable to all such Information.
- (e) The Contractor may disclose Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of the United Nations, the Contractor will give the Employer sufficient prior notice of a request for the disclosure of Information in order to allow the Employer to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.
- (f) The Employer may disclose Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.
- (g) The Recipient shall not be precluded from disclosing Information that:
- (i) is obtained by the Recipient from a third party without restriction;
  - (ii) is disclosed by the Discloser to a third party without any obligation of confidentiality;
  - (iii) is previously known by the Recipient; or
  - (iv) at any time is developed by the Recipient completely independently of any disclosures hereunder.
- (h) Either Party may be entitled to disclose the terms and conditions of the Contract and any documents and other information acquired by it under or pursuant to the Contract without the prior written consent of the other Party if such disclosure is made in good faith:
- (i) to any insurer under a policy of insurance issued pursuant to the Contract;
  - (ii) to any Subcontractor for the furtherance of the performance of that Party's obligations under the Contract; or
  - (iii) to outside consultants or advisers engaged by or on behalf of the disclosing Party and acting in that capacity in connection with the Works (including insurance, tax and legal advisers).

- (i) The Contractor shall disclose all such confidential and other information as the Engineer may reasonably require in order to verify the Contractor's compliance with the Contract.
- (j) The Contractor shall not (without the prior written consent of the Employer) take, or authorize the taking of, any photograph of the Works or the Site for use in any publicity or advertising.
- (k) These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

## **1.12 Compliance with Laws**

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- (a) The Employer shall obtain the permits, licences, authorizations and approvals described in the Specification as being the responsibility of the Employer (if any).
- (b) The Contractor undertakes that it shall, in executing the Works and performing all of its obligations under the Contract, comply with all applicable Laws and that the Contractor's Documents and the completed Works, shall comply with all Laws and/or to the extent required under the Contract.
- (c) The Contractor shall provide assistance and all documentation as described in the Specification, or otherwise reasonably required by the Employer, so as to allow the Employer to obtain any permit, permission, licence or approval under Sub-Clause 1.12 (a).
- (d) The Contractor shall at its cost at all times during the execution of the Works ensure that any Contractor's Personnel who performs any part of the Works is registered and licenced, as required by any applicable Laws and any Authority, to execute the Works.
- (e) The Contractor shall give all Notices, pay all taxes, duties and fees, coordinate and procure all "no objection certificates" from all relevant Authorities and obtain all other permits, licences and approvals, as required by the Laws in relation to the execution of the Works, except for those permits, licences and approvals which are referred to in Sub-Clause 1.12 (a).
- (f) In connection with the performance of its obligations under the Contract, the Contractor acknowledges that the imports and customs Laws and regulations of the Country shall apply to the furnishings and shipments of any products and components thereof to the Country. The Contractor specifically acknowledges that the aforementioned import and custom Laws and regulations of the Country prohibit, among other things, the importation of certain products and components into the Country.
- (g) The Contractor shall complete the Works in accordance with the permits, licences and approvals referred to in Sub-Clause 1.12 (a) and Sub-Clause 1.12 (e) and to the satisfaction of all relevant Authorities. The Contractor shall be responsible for arranging inspection by all relevant Authorities and for obtaining a "certificate of completion" (or its equivalent) from such Authorities and other approvals necessary to ensure completion of the Works in accordance with the Contract.

- (h) If the Contractor suffers delay and/or incurs Cost as a result of the Employer's delay or failure to obtain any permit, permission, licence or approval under Sub-Clause 1.12 (a), provided the delay was not caused or contributed to by the Contractor, the Contractor shall be entitled, subject to Sub-Clause 20.3 [Contractor's Claims], to an EOT and/or payment of such Cost Plus Profit.
- (i) If the Employer incurs additional costs as a result of the Contractor's failure to comply with Sub-Clause 1.12 (c), (d), (e) or (f) provided that the Employer shall have complied with Sub-Clause 2.2 [Assistance], the Employer shall be entitled to payment of these costs by the Contractor subject to Sub-Clause 20.2 [Employer's Claims].
- (j) The Contractor shall defend, indemnify and hold the Employer harmless against and from the consequences of any failure to comply with this Sub-Clause 1.12.

## **1.13 Joint and Several Liability**

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- (a) If the Contractor is a JV:
  - (i) the members of the JV shall be deemed to be jointly and severally liable to the Employer for the Works and performance of all of the Contractor's obligations under the Contract or failure in respect of the same. The actions of one (1) such member shall be deemed to be fully binding on the others;
  - (ii) the Employer may proceed against any or all of the JV members for failure of the Contractor to comply with any obligation, whether arising under the Contract or otherwise;
  - (iii) the members of the JV shall notify the Employer of the member of the JV (leader), who shall have authority to bind the Contractor and each of the members of the JV; and
  - (iv) the Contractor shall not alter, without the prior written consent of the Employer;
    - its composition or legal status; or
    - the scope and parts of the obligations to be carried out by each member under this Contract.

## **1.14 Sections**

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- (a) The interpretations and application of:
  - (i) Time for Completion;
  - (ii) Date of Completion;
  - (iii) Delay Damages;
  - (iv) Retention Money; and
  - (v) Defects Notification Period;

apply separately to each Section of the Works specified in Schedule 1 [Contract Details] (if any) or which is nominated as a Section by the Engineer under Sub-Clause 1.14 (b).

- (b) In addition to Sections of the Works specified in Schedule 1 [Contract Details] (if any), the Engineer may, at any time, nominate a part of the Works to be an additional Section by requesting the Contractor to submit a proposal for a part of the Works to be an additional Section. In any such request, the Engineer shall outline:
  - (i) the portion proposed of the Works to form the additional Section;
  - (ii) the proposed Time for Completion for the nominated additional Section; and
  - (iii) any amounts for Delay Damages for failure to achieve completion of the additional Section by the proposed Time for Completion.
- (c) The Contractor, shall respond in writing as soon as practicable, within fourteen (14) days of the Engineer's request by submitting:
  - (i) a description of the proposed amendments to the sequence of the works along with proposed additional resources and materials necessary ;
  - (ii) the proposal for any necessary modifications to the Programme and to the Time for Completion for the whole of the Works;
  - (iii) the proposal for adjustment to the Contract Price; and
  - (iv) the proposed amounts for Delay Damages having regard to the proportion of the Delay Damages for the whole of the Works attributable to the value of the Works for that Section.
- (d) The Engineer shall, as soon as practicable after receiving such proposal under Sub-Clause 1.14 (c), respond with approval, disapproval or comments under Sub-Clause 3.5 [Agreement or Determination].
- (e) If the Employer, in its sole discretion, elects to proceed with an additional Section, the Engineer shall instruct the Contractor to proceed according to Sub-Clause 1.14 (b), (c) and (d).

## 1.15 Warranties as to Capacity

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- (a) The Employer warrants that it has the power to execute, deliver and perform its obligations under the Contract.
- (b) The Contractor hereby warrants and represents:
  - (i) the power to execute, deliver and perform its obligations under the Contract and all necessary corporate and other action has been taken to authorize such execution, delivery and performance;
  - (ii) the power to obtain and has obtained (as applicable) from all relevant Authorities all licences, permissions and consents required in order for it to execute the Works and to perform all of its obligations under the Contract, except for those which are the express responsibility of the Employer under Sub-Clause 1.12 (a) [Compliance with Laws]; and

- (iii) the facilities, information technology, capability, experience, management expertise, financial resources, equipment, staff and other resources required to execute the Works in a competent and expeditious manner and otherwise in accordance with the Contract.

## 1.16 Prior Work

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- (a) The Contract applies to the execution of any works forming part of the Works, and the performance of any of the Contractor's obligations relating to the Works, carried out before, on or after the Contract Effective Date.
- (b) Where the Contractor has undertaken any design, services or works in connection with the Works prior to the Contract Effective Date, the Contractor warrants to the Employer that such activities have been carried out in accordance with the requirements of the Contract and confirms that all the warranties, obligations and liabilities of the Contractor under or in connection with the Contract apply to such design, services or works.
- (c) Unless otherwise specified in the Contract, such prior design, services or works in connection with the Works are subject to the terms of the Contract and are deemed to be included in the Accepted Contract Amount.

## 1.17 Entire Agreement and Amendment

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

## 1.18 Severability

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- (a) If the enforcement or operation of any provision, or part thereof, of the Contract is prohibited by Laws or if any provision, or part thereof, of the Contract is by Laws rendered void, invalid or unenforceable, such prohibition, voidness, invalidity or unenforceability shall not affect the validity or enforceability of the rest of that provision and/or any other provisions and conditions of the Contract.
- (b) Where either Party cannot rely on any term or provision of the Contract, the Parties may negotiate in good faith for an alternative term or provision with similar contractual effect for the Parties.

## 1.19 Counterparts

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- (a) The Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

## 1.20 Independent Contractor

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- (a) The Contractor shall be an independent contractor performing the Contract. The Contract does not create any partnership, employment, JV or other joint relationship between the Employer on the one hand and the Contractor on the other hand.

## 1.21 Privity

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

## 1.22 Waiver

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- (a) None of the terms, provisions or conditions of the Contract shall be considered waived by the Employer unless a waiver is given in writing by the Employer duly signed and dated.
- (b) Any waiver of the Employer's rights, powers or remedies under the Contract shall be dated and signed by an authorized representative of the Employer granting such waiver, and shall specify the right and the extent to which it is being waived. For the avoidance of doubt, any waiver of any of the Employer's rights, powers or remedies in accordance with this Sub-Clause 1.22 is without prejudice to the privileges and immunities of the United Nations of which the Employer is an integral part, as expressly reserved under Sub-Clause 1.24 [*Privileges and Immunities*].

## 1.23 Publicity and Use of the Name or Emblem of the Employer and the United Nations

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- (a) The Contractor shall not:
- (i) advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the Employer or the United Nations; or
- (ii) in any manner whatsoever make use of the name, emblem or official seal of the Employer or the United Nations, or any abbreviation of the Employer's name or the United Nations in connection with its business or otherwise without the written permission of the Employer.
- (b) The Contractor may use material and information relating to the Works for tendering purposes with prior written consent of the Employer.
- (c) This Sub-Clause 1.23 survives the completion, expiry or termination of the Contract.

## 1.24 Privileges and Immunities

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

## 1.25 Taxes and Duties

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

## 1.26 Personal Data

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- (a) The Contractor shall take all appropriate measures to safeguard any information relating to an identified or identifiable natural person, including any such information the disclosure of which could harm such identified or identifiable natural person that is:
  - (i) obtained by the Contractor from the Employer in connection with, or related to, the performance of the Contract; or
  - (ii) otherwise handled by the Contractor on behalf of the Employer, in connection with, or related to, the performance of the Contract ("Employer Personal Data").
- (b) Without prejudice to the generality of Sub-Clause 1.26 (a), above, and unless otherwise more specifically provided in the Contract, the Contractor shall, at a minimum:
  - (i) for the purposes of the Contract and subject to the provisions of Sub-Clause 1.26 (c), treat Employer Personal Data as information within the meaning of Sub-Clause 1.11 [Confidential Nature of Documents and Information] above;

- (ii) handle Employer Personal Data in a manner that is adequate, relevant and limited to what is necessary for the performance of the Contract, and ensure that Employer Personal Data is kept for no longer than is necessary to perform services under the Contract;
  - (iii) as and when requested by the Employer, update or rectify Employer Personal Data to ensure its accuracy;
  - (iv) transfer Employer Personal Data to third parties, including the Contractor's agents or subcontractors, only in accordance with the requirements of the Contract, and on terms and conditions equivalent to those set forth in this Sub-Clause 1.26 and in Sub-Clause 1.11 [Confidential Nature of Documents and Information], it being understood that provisions of this Sub-Clause 1.26 shall govern to the extent that the provision of this Sub-Clause 1.26 are more restrictive than those set forth in Sub-Clause 1.11 [Confidential Nature of Documents and Information];
  - (v) immediately notify the Employer in writing upon becoming aware of any data or security breach; take immediate mitigating and/or remedial action, including mitigating and/or remedial action as directed by the Employer; and inform and update on a regular basis the Employer of any measures taken by the Contractor to address such data or security breach;
  - (vi) as set forth in the Contract or as otherwise instructed by the Employer in writing, return, delete or destroy Employer Personal Data and, upon written request by the Employer, provide substantiating evidence of such deletion or destruction to the Employer; and
  - (vii) consult with, and follow the instructions of, the Employer with respect to handling any requests and/or complaints by third parties in respect of Employer Personal Data made to or received by the Contractor.
- (c) The Employer will handle any information relating to an identified or identifiable natural person, including any such information the disclosure of which could harm such identified or identifiable natural person that it obtains from the Contractor as a result of, or in connection with, the Contract solely in accordance with its own legal framework.
- (d) The provisions of this Sub-Clause 1.26 shall remain effective following any termination or expiration of the Contract.

## 2 THE EMPLOYER

### 2.1 Right of Access to the Site

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- (a) Unless otherwise specified in the Contract, the Employer shall give the Contractor non-exclusive right of access to, and non-exclusive possession of, those parts of the Site as set out in Schedule 2.2 [*Site Plan*], within the time (or times) and subject to any staged or shared access restrictions stated in Schedule 2.2 [*Site Plan*]. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in Schedule 2.2 [*Site Plan*] and/or the Specification. The Employer may withhold any right of access or possession until it has received the Performance Security from the Contractor.
- (b) If no such time is stated in Schedule 2.2 [*Site Plan*], the Employer shall give the Contractor right of access to, and possession of, the Site (or part thereof) within such times as may be reasonably required to enable the Contractor to proceed in accordance with the Programme under Sub-Clause 8.3 [*Programme*].
- (c) If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right of access to the Site or possession within such time, the Contractor shall give a Notice of Claim to the Engineer, who shall proceed in accordance with Sub-Clause 20.3 [*Contractor's Claims*] to determine any entitlement to an EOT and/or payment of any such Cost Plus Profit.
- (d) If and to the extent that the Employer's failure was caused by any error or delay by the Contractor, (including without limitation an error in, or delay in the submission of any of the Performance Security or the Contractor's Documents, or delay in the Contractor obtaining the requisite licence and registration from the relevant Authorities necessary for the proper execution of the Works) the Contractor shall not be entitled to such EOT, payment of Cost or to make any other related Claim against the Employer.

### 2.2 Assistance

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- (a) If requested by the Contractor, the Employer shall (where it is in a position to do so) promptly provide reasonable assistance to the Contractor in the application for any permits, licences or approvals required by Laws:
  - (i) which the Contractor is required to obtain under Sub-Clause 1.12 [*Compliance with Laws*];
  - (ii) for the delivery of Goods, including clearance through customs; and/or
  - (iii) for the export of Contractor's Equipment when it is removed from the Site, if applicable.

## 2.3 Employer's Personnel

---

- (a) The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors (if any) on or near the Site:
  - (i) cooperate with the Contractor's efforts under Sub-Clause 4.5 [Cooperation]; and
  - (ii) take actions similar to those which the Contractor is required to take under Sub-Clause 4.7 [Health and Safety Procedures] and Sub-Clause 4.17 [Social and Environment].

## 2.4 Employer-Supplied Materials, Employer's Equipment and Employer's Facilities

---

- (a) The Employer shall make the Employer's Equipment and or Employer's Facilities available for the use of the Contractor solely for the execution of the Works in accordance with the details, arrangements, rates and prices stated in the Specification.
- (b) Unless otherwise stated in the Contract, the Employer shall be responsible for the Employer's Equipment and Employer's Facilities, except that the Contractor shall be responsible for the Employer's Equipment, its items and facilities, whilst any of the Contractor's Personnel are operating it, driving it, directing it, using it or in possession or control of it.
- (c) The cost for use of the Employer's Equipment and Employer's Facilities shall be calculated by the Contractor, on a monthly basis using such stated prices for the use of Employer's Equipment and Employer's Facilities and be included in the relevant Statement.
- (d) The Employer shall supply to the Contractor, free of charge, the free-issue materials (if any) or other Employer-Supplied Materials in accordance with the details and arrangements described in the Specification.
- (e) The Contractor, acting in accordance with Industry Best Practices, shall visually inspect such materials, and either:
  - (i) accept the materials from the Employer; or
  - (ii) reject the materials and promptly notify the Engineer of any shortage, defect or default identified in the materials.
- (f) Unless otherwise agreed by the Parties, the Employer shall promptly rectify the shortage, defect or default identified by the Contractor in accordance with Sub-Clause 2.4 (e).
- (g) From acceptance pursuant to Sub-Clause 2.4 (e), the free-issue materials and Employer-Supplied Materials shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve the Employer of liability for any shortage, defect or default not apparent from a visual inspection, except to the extent that such shortage, defect or default has arisen due to an act or omission of the Contractor.

## 2.5 Site Data

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- (a) The Employer shall have made available to the Contractor the Site Data for its information prior to the Base Date. The Employer shall similarly make available to the Contractor all relevant Site Data which comes into the Employer's possession after the Base Date.
- (b) The Contractor shall be responsible for interpreting all data referred to in this Sub-Clause 2.5 and Sub-Clause 4.9 [*Use of Site Data*].

## 3 THE ENGINEER

### 3.1 Engineer's Duties and Authority

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- (a) The Employer shall appoint and assign the Engineer who shall carry out the duties assigned to the Engineer in the Contract. The Engineer shall be vested with all the authority necessary to act as the Engineer under the Contract.
- (b) The Engineer shall be:
  - (i) a professional having suitable qualifications, experience and competence to act as the Engineer under the Contract; and
  - (ii) fluent in the language defined in Sub-Clause 1.4 [*Language*].
- (c) Except as otherwise stated in these Conditions, whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall act as a skilled professional and shall be deemed to act for the Employer except in the event of agreements and determinations in accordance with Sub-Clause 3.5 [*Agreement or Determination*].
- (d) The Engineer shall have no authority to amend the Contract or, except as otherwise stated in these Conditions, to relieve either Party of any duty, obligation or responsibility under or in connection with the Contract.
- (e) The Engineer may exercise the authority attributable to the Engineer necessarily to be implied from the Contract and/or as specified in Schedule 3.7 [*Limits to Engineer's Duties and Authorities*]. If the Engineer is required to obtain the consent of the Employer before exercising a specified authority other than identified in Sub-Clause 3.1 (f), the requirements shall be as identified in Schedule 3.7 [*Limits to Engineer's Duties and Authorities*] or as notified by the Employer. There shall be no requirement for the Engineer to obtain the Employer's consent before the Engineer exercises the authority under Sub-Clause 3.5 [*Agreement or Determination*].
- (f) The Engineer shall obtain the consent of the Employer before exercising an authority or taking action in the following circumstances:
  - (i) nominating a part of the Works to be an additional Section as under Sub-Clause 1.14 [*Sections*];
  - (ii) approving subcontracting any part of the Works under Clause 5 [*Subcontracting*];
  - (iii) issuing a Variation except if such variation does not increase the Contract Price or adjust the Time for Completion under Clause 13 [*Variations and Adjustments*];
  - (iv) suspending progress of part or all of the Works (except in the case of an emergency, when the Contractor shall forthwith comply with the Engineer's instructions);
  - (v) issuing Taking-Over Certificates for the whole of the Works, Sections or a Part under Clause 10 [*Employer's Taking Over*];

- (vi) issuing the Final Completion Certificate for the Works, Sections or a Part; and/or
  - (vii) giving approval under Sub-Clause 6.14 [*Arms, Ammunition and Explosives*].
- (g) The Employer undertakes not to impose further constraints on the Engineer's authority.
- (h) Except as otherwise stated in the Contract, no authorization, approval, comment, check, certificate, consent, examination, inspection, instruction, Notice, proposal, request, test, Review, issue of No-objection, or similar act (including absence of disapproval) by the Engineer (or the Engineer's Assistant) shall relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with the Contract, including responsibility or liability for error, omissions, discrepancies, defects and non-compliances.

### **3.2 Delegation by the Engineer**

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- (a) The Engineer may assign an Engineer's Assistant authorized by the Employer, and delegate to the Engineer's Assistant, in accordance with this Sub-Clause 3.2, the authority necessary to act on the Engineer's behalf, except to replace the Engineer's Assistant. The Engineer shall notify the Contractor of any Engineer's Assistant.
- (b) The Engineer may from time to time assign duties and delegate authority to the Engineer's Assistants, and may also revoke such assignment or delegation. The assignment, delegation or revocation shall be in writing and shall not take effect until such Notice has been given to the Contractor. The Engineer's Assistants shall only be authorized to issue instructions to the Contractor to the extent defined by the delegation.
- (c) All Engineer's Assistants shall be suitably qualified natural persons, who are experienced and competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.4 [*Language*].
- (d) However, unless otherwise agreed by the Parties, the Engineer shall not delegate the authority to agree or determine any matter in accordance with Sub-Clause 3.5 [*Agreement or Determination*] and to issue a Notice to Correct under Sub-Clause 15.1 [*Notice to Correct*].
- (e) Any authorization, approval, comment, check, certificate, consent, examination, inspection, instruction, Notice, proposal, request, test, Review, issue of No-objection, or similar act by the Engineer's Assistant, in accordance with the authorized delegation under Sub-Clause 3.2 (b), shall have the same effect as though the act had been an act of the Engineer. However, if the Contractor questions any instruction of an Engineer's Assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the instruction.

### 3.3 Engineer's Instructions

---

- (a) The Engineer may issue to the Contractor (at any time) instructions which may be necessary for the execution of the Works, in accordance with the Contract. The Contractor shall only take instructions from the Engineer or from an Engineer's Assistant to whom the appropriate authority to give instruction has been delegated under Sub-Clause 3.2 [Delegation by the Engineer].
- (b) The Contractor shall comply with the instructions given by the Engineer or the Engineer's Assistant as the case may be, with due expedition and without delay.
- (c) Verbal instructions may only be given by the Engineer in an emergency or where the Engineer or Engineer's Assistant considers that there is a risk of damage or injury to the Works or any person, provided written instruction confirming the verbal instruction is issued within forty-eight (48) hours.
- (d) If an instruction states that it constitutes a Variation, Sub-Clause 13.3 [Variation Procedure] shall apply. If not so stated, and the Contractor considers that the instruction:
  - (i) constitutes a Variation (or involves work that is already part of an existing Variation/Works); or
  - (ii) does not comply with applicable Laws or will reduce the safety of the Works or is technically impossible;the Contractor shall immediately, and before commencing any work related to the instruction, give a Notice to the Engineer with reasons.
- (e) If the Engineer does not respond within seven (7) days after receiving this Notice, by giving a Notice confirming, reversing or varying the instruction, the Engineer shall be deemed to have revoked the instruction. Otherwise the Contractor shall comply with and be bound by the terms of the Engineer's response.

### 3.4 Replacement of the Engineer

---

- (a) If the Engineer is unable to act as a result of death, illness, disability or resignation (or, in the case of an entity, the Engineer becomes unable or unwilling to carry out any of its duties, other than for a cause attributable to the Employer) the Employer shall be entitled to immediately appoint a replacement by giving a Notice to the Contractor with reasons and the name, address and relevant experience of the replacement. This appointment shall be treated as a temporary appointment until this replacement is accepted by the Contractor, or another replacement is appointed, under this Sub-Clause 3.4.
- (b) If the Employer intends to replace the Engineer, the Employer shall, not less than twenty-one (21) days before the intended date of replacement, give a Notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. The Employer shall not replace the Engineer with a person against whom the Contractor raises reasonable objection by Notice to the Employer, with supporting particulars.

### 3.5 Agreement or Determination

---

- (a) Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Engineer shall act neutrally between the Parties and shall not be deemed to act for the Employer.
- (b) The Engineer shall consult with the Parties jointly and/or separately, and shall encourage discussion between the Parties in an endeavour to reach an agreement. The Engineer shall commence such consultation promptly to allow adequate time to comply with the time limits under Sub-Clause 3.5 (f). Unless otherwise proposed by the Engineer and agreed by the Parties, the Engineer shall provide the Parties with a record of the consultation.
- (c) If agreement is achieved within the time limit for agreement under Sub-Clause 3.5 (f), the Engineer shall give a Notice to the Parties of the agreement.
- (d) If no agreement is achieved within the time limit for agreement under Sub-Clause 3.5 (f), the Engineer shall give a Notice to the Parties accordingly and shall immediately proceed as specified under Sub-Clause 3.5 (e).
- (e) The Engineer shall make a fair determination of the matter or Claim, in accordance with the Contract, taking due regard of all relevant circumstances, within the time limit for determination under Sub-Clause 3.5 (f). The Engineer shall give a Notice to the Parties of the determination. This Notice shall state that it is a "Notice of the Engineer's Determination", and shall describe the determination in detail with reasons and detailed supporting particulars.
- (f) The following time limits for agreement and determination applies:
  - (i) The Engineer shall give the Notice of agreement, if agreement is achieved, within twenty-eight (28) days or within such other time limit as may be proposed by the Engineer and agreed by both Parties (the "time limit for agreement" in these Conditions); or
  - (ii) The Engineer shall give the Notice of determination within fourteen (14) days or within such other time limit as may be proposed by the Engineer and agreed by the Parties (the "time limit for determination" in these Conditions), after the date corresponding to the obligation to proceed under Sub-Clause 3.5 (c) and (d).
- (g) If the Engineer does not give the Notice of agreement or determination within the relevant time limit, the matter shall be deemed to have been rejected.
- (h) Each agreement or determination shall be binding on the Parties (and shall be complied with by the Engineer) unless and until corrected under this Sub-Clause 3.5 or, in the case of a determination, it is revised under Clause 20 [*Claims*].
- (i) In the agreement or determination, if any error of a typographical or clerical or arithmetical nature is identified by either Party, within seven (7) days the Engineer shall be notified and the Engineer shall issue a corrected determination.

- (j) If either Party is dissatisfied with a determination of the Engineer, the dissatisfied Party shall give a Notice stating dissatisfaction to the other Party, with a copy to the Engineer and shall be given within twenty-eight (28) days after receiving the "Notice of the Engineer's Determination". Thereafter, either Party may proceed under Sub-Clause 21 [Dispute Resolution].
- (k) If the dissatisfied Party is dissatisfied with only part(s) of the Engineer's determination:
  - (i) this part(s) shall be clearly identified in the Notice stating dissatisfaction;
  - (ii) this part(s), and any other parts of the determination that are affected by such part(s) or rely on such part(s) for completeness, shall be deemed to be severable from the remainder of the determination; and
  - (iii) the remainder of the determination shall become final and binding on the Parties as if the Notice of dissatisfaction had not been given.
- (l) If no Notice stating dissatisfaction is given by either Party within the period of twenty-eight (28) days stated in Sub-Clause 3.5 (j), the determination of the Engineer shall be deemed to have been accepted by the Parties and shall be final and binding on them.

## 4 THE CONTRACTOR

### 4.1 Contractor's General Obligations

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- (a) The Contractor shall design (to the extent specified in the Contract), execute, test, commission and complete the Works and shall remedy any defects in the Works:
  - (i) properly and in accordance with the Contract and all applicable Laws such that when completed, the Works shall be fit for the purposes for which the Works are intended in accordance with the Contract;
  - (ii) exercising the standard of skill, care and diligence reasonably to be expected of an appropriately qualified contractor experienced in carrying out such work for projects of a similar type, nature and complexity to the Works;
  - (iii) acting in accordance with Industry Best Practices;
  - (iv) with properly equipped facilities and new, good quality and non-hazardous Materials and Plant, and where qualities of Materials, Plant and workmanship are not specified, they shall be fit for the purposes for which they are intended;
  - (v) in compliance with any requirements in relation to access; and
  - (vi) in such a way as to ensure the full, efficient, economic and safe commercial operation of the Works are completed with the minimum interruption for maintenance or repair.
- (b) The Contractor shall provide the Plant (and spare parts, if any) and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required to fulfil the Contractor's obligations under the Contract.
- (c) The Contractor shall be responsible for all aspects of Site management and superintendence, the adequacy, stability and safety of all Site operations and all methods of construction in performing the Works. Except to the extent specified in the Contract, the Contractor shall:
  - (i) be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract; and
  - (ii) not be responsible for the design, drawings or specifications of the Permanent Works (provided by the Employer).
- (d) The Contractor shall, before any part of the Works is commenced, submit to the Engineer, details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without having previously been notified in writing to the Engineer, except in the case of an emergency or where the Contractor reasonably considers that there is a risk of damage or injury to the Works or any person. In such case, notification of the alteration shall be issued within forty-eight (48) hours.

- (e) Nothing in the Contract shall be construed to authorize the Contractor to effect any unilateral change in the execution of the Works, the Contract Price and/or the Contract without the Engineer's or Employer's prior written approval as applicable.
- (f) If the Contract specifies, or the Engineer otherwise issues an instruction in accordance with Sub-Clause 3.3 [*Engineer's Instructions*] requiring that the Contractor shall design any Section or part of the Works, then unless otherwise stated in the Contract:
  - (i) the Contractor shall submit to the Engineer the Contractor's Documents, for this Section or part of the Works in accordance with the Contract, in accordance with procedures specified in Sub-Clauses 4.1 (g), (h) and (i) and the Specification;
  - (ii) these Contractor's Documents shall be in accordance with the provided Specification and Drawings, and shall include additional information required by the Engineer for coordination of each Party's designs;
  - (iii) the Contractor shall be responsible for the design and construction of these Sections or parts of the Works, which shall, when completed, be fit for such purposes for which the Sections or parts of the Works are intended as specified in the Contract; and
  - (iv) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the Contractor's Documents, the as-built documents and operation and maintenance manuals in accordance with the Specification and/or the Engineer's instructions, and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this Section or part of the Works. Such Sections or parts of the Works shall not be considered to be completed for the purposes of being Complete under Sub-Clause 10.1 [*Taking Over*] until these documents and manuals have been submitted to the Engineer.
- (g) When preparing the Contractor's Documents in accordance with Sub-Clause 4.1 (f), the Contractor shall:
  - (i) give the Engineer, for Review, four (4) copies of the Contractor's Documents by the dates, or within the times, set out in the Contract or as otherwise agreed in writing between the Parties or with the Engineer;
  - (ii) give the Engineer, for Review, any amendments proposed to the existing Contractor's Documents; and
  - (iii) allow twenty-eight (28) days for the Engineer to complete a Review and comment on the Contractor's Documents or the amended Contractor's Documents as the case may be.
- (h) If the Engineer gives the Contractor a Notice, within the time allowed for its Review, stating that the Contractor's Documents, or any amended Contractor's Documents, are not acceptable or not in accordance with the Contract, the Contractor shall amend that Contractor's Documents so that it complies with the Contract and promptly submit the amended Contractor's Documents to the Engineer for Review by allowing twenty-eight (28) days for the Engineer to complete a Review.

- (i) Any amendment, which the Contractor proposes to any Contractor's Documents, shall be promptly submitted to the Engineer, with details of:
- (i) the proposed amendment; and
  - (ii) the reasons for the proposed amendment;
- together with any other information and supporting documentation the Engineer reasonably requires. If the Contractor proposes a change to the Contractor's Documents that has previously been submitted under Sub-Clause 4.1 (h), then it shall resubmit the proposed amendment in accordance with the procedures set out in Sub-Clause 4.1 (g).
- (j) For the avoidance of doubt, any Review or approval of, or any comment on, any Contractor's Documents by, or on behalf of, the Engineer in accordance with the Contract is solely to monitor the performance of the obligations of the Contractor during the execution of the Works. No approval, comment or Review or similar act (including the absence of disapproval, comment or Review) by, or on behalf of, the Engineer shall relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with the Contract, including responsibility or liability for error, omissions, discrepancies, defects and non-compliances in the Contractor's Documents. Any failure to disapprove any Contractor's Documents shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the Contractor's Documents under this Sub-Clause 4.1 or otherwise under the Contract.
- (k) To the extent that the Contractor is required to design any Section or part of the Works in accordance with Sub-Clause 4.1 (f) or otherwise under the Contract, the Contractor shall:
- (i) design the Works in accordance with Industry Best Practices, the Laws and the requirements of all relevant Authorities;
  - (ii) ensure such design is prepared by appropriately and professionally qualified and experienced designers in accordance with Industry Best Practices, the Laws and the requirements of all relevant Authorities and who shall also comply with the additional criteria (if any) stated in the Specification;
  - (iii) if requested by the Engineer, within seven (7) days, submit to the Engineer for its consent, the names and particulars of each member of the Contractor's design team, including the details of each team member's professional qualifications and experience; and
  - (iv) warrant that its design of any Section or part of the Works:
    - are fit for such purposes for which the Section or part of the Works is intended as are specified in the Contract;
    - is in accordance with Industry Best Practices;
    - is in accordance with all Laws and requirements of all relevant Authorities; and
    - in compliance with the Employer's design requirements for other Section or parts of Works.

- (l) The Contractor warrants that in carrying out the design (to the extent required by the Contract) and executing the Works it has not, and shall not, specify for use or permit to be used any materials which at the time the Works are being carried out are generally accepted or reasonably suspected as being Prohibited Materials, and shall, when requested, issue to the Employer, and to such persons as the Employer may require, a certificate confirming that no such materials have been specified for use or permitted to be used.

## 4.2 Performance Security

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- (a) Unless otherwise stated in Particular Conditions or Schedule 1 [*Contract Details*], the Contractor shall obtain and maintain (at its cost) an unconditional and irrevocable Performance Security for the amount and currency specified in Schedule 1 [*Contract Details*] to secure the Contractor's proper performance of the obligations under the Contract. The Contractor shall deliver the Performance Security to the Employer within fourteen (14) days after the Contract Effective Date, and shall send a copy to the Engineer.
- (b) The Performance Security shall be issued by a leading and accredited bank or financial institution approved by the Employer and shall be based on the terms and in the form set out in Schedule 5.2 [*Form for Performance Security*].
- (c) Despite any other provision of the Contract, compliance with Sub-Clause 4.2 (a) is a condition precedent to the entitlement of the Contractor to receive any payment from the Employer under the Contract, except advance payment under Sub-Clause 14.2 [*Advance Payment*], and no payment (except advance payment) shall be due or payable until Sub-Clause 4.2 (a) is satisfied.
- (d) If at any time the Contract Price is varied by more than ten (10) per cent whether because of an increase or multiple increases as a result of approved Variations, or the Contractor removes Plant or Works for repair as per Sub-Clause 11.5 [*Removal of Defective Work*], the Contractor shall provide an additional Performance Security.
- (e) Unless otherwise specified in the Contract, the Contractor shall deliver the additional Performance Security as set out in Sub-Clause 4.2 (d) to the Employer within fourteen (14) days of any approved increase to the Contract Price as described in Sub-Clause 4.2 (d), or as applicable as per Sub-Clause 11.5 [*Removal of Defective Work*] and shall send a copy to the Engineer.
- (f) All fees, taxes and expenses associated with procuring, preparing, completing, extending, replacing and stamping (if applicable) any Performance Security shall be paid by the Contractor.
- (g) If the Contractor is a subsidiary of another corporation, the Contractor shall, if requested by the Employer in its absolute discretion, arrange for its ultimate parent company or any other parent company (as the Employer may approve in its absolute discretion) to provide a parent company guarantee in an approved format.
- (h) Where the Contractor comprises a consortium of two (2) or more entities, they shall all cause their respective ultimate parent companies (or other parent company or parent companies approved by the Employer in its absolute discretion) to provide a joint and several parent company guarantee in accordance with Sub-Clause 4.2 (g).

- (i) The Contractor shall, if requested by the Employer in its absolute discretion, also deliver to the Employer a legal opinion in relation to the guarantor's obligations under the parent company guarantee provided under Sub-Clause 4.2 (g) or (h), if any, and whichever is applicable, from a legal advisor approved by the Employer.
- (j) The Contractor shall, if requested by the Employer in its absolute discretion, provide to the Employer financial or other information the Employer may require to satisfy itself that the parent company is an appropriate entity with sufficient means to satisfy the parent company guarantee.
- (k) The Contractor shall ensure that the Performance Security remains valid and enforceable until the issue of the Final Completion Certificate and the Contractor has complied with Sub-Clause 11.11 [*Clearance of Site*] or, if a dispute arises under the Contract, after the final determination of that dispute, whichever occurs later. If the terms of the Performance Security specify an expiry date, and the Contractor has not become entitled to receive the Final Completion Certificate by the date twenty-eight (28) days before the expiry date, the Contractor shall extend the validity of the Performance Security until the issue of the Final Completion Certificate and the Contractor has complied with Sub-Clause 11.11 [*Clearance of Site*] and the Dispute is resolved.
- (l) The Employer shall not make a Claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:
  - (i) failure by the Contractor to extend the validity of the Performance Security as described in Sub-Clause 4.2 (k), in which event the Employer may claim the full amount of the Performance Security;
  - (ii) failure by the Contractor to pay the Employer an amount due, as agreed or determined under Sub-Clause 3.5 [*Agreement or Determination*] or agreed or decided under Clause 21 [*Dispute Resolution*], within forty-two (42) days after the date of the agreement or determination or decision or dispute resolution;
  - (iii) failure by the Contractor to remedy a default stated in a Notice issued under Sub-Clause 15.1 [*Notice to Correct*] within forty-two (42) days or other time (if any) stated in the Notice;
  - (iv) circumstances which entitle the Employer to terminate the Contract under Sub-Clause 15.2 [*Termination by Employer*], irrespective of whether a Notice of termination has been given; or
  - (v) if under Sub-Clause 11.5 [*Removal of Defective Work*] the Contractor removes any defective or damaged Plant from the Site, failure by the Contractor to repair such Plant, return it to the Site, reinstall it and retest it by the date of expiry of the relevant duration stated in the Contractor's Notice (or other date agreed by the Employer).
- (m) Any amount which is received by the Employer under the Performance Security shall be taken into account:
  - (i) in the Final Payment Certificate under Sub-Clause 14.13 [*Issue of Final Payment Certificate*]; or
  - (ii) if the Contract is terminated, in payment due to the Contractor under Sub-Clause 15.4 [*Payment after Termination by Employer*] or Sub-Clause 16.4 [*Payment after Termination by Contractor*].

## 4.3 Contractor's Representative

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- (a) The Contractor's Representative is named and identified in Schedule 1 [Contract Details] and shall be given all authority necessary to act on the Contractor's behalf under the Contract except to replace the Contractor's Representative.
- (b) Unless the Contractor's Representative is named in the Contract, the Contractor shall, before the Commencement Date, submit to the Engineer for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable replacement for such appointment. If the Engineer does not respond within twenty-eight (28) days after receiving this submission, by giving a Notice to the Contractor objecting to the proposed person or replacement, the Engineer shall be deemed to have given consent.
- (c) The Contractor's Representative shall be qualified, experienced and competent in the main engineering disciplines applicable to the Works and fluent in the language for communications defined in Sub-Clause 1.4 [Language].
- (d) The Contractor shall not, without the prior written consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint a replacement.
- (e) If the Contractor's Representative is to be temporarily absent during the execution of the Works, dies or is unable to act as a result of illness, disability or resignation, a suitable replacement person shall be appointed, subject to notifying the Engineer and obtaining the Engineer's prior written consent, to the replacement person.
- (f) The Contractor's Representative shall act for and on behalf of the Contractor at all times during the performance of the obligations under the Contract, including issuing and receiving all Notice and other communications under Sub-Clause 1.3 [Notices and Other Communications] and for receiving instructions under Sub-Clause 3.3 [Engineer's Instructions].
- (g) Subject to Sub-Clause 4.3 (f), the Contractor's Representative may delegate any powers, functions and authority to any competent person, who shall be fluent in the language stated under Sub-Clause 1.4 [Language], and may at any time revoke the delegation. Any delegation or revocation of the Contractor's powers, functions and authority shall not take effect until the Engineer has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.
- (h) The Contractor's Representative may delegate any powers, functions and authority except:
  - (i) the authority to issue and receive Notices and other communications under Sub-Clause 1.3 [Notices and Other Communications]; and
  - (ii) the authority to receive instructions under Sub-Clause 3.3 [Engineer's Instructions].
- (i) The Contractor's Representative shall be based at the Site for the whole time that the Works are being executed at the Site.

## 4.4 Training

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- (a) If training of Employer's Personnel or assignees and/or other identified personnel by the Contractor is stated in Schedule 1 [*Contract Details*], this Sub-Clause 4.4 shall apply.
- (b) The Contractor shall carry out training of the Employer's Personnel or assignees and/or other identified personnel in the operation and maintenance of the Works, and any other aspect of the Works, to the extent and at the times stated in the Specification. The Contractor shall provide qualified and experienced training staff, training facilities and all training materials as necessary and as stated in the Specification (if not stated, as acceptable to the Employer).
- (c) If training is to be carried out before taking over, the Works shall not be considered to be Complete for the purposes of taking over under Clause 10 [*Employer's Taking Over*] until this training has been completed in accordance with the Specification.

## 4.5 Cooperation

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- (a) The Contractor shall allow opportunities for carrying out work by:
  - (i) the Employer's Personnel (and their respective labour, employees and agents);
  - (ii) any other contractors or consultants; and/or
  - (iii) the personnel of any Authority;

who shall be engaged in the execution on or near the Site of any work not included in the Contract, and the Contractor shall coordinate the execution of the Works with the activities of such other parties.
- (b) Services for these personnel and other contractors shall be the responsibility of the Contractor and may include the use of the Contractor's Equipment, Temporary Works or access arrangements as agreed with the Contractor or as instructed by the Engineer.
- (c) Subject to Sub-Clause 4.5 (d), the Contractor shall be responsible for its construction activities on the Site, and for coordinating and interfacing the execution of the Works with the activities and/or works of those parties listed in Sub-Clause 4.5 (a).
- (d) In the event that the Contractor and the persons or entities listed in Sub-Clause 4.5 (a) cannot, by all reasonable means, reach agreement on coordinating these activities and/or works, the Engineer shall be entitled to instruct the Contractor as to the coordination of such activities in accordance with Sub-Clause 3.3 [*Engineer's Instructions*].
- (e) Notwithstanding any other provision of the Contract, the Contractor is not entitled to an EOT or any increase to the Contract Price for cooperating with those parties listed in Sub-Clause 4.5 (a) or coordinating and interfacing the Contractor's activities and the execution of the Works with the activities and/or works of those parties listed in Sub-Clause 4.5 (a), or otherwise in connection with the Contractor's obligations under this Sub-Clause 4.5, except to the extent that the cooperation or coordination and interface was Unforeseeable.

- (f) If the Contractor suffers delay and/or incurs Cost as a result of an Unforeseeable event related to cooperating, coordinating or interfacing with those parties listed in Sub-Clause 4.5 (a), and the Contractor could not reasonably have avoided this delay and/or Cost, then the Contractor shall give a Notice of Claim to the Engineer and shall be entitled, subject to Sub-Clause 20.3 [*Contractor's Claims*], to:
- (i) an EOT for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
  - (ii) payment of any such Cost plus Profit, which shall be added to the Contract Price as a Variation.
- (g) After receiving the Notice under Sub-Clause 4.5 (f), the Engineer shall proceed in accordance with Sub-Clause 20.3 [*Contractor's Claims*] and Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine:
- (i) whether and (if so) to what extent the delay and/or Cost was necessitated by an Unforeseeable event and could not reasonably have been avoided; and
  - (ii) the matters described in Sub-Clause 4.5 (f) (i) and (ii) related to this extent.

## 4.6 Setting Out

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- (a) The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, including verifying the accuracy of all these items of reference prior to setting out the Works, and shall notify the Engineer as soon as practicable of any error. The Contractor shall rectify any error in the positions, levels, dimensions or alignments of the Works and be responsible for the correct positioning.
- (b) Subject to Sub-Clause 4.6 (d), if, prior to setting out the Works, the Contractor confirms, to the satisfaction of the Engineer, that there is an error in relation to the original points, lines and levels of reference specified in the Contract or notified by the Engineer, and the Contractor subsequently suffers delay and/or incurs Cost from executing work which was necessitated by an Unforeseeable error in these items of reference, and the Contractor could not reasonably have avoided this delay and/or Cost, then the Contractor shall give a Notice of Claim to the Engineer and shall be entitled, subject to Sub-Clause 20.3 [*Contractor's Claims*], to:
  - (i) an EOT for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
  - (ii) payment of any such Costs plus Profit, which shall be added to the Contract Price as a Variation.
- (c) After receiving the notice from the Contractor pursuant to Sub-Clause 4.6 (b), the Engineer shall proceed in accordance with Sub-Clause 20.3 [*Contractor's Claims*] and Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine:

- (i) whether and (if so) to what extent the delay and/or Cost was necessitated by an Unforeseeable error in these items of reference, and could not reasonably have been avoided; and
  - (ii) the matters described in Sub-Clause 4.6 (b) (i) and (ii) related to this extent.
- (d) For the avoidance of doubt, the Contractor is not entitled to an EOT or any increase to the Contract Price arising out of or in connection with any errors in original points, lines and levels of reference specified in the Contract or notified by the Engineer, that are discovered after the Contractor has commenced setting out the corresponding part of the Works.

## 4.7 Health and Safety Procedures

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- (a) Within twenty-one (21) days of the Commencement Date and before commencing any construction activities on the Site, the Contractor shall submit to the Engineer the Health and Safety Management Plan which has been specifically prepared for the Works, the Site and other places (if any) where the Contractor intends to execute the Works. Thereafter, whenever the plan is updated or revised, a copy shall promptly be submitted to the Engineer.
- (b) The Contractor shall, throughout the execution of the Works:
  - (i) comply with all applicable health and safety regulations of the relevant Authorities and the health and safety policies, guidelines, procedures and requirements specified in the Specification until the issue of the Final Completion Certificate;
  - (ii) implement and comply with a health and safety system which, as a minimum, shall comply with Sub-Clause 4.7 (b) (i) and any requirements which the Engineer shall notify the Contractor, from time to time;
  - (iii) submit all procedures and compliance documents specified in the Contract and the Specification, to the Engineer for information before each design (if any) and execution stage of the Works is commenced, including safe work method statements, risk assessments, records that show that personnel have been made aware of risk assessments, critical controls and other information that help them to address key health and safety risks;
  - (iv) be responsible for the health and safety of all persons entitled to be on the Site;
  - (v) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to persons;
  - (vi) provide fencing, lighting, guarding and watching of the Works until the taking over under Clause 10 [*Employer's Taking Over*] and when any outstanding works and/or remedying of defects are ongoing;
  - (vii) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land; and

- (viii) provide the Engineer with reasonable access to the Contractor's records and facilities, both on and off the Site, to enable the Engineer to assess the Contractor's compliance with this Sub-Clause 4.7.
- (c) In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the relevant Authorities or local medical or sanitary authorities for the purpose of dealing with or overcoming the epidemic.
- (d) Notwithstanding any other right or remedy the Employer may have, the Contractor agrees that in the event it fails to comply with its health and safety obligations as set out in the Contract, the Engineer may issue a Health and Safety Improvement Notice to the Contractor. This Notice shall be given under Sub-Clause 15.1 [*Notice to Correct*]. In this case, the Contractor shall be responsible to implement any corrective measures required to comply with the Health and Safety Improvement Notice, and as may be instructed by the Engineer in the Notice, at its own costs.
- (e) In accordance, with a Notice to Correct, in case of a breach of a Health and Safety Improvement Notice by the Contractor, the Employer shall have the right to terminate the Contract under Sub-Clause 15.2 [*Termination by Employer*].
- (f) In addition, the Engineer shall have the right to suspend all or part of the Works for and as long as the Contractor remains in breach of its health and safety obligations and until it has taken any required corrective measures, at its own costs, as may be instructed by, and to the satisfaction of, the Engineer. For the avoidance of doubt, in case of such a suspension, the Contractor shall not be entitled to an EOT or any increase to the Contract Price in accordance with Sub-Clause 8.9 [*Consequences of Suspension by Employer*].
- (g) In the event of an imminent risk on the Site, notwithstanding any other provision of the Contract, the Employer's Personnel shall have the right to immediately suspend all or part of the Works, instructing orally, as may be appropriate. The Engineer shall be informed as soon as possible and shall assess the situation and instruct the Contractor of any corrective measures that may be required before the Works can resume. The Engineer shall then confirm the suspension and corrective measures in writing not later than forty-eight (48) hours after being informed of the suspension.
- (h) The Employer may instruct the Contractor to terminate the Subcontractor and/or Nominated Subcontractor in case of breach of health and safety obligations by the Subcontractor and/or Nominated Subcontractor which in the opinion of the Engineer is serious or repeated.
- (i) In case of any health and safety related incident that may occur during the execution of the Works, the Contractor's Representative shall, as soon as possible and within no more than twenty-four (24) hours after the incident, submit to the Engineer a report detailing the incident.
- (j) Notwithstanding any other right or remedy the Employer may have, the Contractor agrees that in the event the Contractor fails to comply with the requirements referred to under this Sub-Clause 4.7, it shall pay and indemnify the Employer for and against any monetary fines and remediation costs as may be specified in the Specification or as otherwise imposed by any relevant Authority and any other loss and damage incurred by the Employer.

## 4.8 Quality Management and Compliance Verification Systems

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- (a) The Contractor shall prepare and implement (and shall ensure that any Subcontractors and Nominated Subcontractors implement) a QMS to demonstrate compliance with the requirements of the Contract. The QMS shall be specifically prepared for the Works and submitted to the Engineer within twenty-eight (28) days of the Commencement Date. Thereafter, whenever the QMS is updated or revised, a copy shall promptly be submitted to the Engineer.
- (b) The QMS shall be in accordance with the details stated in the Specification (if any) and shall include the Contractor's procedures:
  - (i) to ensure that all Notices and other communications under Sub-Clause 1.3 [*Notices and Other Communications*], Contractor's Documents, as-built records (if applicable), operation and maintenance manuals (if applicable), and contemporary records can be traced, with full certainty, to the Works, Goods, work, workmanship or test to which they relate;
  - (ii) to ensure proper coordination and management of interfaces between the stages of execution of the Works, and between Subcontractors; and
  - (iii) for the submission of Contractor's Documents to the Engineer for Review.
- (c) The Engineer shall complete a Review of the QMS and shall give a Notice to the Contractor stating the extent (if any) to which it does not comply with the Contract within twenty-one (21) days of receipt. Within fourteen (14) days after receiving this Notice, the Contractor shall revise the QMS to rectify such non-compliance. If the Engineer does not give such a Notice within twenty-one (21) days of the date of submission of the QMS, the Engineer shall be deemed to have accepted the same.
- (d) The Engineer may, at any time, give a Notice to the Contractor stating the extent to which the Contractor is failing to correctly implement the QMS to the Contractor's activities under the Contract. After receiving this Notice, the Contractor shall immediately remedy such failure.
- (e) The Contractor shall prepare and implement a Compliance Verification System to demonstrate that the design (if any), Materials, Employer's free issue materials (if any), Plant, work and workmanship comply in all respects with the Contract.
- (f) The Compliance Verification System shall be in accordance with the details stated in the Specification (if any) and shall include a method for reporting the results of all inspections and tests carried out by the Contractor in accordance with the Testing Plan.
- (g) Compliance with the QMS and/or Compliance Verification System shall not relieve the Contractor from any duty, obligation or responsibility under or in connection with the Contract.

## 4.9 Use of Site Data

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- (a) To the extent which was practicable (taking account of cost and time), the Contractor shall, prior to the Tender be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the execution of the Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, access to the Site, its surroundings, the Site Data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation) the Site Conditions.

## 4.10 Sufficiency of the Accepted Contract Amount

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- (a) The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Accepted Contract Amount and all fixed unit rates and prices inserted in Schedule 4.1 [*Quantities and Rates*]
- (b) Unless otherwise stated in the Contract, the Accepted Contract Amount and all unit fixed rates and prices inserted in Schedule 4.1 [*Quantities and Rates*] are fixed and cover all the Contractor's obligations (including those under Provisional Sums, if any) and all things necessary for the proper execution, testing, commissioning, completion and the remedying of any defects, and Contractor's design (if any) of the Works in accordance with the Contract.

## 4.11 Unforeseeable Physical Conditions

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- (a) In this Sub-Clause 4.11, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.
- (b) If the Contractor encounters adverse physical conditions which the Contractor considers to have been Unforeseeable, exercising Industry Best Practices, the Contractor shall give a Notice to the Engineer as soon as practicable and not later than fourteen (14) days of such conditions being encountered.
- (c) The Notice given under Sub-Clause 4.11 (b) shall:
  - (i) describe the physical conditions in sufficient detail as required by the Engineer and so that those conditions can be inspected by the Engineer;
  - (ii) set out the reasons why the Contractor considers physical conditions to be Unforeseeable; and
  - (iii) describe the manner in which the physical conditions will have an adverse effect on progress and/or increase the Cost of the execution of the Works.
- (d) The Engineer shall inspect and investigate the physical conditions within seven (7) days, or a longer period agreed with the Contractor, after receiving the Contractor's Notice under Sub-Clause 4.11 (b).

- (e) The Contractor shall continue executing the Works, using all reasonable measures as are appropriate for the physical conditions and to enable the Engineer to inspect and investigate them.
- (f) The Contractor shall comply with any reasonable instructions the Engineer may give for dealing with the physical conditions.
- (g) After receiving the Notice under Sub-Clause 4.11 (c) and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Agreement or Determination] to agree or determine whether and (if so) to what extent these physical conditions were Unforeseeable.
- (h) If and to the extent that the Contractor encounters physical conditions which the Engineer determines are Unforeseeable, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled, subject to Sub-Clause 20.3 [Contractor's Claims], to:
  - (i) an EOT for any such delay, if completion is or will be delayed under Sub-Clause 8.4 [Extension of Time for Completion]; and
  - (ii) payment of any such Cost, which shall be added to the Contract Price as a Variation.
- (i) Before an EOT or any such delay, or additional Cost is finally agreed or determined under Sub-Clause 4.11 (h), the Engineer shall also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen at the Base Date. If and to the extent that these more favourable conditions were encountered, the Engineer may take account of the reductions in Cost and a reduction in any entitlement to an EOT, which were due to these conditions, in making its assessment under Sub-Clause 4.11 (h). The net effect of all adjustments under this Sub-Clause 4.11 shall not result in a net reduction in the Contract Price or Time for Completion.
- (j) The Engineer shall take account of any evidence of the physical conditions foreseen by the Contractor prior to the Base Date, which may be made available by the Employer or the Contractor.

## 4.12 Rights of Way and Facilities

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

## 4.13 Avoidance of Interference

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- (a) The Contractor shall not interfere with:
  - (i) the convenience of the public; and/or
  - (ii) the access to and use and occupation of all facilities including roads, rail and footpaths, irrespective of whether they are public or in the possession of the Employer or of others, except to the extent required for the activities under the Contract.

## 4.14 Access Route

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- (a) The Contractor shall be deemed to have been satisfied as to the suitability, security, and availability of access routes to the Site (including marine and air access (if any)) and the accessibility of such access routes for the Contractor's Personnel. The Contractor shall use its best endeavours, acting in accordance with Industry Best Practices, to prevent any road, rail, bridge or marine access from being damaged by the Contractor's traffic or by the Contractor's Personnel. These endeavours shall include the proper use of appropriate vehicles (conforming to legal load and width limits (if any) and other restrictions) and routes. If any structure, road surface or any other property is damaged by access during the carrying out of the Works then the Contractor shall rectify such damage at its own cost and without any entitlement to an EOT.
- (b) Unless otherwise stated in the Contract:
  - (i) the Contractor shall be responsible for any repair and maintenance which may be required for its use of access routes;
  - (ii) the Contractor shall be responsible for its own security which may be required for its use of access routes;
  - (iii) the Contractor 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;
  - (iv) the Employer shall not be responsible for any third party claims which may arise from the use or otherwise of any access route;
  - (v) the Employer does not guarantee the suitability, security or availability of particular access routes; and
  - (vi) all Cost due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.
- (c) If any land outside the Site which is the property of or under the control of the Employer is made available to the Contractor, this shall be used strictly in accordance with the instructions of the Employer. The Contractor shall observe all agreements entered into by the Employer and made known to the Contractor with any person or persons relating to the access to such land and properties, provided always that compliance with such agreements shall not relieve the Contractor of its obligations under this Sub-Clause 4.14. The Employer shall provide copies of any agreement relating to such land or properties.

- (d) To the extent that non-suitability or non-availability of an access route arises as a result of Unforeseeable changes to that access route by the Employer or a third party after the Base Date and as a result the Contractor suffers delay and/or incurs Cost, the Contractor shall be entitled, subject to Sub-Clause 20.3 [Contractor's Claims], to an EOT and/or payment of such Cost.

## **4.15 Transport of Goods**

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- (a) Unless otherwise stated in the Contract, the Contractor shall;
- (i) give the Engineer not less than twenty-one (21) days notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
  - (ii) be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
  - (iii) be responsible for customs clearance, permits, fees and charges related to the import, transport and handling of all Goods, including all obligations necessary for their delivery to the Site.

## **4.16 Contractor's Equipment**

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- (a) The Contractor shall be responsible for and keep records of all Contractor's Equipment on Site. When brought on to the Site, the Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works and shall comply with any acceptance procedure established by the Employer or as set out in the Specification. The Contractor shall not remove from the Site any major items of the Contractor's Equipment without the prior written consent of the Engineer. Consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.
- (b) In addition to any Notice given under Sub-Clause 4.15 [*Transport of Goods*], the Contractor shall give a Notice to the Engineer of the date on which any major item of Contractor's Equipment has been delivered to the Site. This Notice shall be given within seven (7) days of the delivery date, shall identify whether the item of Contractor's Equipment is owned by the Contractor or a Subcontractor or another person and, if rented or leased and shall identify the rental or leasing entity.

## **4.17 Social and Environment**

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- (a) Within twenty-one (21) days of the Commencement Date and before commencing any construction on the Site, the Contractor shall submit to the Engineer the Social and Environmental Management Plan which have been specifically prepared for the Works, the Site and other places (if any) where the Contractor intends to execute the Works.
- (b) The Contractor shall at all times:
- (i) carry out its obligations under the Contract in an environmentally and socially responsible manner ensuring all necessary precautions are taken to prevent negative impacts on the environment and communities in accordance with Industry Best Practices (both on and off the Site);

- (ii) limit damage and nuisance to people and property resulting from pollution, noise and other results of its operations. In the event there is damage or nuisance incurred, mitigation and remedial measures shall be taken by the Contractor at its cost;
  - (iii) comply with the policies, guidelines, standards, procedures and requirements specified in the Specification and the policies, guidelines, standards, procedures and requirements of all relevant Authorities relating to protection of the environment; and
  - (iv) ensure that emissions, surface discharges, effluent and any other pollutants from the Contractor's activities shall not exceed the values indicated in the Contract and as otherwise prescribed by Laws.
- (c) Notwithstanding any other right or remedy the Employer may have, the Contractor agrees that in the event the Contractor fails to comply with the requirements referred to under Sub-Clause 4.17 (b), it shall pay and indemnify the Employer for and against any monetary fines and remediation costs as may be specified in the Specification or as otherwise imposed by any relevant Authority and any other loss and damage incurred by the Employer.

## **4.18 Electricity, Water and Gas**

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- (a) The Contractor shall be responsible for the provision of all power, water and other utilities (including electricity, gas and telecommunications) and services it may require for the execution of the Works.
- (b) Sub-Clause 4.18 (b) and (c) shall only apply if, as stated in the Specification that the Employer is to provide utilities for the Contractor's use. The Contractor shall, with the prior written approval of the Engineer, use for the purposes of the execution of the Works such supplies of electricity, water, gas and other services as may be available on the Site (if any) and of which details and prices are given in the Specification. The Contractor shall, at its risk and cost, provide any apparatus and connections necessary for its use of these services and for measuring the quantities consumed.
- (c) The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Engineer. The quantities consumed (if any) during each period of payment, shall be measured by the Contractor, and the amount to be paid by the Contractor for such quantities (at the prices stated in the Specification) shall be included in the relevant Statement.

## **4.19 Progress Reports**

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- (a) Unless otherwise stated in the Contract, monthly progress reports shall be prepared by the Contractor and submitted to the Engineer in two (2) copies and in a format approved by the Engineer.
- (b) 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, each within seven (7) days after the last day of the month to which it relates.

- (c) Reporting shall continue until the remedying of all outstanding items identified in the Taking-Over Certificate.
- (d) Each report shall include:
  - (i) charts and detailed descriptions of progress, including each stage of (design by the Contractor, if any) Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection, testing and commissioning;
  - (ii) photographs showing the status of the Works and of progress on the Site;
  - (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 commencement of manufacture, Contractor's inspections, tests, and shipment and arrival at the Site;
  - (iv) the details described in Sub-Clause 6.10 [*Records of Contractor's Personnel and Equipment*];
  - (v) copies of QMS and Compliance Verification System test results and certificates of Materials;
  - (vi) list of Variations, Notice of Claims and other notices given under Sub-Clause 20.3 [*Contractor's Claims*] and Sub-Clause 20.2 [*Employer's Claims*];
  - (vii) health and safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
  - (viii) details and duration of adverse weather conditions;
  - (ix) comparisons of actual and planned progress, in accordance with Sub-Clause 8.3 [*Programme*], with details of any events or circumstances which may adversely affect the completion of the Works in accordance with the Programme and Time for Completion and the measures being (or to be) adopted to overcome or minimize any delays with revised programmes;
  - (x) details of payments made to Subcontractors and Nominated Subcontractors as required under Clause 5 [*Subcontracting*]; and
  - (xi) any other matters as may be set out in the Contract or other information reasonably required by the Employer or the Engineer from time to time.
- (e) If the Contractor fails to submit a monthly progress report in accordance with this Sub-Clause 4.19, the Employer may, in its absolute discretion, withhold payments due to the Contractor until such monthly progress report has been submitted.
- (f) However, nothing stated in any progress report shall constitute a Notice under a Sub-Clause of these Conditions.

## 4.20 Security of the Site

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

## 4.21 Contractor's Operations on Site

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- (a) The Contractor shall confine its operations to the Site, and to any additional areas which are directly required by the Contractor to execute the Works and which are agreed by the Engineer as working areas. The Contractor shall take all necessary precautions to keep the Contractor's Equipment and the Contractor's Personnel within the Site and those additional areas, and to keep them off adjacent land.
- (b) The Contractor shall not use any part of the Site for any purpose not connected with the execution of the Works without the prior written approval of the Engineer. The Contractor shall not destroy, damage or pull down any tree, hedge, wall or building within and outside the Site without the prior written consent of the Engineer unless specifically stated otherwise in the Contract.
- (c) During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall promptly clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.
- (d) The Contractor shall clear away and remove all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works, from that part of the Site and Works to which the Taking-Over Certificate applies. The Contractor shall leave that part of the Site and the Works in a clean and safe condition.
- (e) If agreed with the Employer, the Contractor may retain on the Site, during the DNP, such Goods as are required for the Contractor to fulfil its obligations under the Contract.

## 4.22 Archaeological and Geological Findings

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- (a) All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take all reasonable precautions to prevent the Contractor's Personnel or other persons from removing or damaging any of these findings.

- (b) The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it.
- (c) If the Contractor suffers delay and/or incurs Cost from complying with the instructions in respect of the finding, the Contractor shall give a Notice of Claim to the Engineer and shall be entitled, subject to Sub-Clause 3.5 [Agreement or Determination] and Sub-Clause 20.3 [Contractor's Claims], to:
  - (i) an EOT for any such delay, if the Time for Completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]; and
  - (ii) payment of any such Cost, which shall be added to the Contract Price as a Variation.

## **4.23 Assignment and Novation of Manufacturer's Warranties**

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- (a) The Contractor shall procure that, any warranty, express or implied, with respect to any Plant or Materials used in the execution of the Works made or given by the manufacturer, any Subcontractor or supplier thereof, or any other seller thereof, will be:
  - (i) made in favour of the Employer; or
  - (ii) capable of being assigned, novated, transferred or otherwise made available to the Employer or such entity that the Employer nominates.
- (b) The Contractor shall ensure that all warranties referred to in Sub-Clause 4.23 (a) given by the manufacturer, any Subcontractor or supplier thereof, or any other seller thereof, will be capable of novation from the Employer to any entity to be nominated by the Employer.
- (c) To the extent that the warranties cannot be made in favour of the Employer, assigned, novated, transferred or otherwise made available to the Employer, the Contractor agrees (at its cost) to use its best endeavours (that can be demonstrated) to enforce all rights as the Contractor may have in respect of the warranty, for the benefit of the Employer or its nominee.

## **4.24 Auxiliary Works**

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- (a) The Contractor shall ensure that the Works connect to and fully interface with the Auxiliary Works, provided the Auxiliary Works are:
  - (i) performed in the manner specified in the Specification; and
  - (ii) completed on or before the later of the:
    - dates specified in the Specification; and
    - date the Contractor can and needs to use the relevant item of Auxiliary Works, as assessed by the Engineer.
- (b) The Contractor acknowledges and agrees that:
  - (i) the Auxiliary Works will be performed by third parties;
  - (ii) it shall cooperate with the party(ies) performing the Auxiliary Works;
  - (iii) it has reviewed and is satisfied with the Specification; and
  - (iv) the fact that the Auxiliary Works are not performed by the Contractor in no way excuses the Contractor from any of its undertakings, warranties, obligations or liabilities under or in connection with the Contract.

## 4.25 Mines

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- (a) The Contractor warrants and represents that neither it, nor any of the Contractor's subsidiaries or Affiliates (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.
- (b) Notwithstanding the notice periods in Sub-Clause 15.2 [*Termination by Employer*], the Contractor acknowledges and agrees that any breach of this Sub-Clause 4.25 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Contractor, without any liability to the Employer for termination charges or any other liability of any kind.

## 4.26 Official Not To Benefit and Proscribed Practices

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- (a) The Contractor warrants that it has not engaged, or attempted to engage, in any way whatsoever, in any Proscribed Practices in connection with the selection process or the execution of this Contract or any other activities of the Employer or any other entity of the United Nations, involving, in any way whatsoever, any Employer's Personnel or representative, official, or other agent of the Employer or any other entity of the United Nations.
- (b) Notwithstanding the notice periods in Sub-Clause 15.2 [*Termination by Employer*], the Contractor acknowledges and agrees that any breach of this Sub-Clause 4.26 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Contractor, without any liability to the Employer for termination charges or any other liability of any kind.

## 4.27 Unexploded Ordnances

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- (a) If at any time during the carrying out of the Works, an unexploded ordnance or land mine is discovered at the Site, the Contractor shall immediately stop all work at the Site, notify the Engineer, and take all necessary steps to ensure the safety of all persons and property and secure the Site. The Contractor shall immediately resume the Works at the Site when instructed by the Engineer. Any substantive delay is subject to Sub-Clause 20.3 [*Contractor's Claims*].

## 4.28 Blasting

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

## 5 SUBCONTRACTING

### 5.1 Subcontractors

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- (a) The Contractor shall not subcontract the whole of the Works.
- (b) The Contractor shall only subcontract part of the Works to a Subcontractor with the prior written consent of the Engineer, except that such consent is not required for Subcontractors accepted as part of the contract negotiations and incorporated into the Contract and for Nominated Subcontractors.
- (c) For the purposes of obtaining the Engineer's prior written consent, the Contractor shall give the Engineer detailed particulars of any proposed Subcontractor, which shall include:
  - (i) the relevant experience of the proposed Subcontractor;
  - (ii) the proposed terms and conditions of the subcontract; and
  - (iii) financial or other information that the Engineer may require to satisfy itself that the proposed Subcontractor is an appropriate entity to execute the relevant part of the Works.
- (d) If the Engineer does not respond within fourteen (14) days after receiving particulars from the Contractor (or further information if requested), the Engineer shall be deemed to have given consent.
- (e) The consent of the Engineer (or deemed consent) shall not relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with the Contract.
- (f) The Contractor shall be responsible for the work of all Subcontractors, for managing and coordinating all the Subcontractors' work and for the acts, omissions or defaults of any Subcontractor, its agents or employees, as if they were the acts, omissions or defaults of the Contractor.
- (g) The Contractor shall give the Engineer Notice of:
  - (i) the intended commencement of each Subcontractor's work (such notice not to be less than twenty-eight (28) days) or as otherwise agreed in writing by the Parties; and
  - (ii) the commencement of each Subcontractor's work on the Site.
- (h) The Contractor shall ensure that each subcontract includes provisions that require the Subcontractor, or the Contractor, as applicable, at the request of the Engineer to enter into:
  - (i) a collateral warranty in accordance with Sub-Clause 5.1 (i); and
  - (ii) a Subcontractor side agreement, in accordance with Sub-Clause 5.1 (j).

- (i) If not provided in the Tender, the Contractor shall, within fourteen (14) days of request by the Engineer, require any Subcontractor to enter into a collateral warranty in favour of the Employer, and such collateral warranty shall be in the form as the Employer may reasonably require.
- (j) If not provided in the Tender, the Contractor shall, within fourteen (14) days of request by the Engineer, procure that any Subcontractor shall enter into a side agreement in favour of the Employer, and such agreement shall be in the form as the Employer may reasonably require.
- (k) If the Employer or the Engineer becomes aware that a Subcontractor is entitled to suspend work under a subcontract or terminate a subcontract due to the Contractor's failure to make payment in accordance with the terms of the subcontract, the Engineer may give the Contractor Notice that the Employer intends to pay the Subcontractor. If the Contractor does not respond to the Notice with justifiable reasons for withholding payments to Subcontractor or presents proof of having made the payments within seventy-two (72) hours, the Employer may, in its absolute discretion, pay that Subcontractor such money that the Engineer determines is, or may be, owing to the Subcontractor for subcontract work forming part of the Works and the Employer shall recover subject to Sub-Clause 20.2 [*Employer's Claims*] any such amount paid as a debt due from the Contractor to the Employer.
- (l) If a payment is made by the Employer to or in respect of a worker or Subcontractor in compliance with a law or dispute resolution procedure, the amount paid will be a debt due subject to Sub-Clause 20.2 [*Employer's Claims*] from the Contractor to the Employer.

## 5.2 Nominated Subcontractor

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- (a) In the Contract, a Nominated Subcontractor is a Subcontractor:
  - (i) whom the Engineer, under Sub-Clause 13.4 [*Provisional Sums*], instructs the Contractor to procure and employ as a Subcontractor; and
  - (ii) which shall be procured on terms and for a price to be approved by the Engineer, such terms (at a minimum) to be consistent with the Contract, including the warranties set out in Sub-Clause 17.4 [*Warranties relating to the Works*], and such a price to be a reasonable market price at the time of procuring the Nominated Subcontractor.

## 5.3 Objection to Nomination

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- (a) The Contractor shall not be under any obligation to employ a Nominated Subcontractor, whom the Engineer, under Sub-Clause 5.2 [*Nominated Subcontractor*] and Clause 13 [*Variations and Adjustments*], instructs the Contractor to employ as a Subcontractor and, against whom the Contractor raises reasonable objection by notice to the Engineer as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Employer agrees in writing to indemnify the Contractor against and from the consequences of the matter:

- (i) there are reasons to believe that the Nominated Subcontractor does not have sufficient competence, resources or financial strength;
- (ii) the subcontract does not specify that the Nominated Subcontractor shall indemnify the Contractor against and from any negligence or misuse of Goods by the Nominated Subcontractor, its agents and employees; or
- (iii) the subcontract does not specify that, for the subcontracted work (including design, if any), the Nominated Subcontractor shall:
  - undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge its obligations and liabilities under or in connection with the Contract; and
  - indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Nominated Subcontractor to perform these obligations or to fulfil these liabilities.

## **5.4 Payments to Nominated Subcontractors**

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- (a) The Contractor shall, with the prior written approval of the Engineer, pay to the Nominated Subcontractor the amounts which the Engineer certifies to be due in accordance with the subcontract. These amounts shall be included in the Contract Price paid to the Contractor as Provisional Sums in accordance with Sub-Clause 13.4 [Provisional Sums], except as stated in Sub-Clause 5.5 [Evidence of Payments to Nominated Subcontractors].

## **5.5 Evidence of Payments to Nominated Subcontractors**

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- (a) Before issuing a Payment Certificate to the Contractor which includes an amount payable to a Nominated Subcontractor, the Engineer shall request the Contractor to supply reasonable evidence that the Nominated Subcontractor has received all amounts due in accordance with previous IPCs, less applicable deductions.
- (b) Unless the Contractor submits this reasonable evidence to the Engineer, or:
  - (i) satisfies the Engineer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts; and
  - (ii) submits to the Engineer reasonable evidence that the Nominated Subcontractor has been notified of the Contractor's entitlement;

then the Employer may (at its sole discretion) pay, direct to the Nominated Subcontractor part or all of such amounts previously certified (less applicable deductions) as are due to the Nominated Subcontractor and for which the Contractor has failed to submit the evidence as described in this Sub-Clause 5.5, such amounts shall immediately become a debt due and payable by the Contractor to the Employer subject to Sub-Clause 20.2 [Employer's Claims].

## 6 STAFF AND LABOUR

### **6.1 Engagement of Staff and Labour**

- (a) Except as otherwise stated in the Contract, the Contractor shall make arrangements for the engagement of all Contractor's Personnel, and for their payment, accommodation, feeding, welfare, transport, insurances and taxes in accordance with the relevant Laws and the requirements of any Authority.

### **6.2 Rates of Wages and Conditions of Labour**

- (a) The Contractor shall pay rates of wages, and observe conditions of labour in accordance with relevant Laws and the requirements of any relevant Authority, and such wages and conditions of labour shall not be lower than those minimum standards established for the trade or industry where the Works are being carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general living level of wages and conditions observed locally by employers whose trade or industry is similar. As per the ILO Declaration on Fundamental Principles and Rights at Work, and its underpinning conventions on the elimination of discrimination in respect of employment and occupation, no discrimination between men and women shall be made in the employment of the Contractor's personnel.
- (b) The Parties agree that if the Employer or the Engineer becomes aware that the Contractor has failed to pay the Contractor's Personnel in accordance with Sub-Clause 6.2 (a), the Engineer may request the Contractor to provide, within seventy-two (72) hours of such request, evidence of all payments made to the Contractor's Personnel.
- (c) If the evidence is found unsatisfactory, the Engineer shall give the Contractor Notice seventy-two (72) hours before the Employer intends to pay the Contractor's Personnel. The Employer may, in its absolute discretion, pay those Contractor's Personnel the amount the Engineer determines is, or may be, owing to the staff and labour and the Employer may recover any such amount paid as a debt due from the Contractor to the Employer subject to Sub-Clause 20.2 [*Employer's Claims*].

### **6.3 Recruitment of Persons**

- (a) The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.
- (b) The Employer shall not recruit, or attempt to recruit, staff and labour from amongst the Contractor's Personnel.

## 6.4 Labour Laws

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- (a) The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, as may be amended from time to time, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and the ILO Declaration on Fundamental Principles and Rights at Work and the Eight Fundamental ILO Conventions, whichever has the highest standards, and shall allow them all their legal rights.
- (b) The Contractor shall require, and use its best endeavours to ensure that the Contractor's Personnel obey all applicable Laws, including those concerning health and safety at work.

## 6.5 Working Hours

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- (a) No work shall be carried out on the Site on locally recognized days of rest, public holidays or outside the working hours stated in Schedule 1 [*Contract Details*], unless:
  - (i) otherwise stated in the Contract;
  - (ii) the Engineer gives consent in writing; and/or
  - (iii) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer with reasons and describing the work required.
- (b) In the event that the Employer's Personnel are required to supervise the Contractor's operations in excess of working hours and days as set out in Sub-Clause 6.5 (a), the Employer shall be entitled to reimbursement of this cost of the additional supervision and shall proceed in accordance with Sub-Clause 20.2 [*Employer's Claims*] to claim this entitlement from the Contractor.
- (c) The Contractor shall make arrangements to allow its personnel to take breaks during their working hours in accordance with applicable laws and Industry Best Practices, or as may be reasonably instructed by the Engineer.

## 6.6 Facilities for Staff and Labour

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- (a) Except as otherwise stated in the Contract, the Contractor shall provide and maintain all necessary accommodation, sanitary and welfare facilities for the Contractor's Personnel in accordance with Laws and with considerations of requirements of all genders, as stated in the Specification, involved with the execution of the Works. The Contractor shall also provide facilities for the Employer's Personnel (if any) as stated in the Specification.
- (b) If such accommodation and facilities are to be located on the Site, except where the Employer has given the Contractor prior permission, they shall be located within the areas identified in Schedule 2.2 [*Site Plan*]. If any such accommodation or facilities are found elsewhere within the Site, the Contractor shall immediately remove them at the Contractor's risk and cost.

- (c) The Contractor shall provide the Engineer with reasonable access to the Contractor's records and facilities, both on and off the Site, to enable the Engineer to assess the Contractor's compliance with this Clause 6 [*Staff and Labour*], including off site accommodation and welfare facilities.

## 6.7 Health and Safety of Personnel

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- (a) In addition to the requirements in Sub-Clause 4.7 [*Health and Safety Procedures*], the Contractor shall during the execution of the Works take all reasonable and necessary precautions (including gender considerations), as stated in the Specification and as required by Laws and in accordance with Industry Best Practices to maintain the health and safety of all Contractor's or Employer's Personnel on Site.
- (b) In collaboration with local health authorities, the Contractor shall ensure that:
- (i) medical staff, first aid facilities, sick bay, ambulance service and any other medical services stated in the Specification are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel; and
  - (ii) suitable arrangements are made for all necessary welfare and hygiene requirements and to prevent epidemics.
- (c) In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Authorities or local medical or sanitary authorities for the purpose of dealing with or overcoming the epidemic.
- (d) The Contractor shall appoint a health and safety officer at the Site, responsible for maintaining health and safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue directives for the purpose of maintaining the health and safety of all personnel authorized to enter and work on the Site and take protective measures to prevent accidents and maintain health and safety. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.
- (e) The Contractor shall provide the Engineer with details of any accident and health and safety concerns/incidents in respect of the performance of the Works as soon as practicable and not later than twenty-four (24) hours after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer and the Contract requires.

## 6.8 Contractor's Superintendence

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- (a) From the Commencement Date until the issue of the Final Completion Certificate, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.
- (b) Superintendence shall be given by a sufficient number of persons having adequate spoken and written skills and knowledge in the language defined under Sub-Clause 1.4 [*Language*] and adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the proper and safe execution of the Works.

## 6.9 Contractor's Personnel

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- (a) The Contractor's Personnel, including Key Personnel, shall be appropriately qualified, skilled and experienced in their respective trades or occupations and in accordance with the minimum requirements for the Key Personnel provided in Schedule 3.8 [Key Personnel Requirements].
- (b) The Contractor shall inform its personnel regarding the procedures to be followed and the standards to be complied with under this Contract prior to the beginning of the Works (in particular with respect to Proscribed Practices, social (including gender), environmental, health and safety obligations).
- (c) The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or in the execution of the Works, including the Contractor's Representative and Key Personnel if applicable, who in the opinion of the Engineer:
  - (i) persists in any misconduct or lack of care;
  - (ii) is incompetent or negligent in their duties;
  - (iii) fails to conform with any provisions of the Contract;
  - (iv) persists in any conduct which is prejudicial to safety, health, and/or the protection of the environment;
  - (v) is found, based on reasonable evidence, to have engaged in Proscribed Practices; and/or
  - (vi) has been recruited from the Employer's Personnel in breach of Sub-Clause 6.3 [Recruitment of Persons].
- (d) If Sub-Clause 6.9 (c) applies, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person who meets or exceeds the requirements for each person so removed.
- (e) The Contractor shall ensure that the Key Personnel execute the Works and perform the roles required of their nominated positions and are not removed from those positions without the prior written approval of the Engineer.
- (f) If it is necessary to replace any of the Key Personnel (whether as a result of death, disability, illness, resignation, the application of this Sub-Clause 6.9 or otherwise), the Contractor shall immediately arrange for a replacement by a substitute person who meets or exceeds the requirements stated in Schedule 3.8 [Key Personnel Requirements], to the approval of the Engineer to execute the Works required of the replaced person's nominated position.
- (g) If there is a position listed in Schedule 4.4 [Key Personnel] but no person is named in that particular role, then the Contractor shall obtain the Engineer's approval (such approval not to be unreasonably withheld) before appointing a person to fill that particular role.

## 6.10 Records of Contractor's Personnel and Equipment

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- (a) Unless otherwise proposed by the Contractor and agreed by the Engineer, in each progress report under Sub-Clause 4.19 [Progress Reports], for each work activity shown in the Programme, at each work location and for each day of work, the Contractor shall include records of:

- (i) occupations and actual working hours of each class of Contractor's Personnel;
- (ii) the type and actual working hours of each of the Contractor's Equipment;
- (iii) the types of Temporary Works used;
- (iv) the types of Plant installed in the Permanent Works; and
- (v) the quantities and types of Materials used.

## **6.11 Disorderly Conduct**

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

## **6.12 Supply of Water**

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

## **6.13 Alcoholic Liquor or Drugs**

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

## **6.14 Arms, Ammunition and Explosives**

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

## **6.15 Festivals and Religious Customs**

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

## **6.16 Fundamental Principles and Rights at Work**

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- (a) The Contractor warrants that it shall comply with and ensure the Contractor's Personnel will comply with the 1998 ILO Declaration on Fundamental Principles and Rights at Work. These universal rights include freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

- (b) The Contractor shall provide a safe and secure working environment, all necessary accommodation, sanitary and welfare facilities for the Contractor's Personnel in accordance with Sub-Clause 6.6 [*Facilities for staff and Labour*] and the Specification.
- (c) Notwithstanding the notice periods in Sub-Clause 15.2 [*Termination by Employer*], the Contractor acknowledges and agrees that any breach of this Sub-Clause 6.16 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Contractor without any liability to the Employer for termination charges or any other liability of any kind.

## **6.17 Child Labour**

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- (a) The Contractor represents and warrants that neither it nor the Contractor's Personnel nor any of the Contractor's subsidiary or Affiliates (if any) are engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.
- (b) Notwithstanding the notice periods in Sub-Clause 15.2 [*Termination by Employer*], the Contractor acknowledges and agrees that any breach of this Sub-Clause 6.17 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Contractor without any liability to the Employer for termination charges or any other liability of any kind.

## **6.18 Sexual Harassment, Exploitation and Abuse**

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- (a) The Contractor shall take all appropriate measures, including any other requirements (if any) set out in the Specification, to prevent sexual harassment, exploitation or abuse of anyone by the Contractor's Personnel. For these purposes, sexual harassment, exploitation and abuse include sexual activity with any person less than eighteen (18) years of age, regardless of any Laws relating to consent, unless such sexual activity is consensual between two (2) persons who are married and such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's Personnel.
- (b) In addition, the Contractor shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favours or activities, or from engaging in any sexual activities that are exploitative or degrading to any person.
- (c) Notwithstanding the notice periods in Sub-Clause 15.2 [*Termination by Employer*], the Contractor acknowledges and agrees that any breach of this Sub-Clause 6.18 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Contractor without any liability to the Employer for termination charges or any other liability of any kind.

## 7 PLANT, MATERIALS AND WORKMANSHIP

### 7.1 Manner of Execution

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- (a) The Contractor warrants that it shall carry out the manufacture, supply, installation, testing and commissioning and/or repair of Plant, the production, manufacture, supply and testing of Materials, and all other operations and activities during the execution of the Works:
  - (i) in the manner (if any) specified in the Contract;
  - (ii) exercising the standard of skill, care and diligence of qualified and experienced contractors acting in accordance with Industry Best Practices; and
  - (iii) with properly equipped facilities and non-hazardous Materials and Plant except as otherwise specified in the Contract.

### 7.2 Samples

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- (a) The Contractor shall submit the following samples of Materials, and all relevant information, to the Engineer for its consent, in accordance with the dates identified in the Programme, and in any event not less than thirty (30) days prior to using the Materials in or for the Works:
  - (i) manufacturers' and suppliers' standard samples of Materials and any other samples specified in the Contract, all at the Contractor's cost; and
  - (ii) additional samples instructed by the Engineer.
- (b) The samples shall be labelled as to their origin and intended use in the Works, in batches of a reasonable quantity to enable the Engineer to comply with its obligations under this Sub-Clause 7.2.
- (c) The Engineer shall, within fourteen (14) days of receipt of the samples advise the Contractor in writing, whether the samples meet the requirements of the Contract.
- (d) If the samples are not in accordance with the Contract requirements, the Engineer shall specify in what respects the sample is not in accordance with the Contract. The Contractor shall then submit an amended or alternative sample to the Engineer by the date agreed with the Engineer.
- (e) The Contractor shall inform the Engineer in writing if any amendments requested by the Engineer to any samples would be inconsistent with any Laws or any other requirements of the Contract.
- (f) Where the Engineer completes a Review and is satisfied with any samples pursuant to this Sub-Clause 7.2, it does so for the purpose of administration of the Contract only and any such review or satisfaction shall not relieve the Contractor from its obligations to execute and complete the Works in accordance with the Contract, or from any of its warranties, obligations or liabilities under or in connection with the Contract.
- (g) The Contractor will be deemed to have made sufficient allowance within the Programme for the submission and review of all samples in accordance with this Sub-Clause 7.2.

## 7.3 Inspection

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- (a) The Employer's Personnel and any other person authorized in writing for this purpose 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 and execution of the Works.
- (b) The Contractor shall give the Employer's Personnel full opportunity to carry out the activities in Sub-Clause 7.3 (a), including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any of its obligations, warranties or liabilities under or in connection with the Contract.
- (c) The Contractor shall give sufficient Notice to the Engineer, allowing for any security restraints on the Employer's Personnel travelling to the Site, whenever any Materials, Plant or Works are ready for inspection and before such Materials, Plants or Works are covered up, put out of sight, or packaged for storage or transport. The Employer's Personnel shall then either carry out the examination, inspection, measurement or testing without unreasonable delay or the Engineer shall promptly give Notice to the Contractor that the Employer's Personnel does not require to do so.
- (d) If the Engineer gives no such Notice and/or the Employer's Personnel do not attend at the time stated in the Contractor's Notice (or such time as may be agreed with the Contractor), the Contractor may proceed with covering up, putting out of sight or packaging for storage or transport.
- (e) If the Contractor fails to give the Notice in sufficient time, it shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's risk and cost.

## 7.4 Testing

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- (a) This Sub-Clause 7.4 shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).
- (b) The Contractor shall, no later than twenty-eight (28) days after the Contract Effective Date, submit a Testing Plan for the Works (including any Section of the Works) in a format acceptable to the Engineer, that complies with the requirements of the Contract, including the Specification and the QMS and Compliance Verification System under Sub-Clause 4.8 [*Quality Management and Compliance Verification Systems*], Tests on Completion under Clause 9 [*Tests on Completion*] and the Programme under Sub-Clause 8.3 [*Programme*].

- (c) The Testing Plan shall include a detailed description of:
- (i) the types of tests to be carried out;
  - (ii) the location, number and frequency of the tests;
  - (iii) the test conditions (which shall include normal operating conditions and emergency conditions);
  - (iv) required attendees at the tests (which shall include any persons nominated by the Engineer);
  - (v) the form of the test results; and
  - (vi) any other requirements (if any) set out in the Specification.
- (d) The Engineer shall complete a Review of the Testing Plan provided by the Contractor under Sub-Clause 7.4 (b) or (e). If the Testing Plan is not in accordance with the Contract, the Engineer shall advise the Contractor in writing setting out the reasons why the Testing Plan is not in accordance with the Contract.
- (e) The Contractor shall (at its cost) promptly amend the Testing Plan and re-submit it to the Engineer for Review.
- (f) The process shall be repeated until the Engineer determines and issues No-objection that the Testing Plan is in accordance with the Contract.
- (g) For the avoidance of doubt, the Contractor is not entitled to an EOT or an adjustment to the Contract Price for developing or amending the Testing Plan.
- (h) The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out all tests specified in the Contract and any testing equipment, apparatus and/or materials (if any) stated in the Specification for use by the Engineer or Employer.
- (i) Unless otherwise agreed in writing, the Contractor shall undertake all tests in accordance with the Testing Plan pursuant to Sub-Clause 7.4 (f), and shall agree with the Engineer by a Notice, four (4) days prior, indicating the time and place for the specified testing of any Plant, Materials and other parts of the Works. The Employer, the Engineer and any other Employer's Personnel shall be entitled to be present at any tests.
- (j) If the Engineer does not attend at the time and place stated in the Contractor's Notice pursuant to Sub-Clause 7.4 (i) or as otherwise agreed between the Engineer and Contractor, the Contractor may proceed with the tests and any such tests will be deemed to have been made in the Engineer's presence.
- (k) The Engineer may instruct the Contractor under Clause 13 [*Variations and Adjustments*], to vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, all costs of carrying out this Variation and any delay shall be borne by the Contractor, notwithstanding any other provisions of the Contract, and the Contractor shall not be entitled to an EOT or an adjustment to the Contract Price for performing such tests.

- (l) If the Engineer does not attend at the time and place agreed, or does not notify the Contractor, the Contractor may proceed with the tests.
- (m) If the Contractor suffers delay and/or incurs Cost from complying with an instruction by the Engineer to perform varied or additional tests, and the results of such tests shows that the tested Plant, Materials or workmanship is in accordance with the Contract, the Contractor shall give a Notice of Claim to the Engineer and shall be entitled, subject to Sub-Clause 20.3 [Contractor's Claims], to:
  - (i) an EOT for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]; and
  - (ii) payment of any Cost, which shall be added to the Contract Price as a Variation.
- (n) After receiving the Notice of Claim under Sub-Clause 7.4 (m), the Engineer shall proceed in accordance with Sub-Clause 20.3 [Contractor's Claims] and Sub-Clause 3.5 [Agreement or Determination] to agree or determine the matters.
- (o) The Contractor shall promptly forward to the Engineer duly certified reports of all tests performed in accordance with the Contract. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate, or issue a certificate to that effect. If the Engineer or a nominated delegate has not attended the tests, it shall be deemed to have accepted the readings as accurate.
- (p) Sub-Clause 7.5 [Defects and Rejection] shall apply in the event that any Plant, Materials and other parts of the Works fails to pass a specified test.

## 7.5 Defects and Rejection

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- (a) If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer shall give Notice describing the Plant, Materials, design or workmanship that has been found defective. The Contractor shall (at its cost) then promptly make good the defect and ensure that the Plant, Materials, design or workmanship complies with the Contract within twenty-eights (28) days of receiving the Notice, which may otherwise entitle the Employer to proceed in accordance with Sub-Clause 15.2 [Termination by Employer].
- (b) After remedying defects in any Plant, Materials, design (if any) or workmanship, if the Engineer requires any such items to be retested, the tests shall be repeated under the same terms and conditions as per Sub-Clause 7.4 [Testing] at the Contractor's risk and cost.
- (c) The Engineer may instruct the Contractor to open up for inspection and test part of the Works which have been covered up, to determine if such part of the Works is defective or otherwise not in accordance with the Contract.
- (d) If such parts of the Works, referred to under Sub-Clause 7.5 (c), are defective or otherwise not in accordance with the Contract, the costs of such opening up (together with the costs of promptly making good the defects) shall be borne by the Contractor. For the avoidance of doubt, the Contractor shall not be entitled to any EOT or increase in the Contract Price as a result of any such opening up.

- (e) Subject to Sub-Clause 7.3 (c) [*Inspection*], if such parts of the Works, referred to under Sub-Clause 7.5 (c), are in accordance with the Contract and the Contractor suffers delay and/or incurs Cost from complying with an instruction by the Engineer to open up for inspection and retest part of the Works which have been covered up, the Contractor shall give a Notice of Claim to the Engineer and shall be entitled, subject to Sub-Clause 20.3 [*Contractor's Claims*] to:
  - (i) an EOT for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
  - (ii) payment of any Cost, which shall be added to the Contract Price as a Variation.
- (f) Sub-Clause 7.5 (e) does not apply in the case where the Contractor's Test Plan indicates that the covered up part of the Works should be tested, and the Contractor had failed to do so. In this case, the costs of such opening up (together with the costs of the tests) shall be borne by the Contractor, irrespective of the results of the tests.
- (g) After receiving the Notice of Claim under Sub-Clause 7.5 (e), the Engineer shall proceed in accordance with Sub-Clause 20.3 [*Contractor's Claims*] and Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine the matters described in Sub-Clause 7.5 (e).

## 7.6 Remedial Work

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- (a) Notwithstanding any previous test, examination, inspection, measurement, testing or certification, the Engineer may instruct the Contractor to:
  - (i) repair, remedy or remove from the Site and replace any Plant or Materials which are not in accordance with the Contract;
  - (ii) repair, remedy or remove and re-execute any other work which is not in accordance with the Contract; and
  - (iii) execute any remedial work which is urgently required for the safety of the Works, whether because of an accident, Unforeseeable event or otherwise.
- (b) The Contractor shall comply with the instruction within the time (if any) specified in the instruction, or immediately if urgency is specified under Sub-Clause 7.6 (a) (iii) or within twenty-eight (28) days of receiving the Notice, which may otherwise entitle the Employer to proceed in accordance with Sub-Clause 15.2 [*Termination by Employer*].
- (c) The Contractor shall bear the cost of all remedial work required under this Sub-Clause 7.6, except to the extent that any work under 7.6 (a) (iii) is attributable to any act by the Employer or the Employer's Personnel. If the Contractor suffers delay and/or incurs Cost in carrying out such work, the Contractor shall be entitled, subject to Sub-Clause 20.3 [*Contractor's Claims*], to an EOT and/or payment of such Cost Plus Profit.
- (d) If the Contractor fails to comply with the Engineer's instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall, subject to Sub-Clause 20.2 [*Employer's Claims*] pay to the Employer all Cost arising from this failure. This entitlement shall be without prejudice to any other rights the Employer may have under the Contract or otherwise.

## 7.7 Ownership of Plant and Materials

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- (a) Each item of Plant and Materials shall, to the extent consistent with Laws, become the property of the Employer at whichever is the earlier of the following times, free from Security Interests and other encumbrances:
- (i) when it is delivered to the Site;
  - (ii) when the Contractor is entitled to payment of the value of the Plant and Materials under Sub-Clause 8.10 [*Payment for Plant and Materials in Event of Suspension*]; or
  - (iii) when the Contractor is paid the amount determined for the Plant and Materials under Sub-Clause 14.5 [*Plant and Materials Intended for the Works*].

## 7.8 Royalties

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

## 7.9 Security Interest

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- (a) The Contractor acknowledges and agrees that it shall not file, claim or register any Security Interest, and shall use its best efforts to prevent any Security Interest from being filed, claimed or registered by any Subcontractor or by any employee, servant or agent of the Contractor or Subcontractor, against the Works or any real or other property of the Employer or the Contractor, for any works done or any services rendered or any item of Plant or Materials supplied under the Contract or any subcontract let by the Contractor and shall procure that all subcontracts contain undertakings of a similar effect.
- (b) In the event that any such Security Interest should be filed, claimed or registered, the Contractor shall immediately notify the Employer, with copy to the Engineer, and shall promptly discharge, by bond or otherwise to the satisfaction of the Employer, such Security Interest.
- (c) Until any Security Interest described in Sub-Clause 7.9 (b) is fully discharged, the Employer shall have the right to withhold one hundred and twenty-five (125) per cent of the full amount claimed giving rise to the Security Interest from any payments to be made to the Contractor, and such withholding of payment shall not affect the other rights and obligations of the Parties under the Contract. Alternatively, the Employer may, at its discretion, discharge the Security Interest by paying the appropriate amount directly to the relevant person and shall be entitled, subject to Sub-Clause 20.2 [*Employer's Claims*], to deduct such amount from further payments to be made to the Contractor pursuant to the Contract.

- (d) The Contractor shall indemnify the Employer against any loss, damage, cost or expense (including legal fees and the cost and expense of the Employer discharging any Security Interest as described in Sub-Clause 7.9 (c)) to the extent arising out of or in connection with any Security Interest being filed, claimed or registered as referred to in Sub-Clause 7.9 (b).
- (e) On its application for the Taking-Over Certificate for the Works, pursuant to Clause 10 [*Employer's Taking Over*], the Contractor shall certify to the Employer, by way of a certificate, that it has no knowledge of any outstanding Security Interests or claims which may result in Security Interests affecting the Works or the Site.

## 8 COMMENCEMENT, DELAYS AND SUSPENSION

### 8.1 Commencement of Work

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- (a) The Engineer shall give the Contractor no less than seven (7) days notice of the Commencement Date of the Works which shall be within twenty-eight (28) days of the Contract Effective Date. The Contractor shall commence the design (to the extent specified in this Contract) and execution of the Works (including, without limitation, mobilization and procurement) promptly after the Commencement Date and shall proceed with the Works with due expedition and without delay.

### 8.2 Time for Completion

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- (a) The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), which starts from the Commencement Date, including completion of all work, passing all tests, rectifying all defects and submitting all information and/or documentation which is stated in the Contract as being required for the Works or Section to be considered to be Complete for the purposes of taking over under Sub-Clause 10 [*Employer's Taking Over*].

### 8.3 Programme

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- (a) The Contractor shall submit to the Engineer (with a copy to the Employer) within twenty-one (21) days after Commencement Date for Review, a fully detailed initial programme in accordance to the Contract, for the execution of the Works, detailing how and when the Contractor proposes to carry out each stage of the Works and complying with requirements outlined in Schedule 3.5 [*Programme Requirements*] and Industry Best Practices.
- (b) The Contractor shall also submit a revised programme which accurately reflects the actual progress of the Works, whenever any programme ceases to reflect actual progress or is otherwise inconsistent with the Contractor's obligations.
- (c) The initial programme shall include:
- (i) the Commencement Date and the Time for Completion of the Works and of each Section (if any);
  - (ii) the date of right of access to and possession of (each part of) the Site is to be given to the Contractor in accordance with the time (or times) stated in Schedule 2.2 [*Site Plan*]. If not so stated, the dates the Contractor requires the Employer to give right of access to and possession of (each part of) the Site;
  - (iii) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), preparation and submission of Contractor's Documents, procurement, manufacture, inspection, delivery to Site, construction, erection, installation, work to be undertaken by any Nominated Subcontractor (as defined in Sub-Clause 5.2 [*Nominated Subcontractor*]) and testing;

- (iv) the Review periods for any submissions stated in the Specification or required under these Conditions;
- (v) the sequence and timing of sampling, inspections and tests specified in, or required by, the Contract;
- (vi) for a revised programme: the sequence and timing of the remedial work (if any) under Sub-Clause 7.5 [Defects and Rejection] and/or the remedial work (if any) instructed under Sub-Clause 7.6 [Remedial Work];
- (vii) all activities (to the level of detail stated in the Specification), logically linked and showing the earliest and latest start and finish dates for each activity, the float (if any), and the critical path(s);
- (viii) the dates of all locally recognized days of rest and holiday periods (if any);
- (ix) all key delivery dates of Plant and Materials;
- (x) for a revised programme and for each activity: the actual progress to date, any delay to such progress and the effects of such delay on other activities (if any); and
- (xi) a supporting report which includes:
- a description of all the major stages of the execution of the Works;
  - a general description of the methods which the Contractor intends to adopt in the execution of the Works;
  - details showing the Contractor's reasonable estimate of the number of each category/class of Contractor's Personnel, and of each type of Contractor's Equipment, required on the Site, for each major stage of the execution of the Works;
  - if a revised programme, identification of any significant change(s) to the previous programme submitted by the Contractor; and
  - the Contractor's proposals to overcome the effects of any delay(s) on progress of the Works.
- (d) The Engineer shall complete a Review of the initial programme and each revised programme submitted by the Contractor and may give a Notice to the Contractor stating the extent to which it does not comply with the Contract or ceases to reflect actual progress or is otherwise inconsistent with the Contractor's obligations. If the Engineer gives no such Notice:
- (i) within twenty-one (21) days after receiving the initial programme; or
  - (ii) within fourteen (14) days after receiving a revised programme;
- the Engineer shall be deemed to have given a Notice of No-objection and the initial programme or revised programme (as the case may be) shall be the Programme.
- (e) The Contractor shall proceed in accordance with the Programme, subject to the Contractor's other obligations under the Contract. The Employer's Personnel shall be entitled to rely on the Programme when planning their activities.

- (f) Nothing in any programme, the Programme or any supporting report shall be taken as, or relieve the Contractor of any obligation to give, a Notice under the Contract.
- (g) If, at any time, the Engineer gives a Notice to the Contractor that the Programme fails (to the extent stated) to comply with the Contract or ceases to reflect actual progress or is otherwise inconsistent with the Contractor's obligations, the Contractor shall within fourteen (14) days after receiving this Notice submit a revised programme to the Engineer in accordance with this Sub-Clause 8.3.
- (h) The Contractor is not entitled to an EOT or an adjustment to the Contract Price for developing or revising the Programme.
- (i) The Programme will be used to monitor the progress of the execution of the Works.
- (j) If at any time there is an EOT, the Contractor shall submit a revised Programme as under Sub-Clause 8.4 (e) [*Extension of Time for Completion*].
- (k) Any amended or revised programme submitted by the Contractor under this Sub-Clause 8.3 will not affect or replace the Programme unless expressly agreed to by the Engineer in writing.
- (l) The submission to and Review by the Engineer of any amended or revised programme or any other document or revision thereof under this Sub-Clause 8.3 shall not in any way relieve the Contractor of any of its warranties, obligations or liabilities under or in connection with the Contract.

## 8.4 Extension of Time for Completion

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- (a) The Contractor shall be entitled, subject to Sub-Clause 20.3 [*Contractor's Claims*], to an extension to the Time for Completion if, and to the extent that completion for the purposes of Sub-Clause 10.1 [*Taking Over*] is or will be delayed by any of the following causes:
  - (i) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [*Variation Procedure*] and excluding Variations required due to an act, omission or default of the Contractor or the Contractor's Personnel);
  - (ii) a cause of delay expressly giving an entitlement to an EOT under a Sub-Clause of these Conditions;
  - (iii) Unforeseeable climatic conditions having regard to climatic data published in the Country for the geographical location of the Site;
  - (iv) Unforeseeable shortages in the availability of personnel or Goods (or Employer-Supplied Materials, if any) caused by epidemic or governmental actions;
  - (v) subject to Sub-Clause 4.5 [*Cooperation*] and Sub-Clause 4.24 [*Auxiliary Works*] any delay, impediment or act of prevention caused by or attributable to the Employer, the Employer's Personnel or the Employer's other contractors on the Site that was Unforeseeable; or
  - (vi) subject to Sub-Clause 8.5 [*Delays Caused By Authorities*].

- (b) Sub-Clause 8.4 (a) applies, if the delay can be clearly demonstrated to have delayed the overall completion of the Works and the Contractor can demonstrate to the Engineer's satisfaction that it has used its best endeavours to minimize such delay and any costs and losses associated with it.
- (c) If the Contractor considers itself to be entitled to an EOT, the Contractor shall give a Notice of Claim to the Engineer in accordance with Sub-Clause 20.3 [Contractor's Claims]. When determining each claim for extension of time under Sub-Clause 20.3 [Contractor's Claims], the Engineer shall review previous determinations and may increase, but may not decrease, the total EOT.
- (d) If a delay caused by a matter which is the Employer's responsibility is concurrent with a delay caused by a matter which is the Contractor's responsibility, the Contractor's entitlement to EOT shall be assessed, as appropriate taking due regard of all relevant circumstances.
- (e) If the Engineer agrees or determines that the Contractor is entitled to an EOT in accordance with Sub-Clause 20.3 [Contractor's Claims], the Contractor shall, within fourteen (14) days of such determination, submit a revised draft Programme that shows the effect of the approved EOT on the existing Programme.
- (f) Despite any other provisions of the Contract, the Engineer may, at the sole and absolute discretion of the Employer, at any time make a fair and reasonable EOT. The Engineer has no obligation to grant, or to consider whether to grant, an EOT and is not required to exercise this discretion for the benefit of the Contractor.

## 8.5 Delays Caused by Authorities

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- (a) If the following conditions apply, namely:
  - (i) the Contractor has diligently followed the procedures laid down by any relevant Authority;
  - (ii) the Authority delays or disrupts the Contractor's work such that it will not be able to complete the Works or Sections within the Time for Completion; and
  - (iii) the delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under Sub-Clause 8.4 (a) [*Extension of Time for Completion*].

## 8.6 Rate of Progress

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- (a) The Engineer may instruct the Contractor to submit a revised programme and supporting information describing the revised methods which the Contractor proposes to adopt in order to expedite progress and achieve completion of the Works within the Time for Completion if, at any time other than as a result of a cause listed in Sub-Clause 8.4 [*Extension of Time for Completion*]:
  - (i) the actual progress of the Works or of a Section is too slow to allow completion of the Works or a Section within the relevant Time for Completion; and/or
  - (ii) the progress has fallen (or will fall) behind the Programme under Sub-Clause 8.3 [*Programme*].

- (b) Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional Cost, the Employer shall be entitled, subject to Sub-Clause 20.2 [*Employer's Claims*], to payment of these Costs by the Contractor in addition to any Delay Damages under Sub-Clause 8.7 [*Delay Damages*].
- (c) The Engineer may, at any time, initiated either by an instruction or as a consequence of the failure of the Contractor to fulfil its obligations under the Contract, direct the Contractor to submit a proposal to accelerate the rate of progress for Works for any reason including as an alternative to granting an EOT for Completion and act on the same as under Sub-Clause 13.3 [*Variation Procedure*]. The Contractor will not be entitled to payment of any Cost where the instruction was issued as a consequence of the failure of the Contractor to fulfil its obligations under the Contract.

## 8.7 Delay Damages

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- (a) If the Contractor fails to complete the Works or a Section of the Works (if any) within the Time for Completion, the Contractor shall be subject to Sub-Clause 20.2 [*Employer's Claims*] and pay Delay Damages to the Employer for this default.
- (b) The Delay Damages shall be the amount stated in Schedule 1 [*Contract Details*], which shall be paid for every day which shall elapse between the relevant Time for Completion and the Date of Completion of the Works or relevant Section (if any).
- (c) The total amount of Delay Damages due under this Sub-Clause 8.7 shall not exceed the aggregate maximum amount of Delay Damages (if any) stated in Schedule 1 [*Contract Details*]. If no maximum amount is stated then the aggregate maximum amount shall be ten (10) per cent of the Accepted Contract Amount.
- (d) If the Employer has become entitled, under this Sub-Clause 8.7, to the aggregate maximum amount of Delay Damages, it may terminate the Contract in accordance with Sub-Clause 15.2 (a) [*Termination by Employer*].
- (e) These Delay Damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [*Termination by Employer*] prior to completion of the Works.
- (f) This Sub-Clause 8.7 shall not limit the Contractor's liability for Delay Damages in any case of fraud, gross negligence, deliberate default or reckless misconduct by the Contractor.

## 8.8 Suspension by Employer

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- (a) The Engineer may at any time, instruct the Contractor through a Notice to suspend progress of part or all of the Works and the Engineer may, in its sole and absolute discretion, notify the Contractor of the cause for the suspension and the date it comes into effect.
- (b) During any period of suspension, the Contractor shall not remove from the Site any Materials, Plant or any Contractor's Equipment without the prior written consent of the Engineer or Employer.

- (c) During such suspension, the Contractor shall protect, store and secure the Works (or relevant part of the Works) against any deterioration, loss or damage.
- (d) If and to the extent that the suspension is caused or contributed to by, or the responsibility of, the Contractor, or the Contractor's Personnel, Sub-Clauses 8.9 [*Consequences of Suspension by Employer*], 8.10 [*Payment for Plant and Materials in Event of Suspension*] and 8.11 [*Prolonged Suspension*] shall not apply.

## 8.9 Consequences of Suspension by Employer

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- (a) Subject to Sub-Clause 8.9 (b), if the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Sub-Clause 8.8 [*Suspension by Employer*] and/or from resuming the work, the Contractor shall be entitled, subject to Sub-Clause 20.3 [*Contractor's Claims*], to:
  - (i) an EOT for any such delay, if the Time for Completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
  - (ii) payment of any such Cost Plus Profit, which shall be added to the Contract Price as a Variation.
- (b) For the avoidance of doubt, the Contractor shall not be entitled to an EOT or any increase to the Contract Price, for making good the consequences of the Contractor's faulty or defective design, workmanship or Materials, Plant or any deterioration, loss or damage caused by the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.8 [*Suspension by Employer*] or in respect of any other breach of the Contract by the Contractor or the Contractor's Personnel.

## 8.10 Payment for Plant and Materials in Event of Suspension

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- (a) The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have been ordered but not been delivered to Site, if:
  - (i) the work on Plant or delivery of Plant and/or Materials has been suspended for more than twenty-eight (28) consecutive days;
  - (ii) the Plant and/or Materials where scheduled, in accordance with the Programme, to have been completed and ready for delivery to the Site during the suspension period;
  - (iii) the Contractor provides the Engineer with reasonable evidence that the Plant and/or Materials comply with the Contract; and
  - (iv) the Contractor has paid for and properly stored the Plant and/or Materials and marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.

## 8.11 Prolonged Suspension

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- (a) If a suspension under Sub-Clause 8.8 [*Suspension by Employer*] has continued for more than one hundred and eighty (180) consecutive days, the Contractor may request the Engineer's permission to proceed with the Works.
- (b) If the Engineer does not give permission within twenty-eight (28) days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [*Variations and Adjustments*] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give a Notice of termination under Sub-Clause 16.2 [*Termination by Contractor*].

## 8.12 Resumption of Work

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- (a) After a permission or instruction to proceed with the Works is given by the Engineer, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension. If the cause of the suspension is attributable to or the responsibility of the Contractor, the Contractor shall bear the cost of making good.

## 9 TESTS ON COMPLETION

### 9.1 Contractor's Obligations

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- (a) The Contractor shall carry out the Tests on Completion in accordance with this Sub-Clause 9.1, Sub-Clause 7.4 [*Testing*] and Sub-Clause 7.5 [*Defects and Rejection*], the Specification, the QMS and Compliance Verification System under Sub-Clause 4.8 [*Quality Management and Compliance Verification Systems*] and in accordance with Sub-Clause 10.1 [*Taking Over*].
- (b) The Contractor shall give the Engineer not less than twenty-one (21) days Notice of the date on which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within fourteen (14) days after this date, on such day or days as the Engineer shall instruct.
- (c) Unless otherwise stated in the Contract, the Tests on Completion shall be carried out in accordance with the Specification and the approved Testing Plan.
- (d) As soon as the Works, or a Section, have passed each of the Tests on Completion in accordance with the Specification, the Contractor shall submit a certified report of the results of these tests to the Engineer.
- (e) The Engineer shall complete a Review of such a report and may give a Notice to the Contractor stating the extent to which the results of the tests do not comply with the Contract. If the Engineer does not give such a Notice within fourteen (14) days after receiving the results of the tests, the Engineer shall be deemed to have given No-objection.
- (f) In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of (any part of) the Works by the Employer on the performance or other characteristics of the Works.
- (g) If any of the Tests on Completion fails, Sub-Clause 9.3 [*Retesting*] shall apply.

### 9.2 Delayed Tests

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- (a) If the Tests on Completion are unduly delayed by the Contractor, the Engineer may by Notice require the Contractor to carry out the Tests on Completion within twenty-one (21) days after receiving the Notice. The Contractor shall carry out the Tests on Completion on such days within that twenty-one (21) day period as the Contractor shall notify the Engineer.
- (b) If the Contractor fails to carry out the Tests on Completion within this period of twenty-one (21) days, the Employer's Personnel may proceed with the Tests on Completion at the risk and cost of the Contractor. Any Tests on Completion undertaken in accordance with this Sub-Clause 9.2 (b) shall be deemed to have been carried out in the presence of the Contractor and the results of the Tests on Completion shall be accepted as accurate.
- (c) If the Employer incurs additional costs as a result of such testing, the Employer shall be entitled, subject to Sub-Clause 20.2 [*Employer's Claims*], to payment by the Contractor of the costs reasonably incurred.
- (d) If the Tests on Completion are unduly delayed by the Employer, Sub-Clause 10.4 [*Interference with Tests on Completion*] shall apply.

## 9.3 Retesting

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- (a) If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [*Defects and Rejection*] shall apply, and the Engineer may require the failed Tests on Completion, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

## 9.4 Failure to Pass Tests on Completion

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- (a) If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [*Retesting*], the Engineer may, in its sole and absolute discretion, be entitled to:
- (i) order further repetition of Tests on Completion under Sub-Clause 9.3 [*Retesting*];
  - (ii) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in Sub-Clause 11.4 (b) [*Failure to Remedy Defects*]; or
  - (iii) issue a Taking-Over Certificate, if the Employer so requests.
- (b) In the event of the application of Sub-Clause 9.4 (a) (iii), the Contractor shall proceed in accordance with all of its other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure.
- (c) Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be:
- (i) agreed by the Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued; or
  - (ii) determined and paid under Sub-Clause 3.5 [*Agreement or Determination*] and Sub-Clause 20.2 [*Employer's Claims*].

## 10 EMPLOYER'S TAKING OVER

### 10.1 Taking Over

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- (a) The Works or a Section shall only be considered to be Complete and ready for taking over by the Employer when, in the Engineer's reasonable opinion:
- (i) the Works or the relevant Section of the Works are completed in accordance with the requirements of the Contract, except for minor omissions and minor defects that:
    - do not prevent the whole of the Works or the relevant Section or part of the Works, and the Site from being used for their intended purpose;
    - do not cause any restriction under any Laws or under any direction of any Authority on the use or occupation of the whole of the Works, or the relevant Section or part of the Works;
    - the Contractor has reasonable grounds for not promptly rectifying such omissions and defects; and
    - failure to promptly rectify those omissions and defects will not prejudice the safe and convenient use of the whole of the Works, or the relevant Section or part of the Works, and the Site for their intended purpose.
  - (ii) all commissioning, testing and training required under the Contract has been successfully performed in accordance with Clause 9 [*Tests on Completion*] and Sub-Clause 4.4 [*Training*];
  - (iii) all information to be provided by the Contractor to the Employer and Engineer under the Contract has been provided including:
    - Contractor's Documents;
    - six (6) copies of all as-built records in the form approved by the Engineer and related documents including a complete set of specifications and drawings (if any) to be prepared by or on behalf of the Contractor pursuant to the Contract;
    - results of all tests performed in accordance with Clause 9 [*Tests on Completion*]; and
    - operation and maintenance manuals (if any) in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this Section or part of the Works.
  - (iv) any certificate or approval, which shall be issued or given by an Authority to lawfully occupy or use the whole of the Works, or the relevant Section or part of the Works, has been issued or given by that Authority and provided to the Engineer;
  - (v) the cleaning of the Works, or the relevant Section or part of the Works, throughout, including cleaning of interior and exterior surfaces, clearing debris from the Site and removing waste and surplus materials from the Site in accordance with Sub-Clause 4.21 [*Contractor's Operations on Site*] has been completed;

- (vi) dismantling and removing the Temporary Works from Site, including scaffolding, hoardings, barricades and foot crossings specific to the Works or the relevant Section or part of the Works have been completed;
- (vii) if relevant making good access to the Works, including roads, footpaths, kerbs and gutters adjacent to the Works including any rectification work required under Sub-Clause 4.14 [Access Route] has been completed;
- (viii) the Contractor has replaced any Plant-related consumables (such as filters, gaskets, lubricants etc), cleaned, refurbished, reconditioned and otherwise made good any wear and tear of Plant and/or equipment which the Contractor may have run and/or operated prior to taking over by the Employer;
- (ix) any requirements for taking over under the Contract have been fulfilled; and
- (x) a Taking-Over Certificate has been issued.

## 10.2 Taking Over of the Works and Sections

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- (a) The Contractor shall apply by notice to the Engineer for a Taking-Over Certificate not earlier than fourteen (14) days before the Works will, in the Contractor's opinion, be Complete and ready to be taken over. If the Works are divided into Sections, the Contractor shall similarly apply for a Taking-Over Certificate for each Section.
- (b) The Engineer shall, within twenty-eight (28) days after receiving the Contractor's application:
  - (i) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were Complete and taken over (the Date of Completion in accordance with the Contract), except for any minor omissions, outstanding work and defects which the Engineer (in its sole and absolute discretion) is satisfied will not substantially affect the use of the Works or Section for their intended purpose either until or whilst this work is completed and these defects as set out in Defects List are remedied; or
  - (ii) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under Sub-Clause 10.2 (a).
- (c) When a Taking-Over Certificate has been issued for a Part, Section or whole of the Works, then the Employer shall take over that Part, Section or whole of the Works from the date of taking over certified in the Taking-Over Certificate.

## 10.3 Taking Over of Parts of the Works

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- (a) The Engineer may, at the sole and absolute discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works, including a Section.

- (b) The Employer shall not use any part of the Works or a Section (other than as a temporary measure or which is either specified in the Contract or agreed by the Parties in writing or required for reasons attributable to the acts, omissions, breaches or defaults of the Contractor or the Contractor's Personnel) unless and until the Engineer has issued a Taking-Over Certificate for this Part.
- (c) If the Employer does use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by the Parties in writing or for reasons attributable to the acts, omissions, breaches or defaults of the Contractor or the Contractor's Personnel) before the relevant Taking-Over Certificate is issued:
  - (i) the Part which is used shall be deemed to have been taken over as from the date on which it is used by the Employer;
  - (ii) the Contractor shall cease to be liable for the care of such Part as from this date, when responsibility shall pass to the Employer; and
  - (iii) the Engineer shall as soon as practicable issue a Taking-Over Certificate for this Part.
- (d) After the Engineer has issued a Taking-Over Certificate for a Part of the Works or a Section, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion or action any outstanding items on the Defects List as soon as practicable, and in any case, before the expiry date of the relevant DNP.
- (e) Subject to Sub-Clause 10.3 (f), if the Contractor incurs Cost as a result of the Employer taking over and/or using a Part, the Contractor shall be entitled, subject to Sub-Clause 20.3 [Contractor's Claims], to the payment of any such Cost Plus Profit, which shall be added to the Contract Price as a Variation.
- (f) Where, for reasons attributable to the acts or omissions of the Contractor, the Employer in its absolute discretion elects to instruct to issue a Taking-Over Certificate or otherwise uses a part of the Works in accordance with this Sub-Clause 10.3, the Contractor shall not be entitled to any EOT or any increase to the Contract Price.
- (g) If a Taking-Over Certificate has been issued for a Part of the Works (other than a Section), the Delay Damages thereafter for completion of the remainder of the whole of the Works shall be reduced. Similarly, the Delay Damages for the remainder of the Section (if any) in which this Part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these Delay Damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Engineer shall proceed in accordance with Sub-Clause 3.5 [Agreement or Determination] to agree or determine these proportions. The provisions of this Sub-Clause 10.3 (g) shall only apply to the daily rate of Delay Damages under Sub-Clause 8.7 [Delay Damages], and shall not affect the maximum amount of these Delay Damages.

## 10.4 Interference with Tests on Completion

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- (a) If the Contractor is prevented, for more than fourteen (14) days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.
- (b) The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the DNP. The Engineer shall require the Tests on Completion to be carried out by giving fourteen (14) days' notice to the Contractor.
- (c) If the Contractor suffers delay and/or incurs Cost as a result of being prevented from carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled, subject to Sub-Clause 20.3 [Contractor's Claims], to:
  - (i) an EOT for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
  - (ii) payment of any such Cost Plus Profit, which shall be included in the Contract Price.

## 10.5 Elements Requiring Reinstatement

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- (a) Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other elements/surfaces requiring reinstatement.

## 11 DEFECTS LIABILITY

### 11.1 Completion of Outstanding Work and Remedyng Defects

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- (a) In order for the Works or Sections (as the case maybe) and Contractor's Documents to be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant DNP or as soon as practicable thereafter, the Contractor shall:
  - (i) complete any work set out in the Defects List and any other work which is outstanding on the relevant Date of Completion, within the times stated in the relevant Taking-Over Certificate, within such other reasonable time as is instructed by the Engineer; and
  - (ii) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the DNP for the Works or Section (as the case may be).
- (b) If a defect appears (including if the Works fail to pass the Tests after Completion, if any) or damage occurs during the relevant DNP, the Contractor shall be notified accordingly, by (or on behalf of) the Employer. Promptly thereafter:
  - (i) the Contractor and the Employer (or any Employer's Personnel) shall jointly inspect the defect or damage;
  - (ii) the Contractor shall then prepare and submit a proposal for necessary remedial work; and
  - (iii) Sub-Clause 7.5 (a), (b) and (c) [*Defects and Rejection*] shall apply.

### 11.2 Cost of Remedyng Defects

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- (a) All work referred to in Sub-Clause 11.1 (a) [*Completion of Outstanding Work and Remedyng Defects*] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:
  - (i) Contractor's design (if any), other than a part of the design for which the Employer is responsible;
  - (ii) the Works, Plant, Materials or workmanship not being in accordance with the Contract;
  - (iii) improper operation or maintenance or training which was attributable to matters for which the Contractor is responsible; or
  - (iv) failure by the Contractor to comply with any other obligation under the Contract.
- (b) If the Contractor considers that the work is attributable to any other cause, the Contractor shall promptly give a Notice to the Engineer and the Engineer shall proceed under Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine the cause. If and to the extent the Engineer determines that such work is attributable to any other cause, Sub-Clause 13.3 [*Variation Procedure*] shall apply.

## 11.3 Extension of Defects Notification Period

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- (a) The Employer shall be entitled, subject to Sub-Clause 20.2 [*Employer's Claims*], to an extension of the DNP for the Works, a Section or a Part if and to the extent that the Works, a Section, a Part or a major item of Plant (as the case may be), and after taking over, cannot be used for the purposes for which they are intended by reason of a defect or damage under conditions in Sub-Clause 11.2 [*Cost of Remediying Defects*]. However, a DNP shall not be extended by more than two (2) years after the initial DNP that relates to those Works, a Section or a Part would otherwise have expired.
- (b) If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [*Suspension by Employer*] (other than where the cause of such suspension was the responsibility of the Contractor) or Clause 16 [*Suspension and Termination by Contractor*], the Contractor's obligations under this Clause 11 [*Defects Liability*] shall not apply to any defects or damage occurring more than two (2) years after the DNP for the Works, of which the Plant and/or Materials form part, would otherwise have expired.

## 11.4 Failure to Remedy Defects

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- (a) If the Contractor fails to remedy any defect or damage under Sub-Clause 11.1 [*Completion of Outstanding Works and Remediying Defects*] within a reasonable time, a date shall be fixed by the Engineer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.
- (b) If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remediying Defects*], the Employer may (at its sole and absolute discretion):
  - (i) carry out the work itself or have the work carried out by others, in a reasonable manner and at the Contractor's cost and risk. The Contractor shall, subject to Sub-Clause 20.2 [*Employer's Claims*], pay to the Employer the Cost incurred by the Employer in remedying the defect or damage, but the Contractor shall have no responsibility for this work;
  - (ii) accept the damaged or defective work, in which case the Employer shall be entitled, subject to Sub-Clause 20.2 [*Employer's Claims*], to a reduction in the Contract Price. The reduction shall be in full satisfaction of this failure only and shall be in the amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure;
  - (iii) require the Engineer to treat any part of the Works which cannot be used for its intended purpose(s) under the Contract by reason of this failure as an omission, as if such omission had been instructed under Sub-Clause 13.1 [*Right to Vary*]; or
  - (iv) terminate the Contract, if the defect or damage deprives the Employer of substantially the whole benefit of the Works. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover from the Contractor all sums paid for the Works or for such part (as the case may be), plus Cost, including the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

- (c) The exercise of discretion by the Employer under Sub-Clause 11.4 (b) (ii), (iii) or (iv), shall be without prejudice to any other rights the Employer may have, under the Contract or otherwise.

## 11.5 Removal of Defective Work

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- (a) If during the DNP the Contractor considers that any defect or damage in any Plant or Works cannot be remedied expeditiously on the Site, the Contractor shall give a Notice with reasons to the Employer requesting consent to remove the defective or damaged Plant or Works from the Site for the purposes of repair and its reinstatement by a specific or mutually agreed date.
- (b) If the Employer gives consent (in its sole and absolute discretion, and which consent shall not relieve the Contractor from any obligation or responsibility under the Contract), the Contractor may remove from the Site such items of Plant or Works that are defective or damaged. As a condition of any consent, the Employer may require the Contractor to increase the amount of the Performance Security by the full replacement cost of the defective or damaged items of Plant or Works, or to provide other appropriate security approved by the Employer.

## 11.6 Further Tests

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- (a) Within seven (7) days of completion of the work of remedying of any defect or damage, the Contractor shall give a Notice to the Employer describing the remedied Works, Section, Part and/or Plant and the proposed repeated tests (under Clause 9 [*Tests on Completion*]). Within seven (7) days after receiving this Notice, the Employer shall give a Notice to the Contractor either:
- (i) agreeing with such proposed testing; or
  - (ii) instructing the repeated tests that are necessary to demonstrate that the remedied Works, Section, Part and/or Plant comply with the Contract.
- (b) If the Contractor fails to give such a Notice within the seven (7) days, the Employer may give a Notice to the Contractor, within fourteen (14) days after the defect or damage is remedied, instructing the repeated tests that are necessary to demonstrate that the remedied Works, Section, Part and/or Plant comply with the Contract.
- (c) All repeated tests under this Sub-Clause 11.6 shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [*Cost of Remediating Defects*], for the cost of the remedial work.

## 11.7 Right of Access

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- (a) Until the Final Completion Certificate has been issued, the Contractor shall, with the Employer's prior written approval, have limited right of access to the Works and to records of the operation and performance of the Works, as is reasonably required in order for the Contractor to comply with this Clause 11 [*Defects Liability*], except as may be inconsistent with the Employer's reasonable security restrictions, or agreements with third parties such as purchasers and other contractors.

## 11.8 Contractor to Search

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- (a) The Contractor shall, if instructed by the Engineer, search for the cause of any defect, under the direction of the Engineer. The Contractor shall carry out the search on the dates stated in the Engineer's instruction or other dates agreed with the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedy Defects*], any Cost Plus Profit for the search shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.5 [*Agreement or Determination*] and shall be included in the Contract Price.
- (b) If the Contractor fails to carry out the search in accordance with this Sub-Clause 11.8, the search may be carried out by the Employer's Personnel. The Contractor shall be given a Notice of the date when such a search will be carried out and the Contractor shall attend at the Contractor's own cost. If the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedy Defects*], the Employer shall be entitled, subject to Sub-Clause 20.2 [*Employer's Claims*], to payment by the Contractor of the costs of the search reasonably incurred by the Employer.

## 11.9 Final Completion Certificate

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- (a) Performance of the Contractor's obligations shall not be considered to have been completed for the purposes of issue of the Final Completion Certificate until the Employer has received such warranties specified in the Contract and any other warranties normally provided by suppliers, manufacturers and Subcontractors for work of similar scope and complexity to the Works, and confirmation that the warranties are capable of novation from the Employer to any entity to be nominated by the Employer or is in the name of the Employer's nominee under Sub-Clause 4.23 [*Assignment and Novation of Manufacturer's Warranties*], or if Sub-Clause 4.23 (c) applies, the Contractor has demonstrated to the reasonable satisfaction of the Employer or its delegate that it has used its best endeavours to enforce such rights as the Contractor may have for the benefit of the Employer.
- (b) Performance of the Contractor's obligations shall not be considered to have been completed until the Employer or its delegate has issued the Final Completion Certificate to the Contractor, stating the date on which the Contractor completed its obligations under the Contract.
- (c) The Employer shall issue the Final Completion Certificate within twenty-eight (28) days after the expiry of the DNP for the whole Works or the latest of the expiry dates of the DNPs for Sections, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all of the Works, including remedying defects, notified under Sub-Clause 11.1 [*Completion of Outstanding Works and Remedy Defects*].

## 11.10 Unfulfilled Obligations

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- (a) After the Final Completion Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which becomes apparent at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

- (b) Notwithstanding the issue of a Final Completion Certificate, the Contractor shall be responsible for remedying at its cost and expense any Latent Defect, as well as any damage to the Works caused by such Latent Defect, which appears or occurs at any time during the Latent Defect Period. The Employer shall give the Contractor Notice of any such Latent Defect or damage. The Employer shall afford the Contractor such access to the Permanent Works as may be reasonable in all the circumstances to remedy the Latent Defect or damage. The Contractor shall remedy such Latent Defect or damage as soon as reasonably practicable.
- (c) If the Contractor fails to remedy any Latent Defect or damage within a reasonable time, the Engineer shall instruct the Contractor of a reasonable date, on or by which the Latent Defect or damage is to be remedied. If the Contractor fails to remedy the Latent Defect or damage by this notified date, the Employer (or such other party on its behalf) shall carry out the work, in a reasonable manner and at the Contractor's cost (but the Contractor shall have no responsibility for this work) and the Contractor shall pay to the Employer the costs reasonably incurred by the Employer in remedying the Latent Defect or damage. This Sub-Clause 11.10 shall not relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with the Contract or otherwise prescribed by Laws.
- (d) Subject to any express provision in the Contract to the contrary, the respective warranties, obligations or liabilities of the Parties do not cease on the completion, expiry or termination of this Contract.

## **11.11 Clearance of Site**

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- (a) Promptly after the issue of the Final Completion Certificate, the Contractor shall at its own cost:
  - (i) remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site;
  - (ii) reinstate all parts of the Site which were affected or altered by the Contractor's activities during the execution of the Works; and
  - (iii) leave the Site and the Works in a clean and safe condition.
- (b) If the Contractor fails to comply with Sub-Clause 11.11 (a) within twenty-eight (28) days after the Employer receives a copy of the Final Completion Certificate, the Employer may sell or otherwise dispose of any remaining items and may reinstate and clear the Site (as maybe necessary) at the Contractor's cost. The costs incurred by the Employer in connection with, or attributable to, such sale or disposal and reinstating or cleaning the Site, shall be a debt due and payable by the Contractor which the Employer may deduct from the proceeds of any sale or disposal of such items, with the balance of any monies paid to the Contractor.

## 12 MEASUREMENT AND VALUATION

### 12.1 Works to be Measured

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- (a) The Works shall be measured in accordance with this Clause 12 [*Measurement and Valuation*].
- (b) Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor of the part to be measured and the date on which the measurement will be made, who shall:
  - (i) either attend or send a qualified representative to assist the Engineer in making the measurement; and
  - (ii) supply any particulars requested by the Engineer.
- (c) If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Engineer shall be accepted and deemed as accurate by the Contractor.
- (d) Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these records shall be prepared by the Engineer. The Contractor shall, as and when requested, examine and agree the records with the Engineer. If the Contractor fails to attend, the records shall be accepted and deemed as accurate by the Contractor.
- (e) If the Contractor examines and disagrees with the records, then the Contractor shall give notice to the Engineer, setting out the reason why the Contractor considers the measurement or records to be inaccurate. After receiving this Notice, the Engineer shall review the records and either confirm or vary them. If the Contractor does not give such notice to the Engineer within fourteen (14) days after being requested to attend the measurement or examine the records, they shall be accepted and deemed as accurate.

### 12.2 Method of Measurement

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- (a) The method of measurement shall be as stated in Schedule 3.4 [*Valuation and Payment*] or, if not so stated, that which shall be in accordance with Schedule 4.1.A [*Bill of Quantities*] or other applicable Schedules.
- (b) Except as otherwise stated in the Contract, measurement shall be made of the net actual quantity of each item of the Permanent Works and no allowance shall be made for bulking, shrinkage or waste.

### 12.3 Valuation

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- (a) Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Agreement or Determination*] to value each item of work by applying the valuation, payment method and the appropriate rate or price for the item, agreed or determined in accordance with Schedule 3.4 [*Valuation and Payment*] with Sub-Clause 12.1 [*Works to be Measured*] and Sub-Clause 12.2 [*Method of Measurement*].
- (b) For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Schedule 4.1 [*Quantities and Rates*], if there is no such item, then as specified for similar work.

- (c) Each new rate or price shall be derived from any relevant rates or prices in the Contract. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable cost of executing the work, together with profit, taking account of any other relevant matters.
- (d) Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of IPCs.

## 12.4 Omissions

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- (a) The Contractor shall give notice to the Engineer accordingly, with supporting particulars, if the omission of work forms part (or all) of a Variation and:
  - (i) the value of which has not otherwise been agreed;
  - (ii) the Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;
  - (iii) the omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and
  - (iv) this cost is not deemed to be included in the evaluation of any substituted work.
- (b) Upon receiving the Notice under Sub-Clause 12.4 (a), the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine this cost, which shall be included in the Contract Price. For the avoidance of doubt the Contractor is not entitled to loss of profit if the sum of all omissions is less than ten (10) per cent of the Accepted Contract Amount.

# 13 VARIATIONS AND ADJUSTMENTS

## 13.1 Right to Vary

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- (a) Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the whole of the Works, either by an instruction under Sub-Clause 3.3 [*Engineer's Instructions*] or by a request for the Contractor to submit a proposal.
- (b) Variation may include:
  - (i) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation);
  - (ii) changes to the quality and other characteristics of any item of work;
  - (iii) changes to the levels, positions and/or dimensions of any part of the Works;
  - (iv) omission of any part of the Works;
  - (v) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work; and/or
  - (vi) changes to the sequence or timing of the execution of the Works (including advancing or postponing the Time for Completion).
- (c) The Contractor shall submit a proposal, unless the Contractor promptly gives a Notice to the Engineer stating (with detailed supporting particulars) that:
  - (i) the varied work was Unforeseeable having regard to the scope and nature of the Works described in the Specification;
  - (ii) the Contractor cannot readily obtain the Goods required for the Variation; or
  - (iii) any other reason that adversely affects the Contractor's obligations under the Contract.
- (d) The Contractor shall within fourteen (14) days of receipt of the Notice, and before the Contractor carries out the Variation, submit to the Engineer a detailed proposal, including:
  - (i) a detailed description of the varied works to be performed including pertinent details such as resources, methodology and Programme;
  - (ii) a breakdown of the increase or decrease in the Contract Price and any effect on the Programme and Time for Completion; and
  - (iii) any further particulars that the Engineer may reasonably require.
- (e) The Engineer shall respond with approval, disapproval or comments to the proposal. The Contractor shall then be bound by any such Variation Notice and shall execute the Variation with due expedition and without delay.
- (f) The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs a Variation in writing.

- (g) Notwithstanding any other provisions of the Contract, no change, modification, addition or deletion to, in or from the Specification or the Contractor's Documents, the Works or the Contractor's conditions and methods of working, which are necessary due to any act, omission or default of the Contractor in the performance of its obligations under the Contract, shall be deemed to be a Variation and any such matter shall not result in any adjustment of the Contract Price, EOT or other relief. Any additional Cost to the Employer caused by such change, modification, addition or deletion which are attributable to such default or breach shall be borne by the Contractor and shall be recovered by the Employer subject to Sub-Clause 20.2 [*Employer's Claims*].
- (h) If the Contractor incurs Costs in complying with an acceleration direction under Sub-Clause 8.6 (c) [*Rate of Progress*] except where the direction was issued as a consequence of the failure of the Contractor to fulfill its obligations under the Contract, the Contractor shall be entitled, subject to Sub-Clause 20.3 [*Contractor's Claims*], to the payment of any such Costs, which shall be added to the Contract Price as a Variation.
- (i) No Variation invalidates the Contract. The Contractor agrees that a Variation may involve the omission of any part or parts of the Works and the Contractor agrees that the Employer may engage others to perform that part or parts of the Works which have been omitted. The Contractor further acknowledges that any omission or omissions will not constitute a basis for the Contractor to allege that the Employer has repudiated the Contract no matter the extent or timing of the omission or omissions.

## 13.2 Value Engineering

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- (a) The Contractor may, at any time submit to the Engineer a written proposal which (in the Contractor's opinion) will, if adopted:
  - (i) accelerate completion of the Works and/or the Project;
  - (ii) reduce the cost to the Employer of executing, maintaining or operating the Works and/or the Project;
  - (iii) improve the efficiency or value to the Employer of the completed Works and/or the Project; or
  - (iv) otherwise be of benefit to the Employer.
- (b) The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 (a) [*Variation Procedure*].
- (c) If a proposal, submitted under this Sub-Clause 13.2, which is approved by the Engineer under Sub-Clause 13.3 (b) and (c) [*Variation Procedure*], includes a change in the design of part of the Permanent Works, then unless otherwise agreed by the Parties:
  - (i) the Contractor shall design this part;
  - (ii) Sub-Clause 4.1 (k) [*Contractor's General Obligations*] shall apply; and
  - (iii) if the Engineer determines that this change results in a reduction in the Contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine a fee (if any), which shall be added to the Contract Price. This fee shall be fifty (50) per cent of the difference between the following amounts:

- such reduction in Contract Price resulting from the change, excluding adjustments under Sub-Clause 13.6 [*Adjustments for Changes in Laws*] and Sub-Clause 13.7 [*Adjustments for Changes in Cost*]; and
  - the reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.
- (d) If the reduction in Contract Price is less than the reduction in value to the Employer, there shall not be a fee.

### 13.3 Variation Procedure

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- (a) If the Engineer requests a proposal prior to instructing a Variation, under Sub-Clause 13.1 (a) [*Right to Vary*], or the Engineer instructs in accordance with Sub-Clause 3.3 (d) [*Engineer's Instructions*], the Contractor shall respond in writing as soon as practicable and within fourteen (14) days either by giving reasons why it cannot comply (if this is the case) or by submitting:
  - (i) a description of the proposed design (if any) and/or work to be performed, including details of the resources and methods adopted or to be adopted by the Contractor;
  - (ii) a programme for its execution and the Contractor's proposal for any necessary modifications to the Programme according to Sub-Clause 8.3 [*Programme*], including the Time for Completion for Sections (if any) and the whole of the Works;
  - (iii) the Contractor's proposal for adjustment to the Contract Price which shall, where applicable, be in accordance with the rates set out Schedule 4.1 [*Quantities and Rates*]. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable cost of executing the work, together with profit, taking account of any other relevant matters;
  - (iv) if the Parties have agreed to the omission of any work which is to be carried out by others, the Contractor's proposal may also include the amount of any loss of profit and any other losses and damages as allowed under the Contract; and
  - (v) any other further information or particulars requested by the Engineer.
- (b) The Engineer shall, as soon as practicable after receiving such proposal under Sub-Clause 13.3 (a) or after receiving a value engineering proposal under Sub-Clause 13.2 [*Value Engineering*], respond with approval, disapproval or comments. The Contractor shall only delay work that is contingent upon a response to the variation or value engineering proposal.
- (c) Each instruction to execute a Variation shall be issued by the Engineer to the Contractor, who shall acknowledge receipt.
- (d) The Engineer shall proceed in accordance with Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine:
  - (i) an EOT, if any; and/or

- (ii) the adjustment to the Contract Price (including valuation of the Variation in accordance with Clause 12 [Measurement and Valuation]) valued using rates set out in Schedule 4.1 [Quantities and Rates] to the extent the Engineer determines that the scope of the varied work is reasonably comparable to the unit descriptions contained therein. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable cost of executing the work, together with profit, taking account of any other relevant matters.

## 13.4 Provisional Sums

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- (a) Each Provisional Sum shall only be used, in whole or in part, in accordance with the Engineer's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such actual direct, reasonable and properly incurred and substantiated amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed under Sub-Clause 13.4 (b) (i) and/or (ii).
- (b) For each Provisional Sum, the Engineer shall instruct:
- (i) work to be executed (including Plant, Materials or services to be supplied) by the Contractor under Sub-Clause 13.1 [Right to Vary] and valued as in Sub-Clause 13.3 (d) [Variation Procedure]; and/or
  - (ii) Plant, Materials or services to be purchased by the Contractor from a Nominated Subcontractor or otherwise; and for which there shall be included in the Contract Price:
    - the actual direct, reasonably and properly incurred and substantiated expenditure paid (or due to be paid) by the Contractor to the Nominated Subcontractor; and
    - a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate stated in Schedule 1 [Contract Details]. If there is no percentage rate stated, then the percentage rate shall be ten (10) per cent.
- (c) The Contractor shall, when required by the Engineer, produce all quotations, invoices, vouchers and accounts or receipts in substantiation of the Provisional Sums and Plant, Materials or services purchased from Nominated Subcontractors.

## 13.5 Daywork

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- (a) For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the daywork rates and schedule included in Schedule 4.1.B [Daywork Schedule] or as otherwise agreed in writing between the Parties, and the following procedure shall apply.
- (b) Before ordering Goods for the work (other than Goods priced in the Daywork Schedule), the Contractor shall submit one (1) or more quotations from the Contractor's suppliers and/or subcontractors to the Engineer. Thereafter, the Engineer shall instruct the Contractor to accept one (1) of these quotations (but such instruction shall not be taken as an instruction under Sub-Clause 5.2 [Nominated Subcontractor]).

- (c) Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:
  - (i) the names, occupations and time of Contractor's Personnel;
  - (ii) the identification, type and time of Contractor's Equipment and Temporary Works; and
  - (iii) the quantities and types of Plant and Materials used.
- (d) One (1) copy of each statement will, if correct, or when agreed, be signed by the Engineer promptly and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to their inclusion in the next Statement under Sub-Clause 14.3 [*Contractor's Statements*].
- (e) When applying for payment in respect of daywork, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods (other than Goods and prices in the Daywork Schedule).
- (f) Unless otherwise stated explicitly, the rates and prices in the Daywork Schedule include taxes, overheads and profit.

## 13.6 Adjustments for Changes in Laws

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- (a) Subject to the following provisions of this Sub-Clause 13.6, the Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in Laws made and/or officially published after the Base Date, which affects the Contractor in the performance of obligations under the Contract. In this Sub-Clause 13.6, "change in Laws" means any of the changes listed below:
  - (i) the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws);
  - (ii) the judicial or official governmental interpretation or implementation of the Laws referred to in Sub-Clause 13.6 (a) (i);
  - (iii) any permit, permission, licence or approval obtained by the Employer or the Contractor under Sub-Clause 13.6 (a) (i) or (ii) and Sub-Clause 1.12 [*Compliance with Laws*]; or
  - (iv) the requirements for any permit, permission, licence and/or approval to be obtained by the Contractor under Sub-Clause 1.12 (b) [*Compliance with Laws*].
- (b) If the Contractor suffers delay and/or incurs an increase in Cost as a result of any change in Laws, the Contractor shall be entitled, subject to Sub-Clause 20.3 [*Contractor's Claims*], to an EOT and/or payment of such Cost.
- (c) If there is a decrease in Cost as a result of any change in Laws, the Employer shall be entitled, subject to Sub-Clause 20.2 [*Employer's Claims*], to a reduction in the Contract Price.

- (d) If any adjustment to the execution of the Works becomes necessary as a result of any change in Laws:
  - (i) the Contractor shall promptly give a Notice to the Engineer; or
  - (ii) the Engineer shall promptly give a Notice to the Contractor with detailed supporting particulars.
- (e) Pursuant to Sub-Clause 13.6 (d), the Engineer shall either instruct a Variation or request a proposal as per Clause 13 [*Variations and Adjustments*].
- (f) For the avoidance of any doubt, while the Contractor shall execute the Works provided in accordance with any applicable Laws, the Law Applicable to the Contract shall be the law stated in Sub-Clause 21.3 (j) [*Arbitration*].

## 13.7 Adjustments for Changes in Cost

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- (a) Unless otherwise expressly stated in Schedule 3.4 [*Valuation and Payment*] or in the Particular Conditions, the Contract Price, and the rates and prices inserted in Schedule 4.1 [*Quantities and Rates*] shall not be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works.
- (b) Unless allowance for rises or falls in the cost of labour, Goods and other inputs to the Works is stated in Schedule 3.4 [*Valuation and Payment*], the Accepted Contract Amount and the rates and prices inserted in Schedule 4.1 [*Quantities and Rates*], shall be deemed to include amounts to cover contingency of rises and falls in the cost of labour, Goods and other inputs to the Works.
- (c) For the avoidance of doubt, if the Contractor is entitled to payment of any Costs to be included in the Contract Price under a Sub-Clause of these General Conditions (other than in the event of any Variation or a suspension which is not attributable to or the responsibility of the Contractor), then the Engineer shall determine such Costs, valued using an appropriate rate (if any) set out in Schedule 4.1 [*Quantities and Rates*] and such rates shall not be adjusted for any rise or fall in the cost of such labour, Goods and other inputs to the Works, unless otherwise stated in Schedule 3.4 [*Valuation and Payment*].

## 14 CONTRACT PRICE AND PAYMENT

### 14.1 Contract Price

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- (a) Unless otherwise stated in the Contract:
- (i) the Contract Price shall be the value of the Works, in accordance with Schedule 1.2 [*Details provided by the Contractor*] and as may vary under Sub-Clause 12.3 [*Valuation*] and subject to adjustments, additions (including Cost or Cost Plus Profit to which the Contractor is entitled under these Conditions) and/or deductions in accordance with the Contract;
  - (ii) the Contractor shall pay all taxes, duties and fees required to be paid by it under the Contract and as required by Laws, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.6 [*Adjustments for Changes in Laws*] and Sub-Clause 13.7 [*Adjustments for Changes in Cost*] (if applicable). This obligation shall include value added tax (VAT) unless the Employer has obtained an exemption for such VAT from the relevant Authorities on behalf of the Contractor; and
  - (iii) as per Schedule 3.4 [*Valuation and Payment*]:
    - if the payment option is “measure and pay”, the rates shall be as set out in Schedule 4.1 [*Quantities and Rates*] and shall be applied to the relevant quantity of Works measured as completed. The quantities in the Schedules stated in this Sub-Clause 14.1 (a) (iii) are not to be taken as the actual quantities of the Works which the Contractor is required to execute, or for the purposes of Clause 12 [*Measurement and Valuation*];
    - if the payment option is “lump sum”, the lump sums, the price and quantities as set out in Schedule 4.1.A [*Bill of Quantities*] are fixed regardless of the actual quantities of the Works, unless adjustments are made in accordance with Clause 13 [*Variations and Adjustments*].
- (b) The Contractor shall submit to the Engineer, within twenty-eight (28) days after the Commencement Date, a proposed breakdown of each of the lump sum amounts (if any) in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.

### 14.2 Advance Payment

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- (a) If no advance payment is set out in Schedule 1 [*Contract Details*], and the Employer does not elect to make an Advance Payment, then this Sub-Clause 14.2 shall not apply.
- (b) The Employer shall make the advance payment (if any) as an interest-free loan for mobilization, when the Contractor submits an Advance Payment Security in accordance with this Sub-Clause 14.2. The Employer may also, at its sole discretion, make an Advance Payment or increase the existing Advance Payment, under exceptional circumstances, if requested by the Contractor, provided the Contractor submits an additional Advance Payment Security to cover the total amount of the Advance Payment.

- (c) The Advance Payment Security shall be a duly executed and enforceable unconditional and irrevocable on-demand guarantee in the form set out in Schedule 5.1 [*Form for Advance Payment Security*] from a leading and accredited bank or financial institution approved by the Employer.
- (d) The Engineer shall issue an Advance Payment Certificate for the advance payment (or additional advance payment, if any) within fourteen (14) days after:
  - (i) the Employer has received the Advance Payment Security in the form under this Sub-Clause 14.2; and
  - (ii) the Engineer has received a copy of the Contractor's application for the advance payment under this Sub-Clause 14.2.
- (e) The Employer shall pay the advance payment within thirty (30) days after receiving the Advance Payment Certificate.
- (f) The Contractor shall ensure that the Advance Payment Security is valid and enforceable until the whole of the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor in the interim payments. If the terms of the Advance Payment Security specifies its expiry date, and the advance payment has not been repaid by twenty-eight (28) days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid. If the Employer does not receive this evidence of the extension of the Advance Payment Security, the Employer shall be entitled to claim under the guarantee the amount of advance payment which has not been repaid.
- (g) The advance payment shall be repaid by the Contractor through percentage deductions from each IPC at the rate stated in Schedule 1 [*Contract Details*] until such time as the advance payment has been repaid and within the period of repayment stated in Schedule 1 [*Contract Details*], if applicable.
- (h) If the advance payment has not been fully repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [*Termination by Employer*], Clause 16 [*Suspension and Termination by Contractor*] or Clause 18 [*Force Majeure*] (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

### **14.3 Contractor's Statements**

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- (a) The Contractor shall, in accordance with the timing specified in Schedule 3.4 [*Valuation and Payment*], submit a Statement in four (4) copies to the Engineer, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers itself to be entitled up to the end of the relevant payment period, together with supporting documents which shall include the relevant report on progress in accordance with Sub-Clause 4.19 [*Progress Reports*].
- (b) The Statement shall include the following items, as applicable, which shall be expressed in the currencies in which the Contract Price is payable:
  - (i) the estimated Contract value of the Works executed or the identified lump sum value of the milestones of Works as per Schedule 3.4 [*Valuation and Payment*] and Schedule 4.1 [*Quantities and Rates*], up to the end of the relevant payment period (including Variations but excluding items described in Sub-Clause 14.3 (b) (ii) to (vii);

- (ii) any amounts to be added and/or deducted for changes in Laws under Sub-Clause 13.6 [*Adjustments for Changes in Laws*], and for changes in Cost under Sub-Clause 13.7 [*Adjustments for Changes in Cost*];
  - (iii) any amounts to be deducted for retention, calculated by applying the percentage of retention stated in Schedule 1 [*Contract Details*] to the total of the amounts under Sub-Clause 14.3 (b) (i), (ii) and (ix) until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in Schedule 1 [*Contract Details*];
  - (iv) any amounts to be added and/or deducted for advance payment and repayments in accordance with Sub-Clause 14.2 [*Advance Payment*];
  - (v) any amounts to be added and deducted for Plant and/or Materials in accordance with Sub-Clause 14.5 [*Plant and Materials Intended for the Works*];
  - (vi) any amounts to be added for Provisional Sums under Sub-Clause 13.4 [*Provisional Sums*] including those of Nominated Subcontractors as required under Clause 5 [*Subcontracting*];
  - (vii) any amount to be added for release of Retention Money under Sub-Clause 14.9 [*Release of Retention Money*];
  - (viii) any amount to be deducted for the Contractor's use of utilities provided by the Employer under Sub-Clause 4.18 [*Electricity, Water and Gas*] and Sub-Clause 2.4 [*Employer-Supplied Materials, Employer's Equipment and Facilities*];
  - (ix) any other additions and/or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [*Claims*] and Clause 21 [*Dispute Resolution*];
  - (x) the deduction of amounts certified in all previous IPCs; and
  - (xi) the VAT unless the Employer has obtained an exemption for such VAT from the relevant Authorities on behalf of the Contractor.
- (c) The Engineer may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate or payment of the amounts thereunder shall not be deemed to indicate the Engineer's or Employer's (as the case may be) acceptance, approval, consent or satisfaction.

## 14.4 Schedule of Payments

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- (a) If Schedule 3.4 [*Valuation and Payment*] specifies the instalment amounts in which the Contract Price shall be paid, then, unless otherwise stated in this Schedule:
  - (i) the instalments amounts indicated shall be estimated Contract values for the purposes of Sub-Clause 14.3 (b) (i) [*Contractor's Statements*] if it is a "measure and pay" payment option and would be actual amounts if it is a "lump sum" payment option;
  - (ii) Sub-Clause 14.5 [*Plant and Material Intended for the Works*] shall not apply; and

- (iii) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to differ than that on which Schedule 3.4 [*Valuation and Payment*] was based, then the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine revised instalment amounts, taking into account the extent to which the progress differs from that on which the instalment amounts were previously based.
- (b) If Schedule 3.4 [*Valuation and Payment*] does not specify the instalment amounts in which the Contract Price shall be paid, the Contractor shall submit non-binding estimates of the payments which it expects to become due during each monthly period. The first estimate shall be submitted within twenty-eight (28) days after the Commencement Date. Revised estimates shall be submitted at monthly intervals, until the Taking-Over Certificate has been issued for the whole of the Works.

## **14.5 Plant and Materials Intended for the Works**

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- (a) If the lists referred to in Sub-Clause 14.5 (c) iii are not included in the Schedule 3.4 [*Valuation and Payment*], this Sub-Clause 14.5 shall not apply.
- (b) IPCs shall include, under Sub-Clause 14.3 (b) (v) [*Contractor's Statements*]:
  - (i) an amount for Plant and Materials which have been delivered to the Site for incorporation in the Permanent Works; and
  - (ii) a reduction when the Contract value of such Plant and Materials is included as part of the Permanent Works under Sub-Clause 14.3 (b) (i) [*Contractor's Statements*].
- (c) The Engineer shall proceed under Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine each amount to be added for Plant and Materials if the following conditions are fulfilled:
  - (i) the Contractor has:
    - kept satisfactory records (including the orders, receipts, Cost and use of Plant and Materials) which are available for inspection by the Engineer and the Employer;
    - submitted evidence demonstrating that the Plant and Materials comply with the Contract (which may include test certificates and/or compliance verification documentation);
    - submitted a statement of the Cost incurred in acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence; and
    - submitted the Performance Security in a form approved by the Employer and issued by an entity approved by the Employer in amounts and currencies equal to the amount due under this Sub-Clause 14.5. This guarantee shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;

and either,

(ii) the relevant Plant and Materials:

- are those listed in Schedule 3.4 [*Valuation and Payment*] for payment when shipped;
- have been shipped to the Country en route to the Site in accordance with the Contract; and
- are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Engineer together with evidence of payment of freight and insurance, any other documents reasonably required by the Engineer;

or,

(iii) the relevant Plant and Materials:

- are those listed in Schedule 3.4 [*Valuation and Payment*] for payment when delivered to the Site; and
- 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 Contract.

- (d) The additional amount to be certified shall be the equivalent of eighty (80) per cent of the Engineer's determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents stated in this Sub-Clause 14.5 and of the Contract value of the Plant and Materials.
- (e) The currencies for this additional amount shall be the same as those in which payment will become due when the Contract value is included under Sub-Clause 14.3 (b) (i) [*Contractor's Statements*]. At that time, the Payment Certificate 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.

## 14.6 Issue of Interim Payment Certificate

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- (a) No amount will be certified or paid until the Employer has received and approved the Performance Security and the reports required under Sub-Clause 4.19 [*Progress Reports*]. Thereafter, the Engineer shall, within twenty-eight (28) days after receiving a Statement and supporting documents, issue to the Employer (with a copy to the Contractor) an IPC which shall state:
- (i) the amount which the Engineer fairly determines to be due; and
- (ii) including any additions and/or deductions which have become due under Sub-Clause 3.5 [*Agreement or Determination*] or otherwise under the Contract, with supporting particulars.
- (b) Prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an IPC in an amount which would be less than the minimum amount of IPCs as set out in Schedule 3.4 [*Valuation and Payment*]. In this event, the Engineer shall give notice to the Contractor accordingly.

- (c) An IPC shall not be withheld for any other reason, although:
  - (i) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and
  - (ii) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.
- (d) The Engineer may in any Payment Certificate make any corrections or modification that should properly be made to any previous Payment Certificate. A Payment Certificate or payment of the amounts thereunder shall not be deemed to indicate the Engineer's acceptance, approval, consent or satisfaction to any Contractor's Document or to the Works or any part of the Works.

## 14.7 Payment

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- (a) The Employer shall pay to the Contractor:
  - (i) the amount certified in each IPC within thirty (30) days after the Engineer issues and the Employer receives such IPC; and
  - (ii) the amount certified in the Final Payment Certificate within thirty (30) days after the Employer receives this Final Payment Certificate.
- (b) Payment of the amount due in each currency (as applicable) shall be made into the bank account nominated by the Contractor. The Contractor shall be responsible for and shall pay any bank transfer fees arising out of or in connection with payments made by the Employer to the Contractor pursuant to the Contract.
- (c) The Contractor undertakes to pay its Subcontractors in accordance with the provisions of the relevant contract and to ensure that labourers employed in the execution of the Works, whether by the Contractor or by its Subcontractors, are paid in accordance with their respective contracts and the Laws.

## 14.8 Delayed Payment

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- (a) If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the expiry of the time for payment specified in Sub-Clause 14.7 [Payment], irrespective of the date on which any IPC is issued.
- (b) Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rates and details stated in Schedule 1 [Contract Details].
- (c) The Contractor shall be entitled to this payment of such financing charges by the Employer without the need for the Contractor to submit formal notice or certification, and without prejudice to any other right or remedy.

## 14.9 Release of Retention Money

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- (a) After the issue of the Taking-Over Certificate for:
  - (i) the Works, the Contractor shall include the first half of the Retention Money in a Statement (or as applicable); or
  - (ii) a Section, the Contractor shall include the relevant percentage of the first half of the Retention Money in a Statement.
- (b) Promptly after the latest expiry dates of the DNP(s) (of the Sections, if any), the outstanding balance of the Retention Money shall be certified by the Engineer for payment to the Contractor.
- (c) If any part of the Works remains to be executed under Clause 11 [Defects Liability], the Engineer shall be entitled to withhold certification of the estimated cost of that part of the Works as determined by the Engineer, until it has been completed.
- (d) The relevant percentage for each Section shall be the percentage value of the Section as stated in Schedule 1 [Contract Details] or as determined by the Engineer.

## 14.10 Statement at Taking Over

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- (a) Within eighty-four (84) days after receiving the Taking-Over Certificate for the Works or a Section, the Contractor shall submit to the Engineer four (4) copies of a Statement with supporting documents, in accordance with Sub-Clause 14.3 [Contractor's Statements], showing:
  - (i) the value of all work done in accordance with the Contract up to Date of Completion for the Works or the Section;
  - (ii) any further sums which the Contractor considers to be due at the Date of Completion of the Works or the Section;
  - (iii) an estimate of any other amounts which the Contractor considers have or will become due to it after the Date of Completion of the Works under the Contract. Estimated amounts shall be shown separately in this Statement;
  - (iv) any Claim for which the Contractor has issued a Notice under Sub-Clause 20.3 [Contractor's Claims] in respect of the Works or relevant Section taken over, which the Contractor considers to be due from the Employer for all events and circumstances that have occurred up to the Date of Completion; and
  - (v) any disputed Claims or matter relating to the whole of the Works or relevant Section that has been referred to dispute resolution under Clause 21 [Dispute Resolution].
- (b) The Engineer shall then issue an IPC in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificate].
- (c) The Contractor is not entitled to make a Claim, and the Employer is released from any new Claim or an increase in any existing Claim against the Employer in respect of the Contract Price or otherwise, in respect of all events and circumstances that have occurred up to the earlier of the submission of the Statement at Taking Over or expiration of the twenty-eight (28) days after the Engineer issues the Taking-Over Certificate for a Section or the whole of the Works, as taken over.

## 14.11 Final Statement

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- (a) Within fifty-six (56) days after receiving the Final Completion Certificate, the Contractor shall submit to the Engineer, four (4) copies of a draft final Statement with supporting documents showing in detail, in a form approved by the Engineer:
  - (i) the value of all work done in accordance with the Contract; and
  - (ii) any further sums which the Contractor considers to be due to it under the Contract or otherwise.
- (b) If the Engineer disagrees with or cannot verify any part of the draft final Statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the Final Statement as agreed.
- (c) If, following discussions between the Engineer and the Contractor, it becomes evident that there is disagreement for some parts of the Statement, the Engineer shall deliver to the Employer (with a copy to the Contractor) a Final Payment Certificate-for the agreed parts of the draft final statement which is a "Partially Agreed Final Statement" in these Conditions.
- (d) Thereafter, if the dispute is finally resolved under Clause 21 [*Dispute Resolution*], the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement based on which the Final Payment Certificate shall be issued as per Sub-Clause 14.13 [*Issue of Final Payment Certificate*].

## 14.12 Discharge

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- (a) When submitting the Final Statement or the Partially Agreed Final Statement (as the case may be), the Contractor shall submit a discharge as per Schedule 5.3 [*Form of Discharge*], which confirms that the total of such Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract for the works.
- (b) This discharge may state that the total of the Statement is subject to any payment that may become due in respect of any Dispute proceeding or arbitration is in progress under Clause 21 [*Dispute Resolution*] and that it becomes effective after the Contractor has received:
  - (i) full payment of the amount certified in the Final Payment Certificate; and
  - (ii) the Performance Security or part thereof.
- (c) If the Contractor fails to submit this discharge, the discharge shall be deemed to have been submitted and to have become effective when the conditions of Sub-Cause 14.12 (a) and (b) have been fulfilled.
- (d) A discharge under this Sub-Cause 14.12 shall not affect either Party's liability or entitlement in respect of any Dispute for which a proceeding or arbitration is in progress under Clause 21 [*Dispute Resolution*].

## 14.13 Issue of Final Payment Certificate

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- (a) Within twenty-eight (28) days after receiving the Final Statement or any Partially Agreed Final Statement under Sub-Clause 14.11 [*Final Statement*] and the discharge in accordance with Sub-Clause 14.12 [*Discharge*], the Engineer shall issue, to the Employer, the Final Payment Certificate which shall state:
  - (i) the amount which the Engineer fairly considers is finally due including any additions and/or deductions which have become due under Sub-Clause 3.5 [*Agreement or Determination*] or under the Contract; and
  - (ii) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, and after giving credit to the Contractor for all amounts (if any) previously paid by the Contractor and/or received by the Employer under the Performance Security, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.
- (b) If the Contractor has not submitted a draft Final Statement within the time specified under Sub-Clause 14.11 [*Final Statement*], the Engineer shall request the Contractor to do so. If the Contractor fails to submit a draft Final Statement within a period of twenty-eight (28) days, the Engineer shall issue the Final Payment Certificate for such amount as the Engineer fairly determines to be due.

## 14.14 Cessation of Employer's Liability

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- (a) The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:
  - (i) in the Final Statement or Partially Agreed Final Statement;
  - (ii) in the Statement described in Sub-Clause 14.10 [*Statement at Taking Over*] (except for matters or things arising after the issue of the Taking-Over Certificate for the Works); and
  - (iii) the Engineer has certified such amounts as due and payable to the Contractor.
- (b) This Sub-Clause 14.14 shall not limit the Employer's liability under its indemnification obligations or in case of fraud, deliberate default or reckless misconduct by the Employer.

## 14.15 Currency of Payment

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- (a) Unless otherwise stated in the Contract, the Contract Price and all other payments under the Contract shall be paid in the currency or currencies stated in Schedule 1 [*Contract Details*]. If more than one (1) currency is so named, payments shall be made as follows:
  - (i) if the Contract Price is only expressed in the local currency of the Country and a foreign currency:

- the proportions or amounts of the local and foreign currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in Schedule 1 [*Contract Details*], except as otherwise agreed by the Parties;
  - payments and deductions under Sub-Clause 13.4 [*Provisional Sums*] and Sub-Clause 13.6 [*Adjustments for Changes in Laws*] shall be made in the applicable currencies and proportions; and
  - other payments and deductions under Sub-Clause 14.3 [*Contractor's Statements*] shall be made in the currencies and proportions specified in this Sub-Clause 14.15 (a) (i);
- (ii) whenever an adjustment is agreed or determined under Sub-Clause 13.2 [*Value Engineering*] or Sub-Clause 13.3 [*Variation Procedure*], the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified in Sub-Clause 14.15 (a) (i);
- (iii) payment of the Delay Damages specified in Schedule 1 [*Contract Details*] shall be made in the currencies and proportions specified in this Schedule;
- (iv) other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by the Parties;
- (v) if any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer shall recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (vi) if no rates of exchange are stated in Schedule 1 [*Contract Details*], they shall be those prevailing on the Base Date and published by the central bank of the Country.

## 14.16 Audit and Investigations

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- (a) Each payment made by the Employer to the Contractor may be subject to a post-payment audit by auditors, whether internal or external, of the Employer or by other authorized and qualified agents of the Employer at any time during the term of the Contract and for a period of two (2) years following the expiration or prior termination of the Contract. The Employer shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the Employer other than in accordance with the terms and conditions of the Contract.
- (b) The Contractor acknowledges and agrees that, from time to time, the Employer may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the obligations of the Contract. The right of the Employer to conduct an investigation and the Contractor's obligation to comply with such an investigation shall not lapse upon issuance of the Final Completion Certificate or termination of the Contract.

- (c) The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available the Contractor's Personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to the Employer access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's Personnel and relevant documentation.
- (d) The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by the Employer.

## 14.17 Contractor's Performance Evaluation

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

## 15 TERMINATION BY EMPLOYER

### 15.1 Notice to Correct

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- (a) If the Contractor fails to carry out any obligations under the Contract, the Engineer may, by giving a Notice to Correct, require the Contractor to make good the failure and to remedy it within a specified time.
- (b) The Notice to Correct shall:
  - (i) describe the Contractor's failure;
  - (ii) state the Sub-Clause and/or provisions of the Contract under which the Contractor has the obligation; and
  - (iii) specify the time within which the Contractor shall remedy the failure, which shall be reasonable, taking due regard of the nature of the failure and the work and/or other action required to remedy it.
- (c) After receiving a Notice to Correct, the Contractor shall respond as soon as possible and no later than seven (7) days by giving a Notice to the Engineer describing the measures the Contractor will take to remedy the failure, and stating the date on which such measures will be commenced in order to comply with the time specified in the Notice to Correct.
- (d) The time specified in the Notice to Correct shall not give rise to an EOT.

### 15.2 Termination by Employer

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- (a) The Employer shall be entitled to give a Notice to the Contractor of its intention to terminate the Contract if the Contractor:
  - (i) fails to comply with a Notice to Correct;
  - (ii) fails to comply with a binding agreement, or final and binding determination, under Sub-Clause 3.5 [*Agreement or Determination*];
  - (iii) fails to comply with a decision taken under Clause 21 [*Dispute Resolution*] (whether binding or final and binding);
  - (iv) fails to comply with Sub-Clause 4.2 [*Performance Security*];
  - (v) abandons the Works or otherwise demonstrates an intention not to continue performance of the Contractor's obligations under the Contract;
  - (vi) without reasonable excuse fails to proceed with the Works in accordance with Clause 8 [*Commencement, Delays and Suspension*];
  - (vii) without reasonable excuse fails to comply with a Notice issued under Sub-Clause 7.5 [*Defects and Rejection*] or Sub-Clause 7.6 [*Remedial Work*];
  - (viii) without reasonable excuse fails to comply with its obligations under Sub-Clause 1.12 [*Compliance with Laws*]; or
  - (ix) is otherwise in material breach of the Contract.

- (b) Unless the Contractor complies with the Notice of intention to terminate the Contract given under Sub-Clause 15.2 (a) and remedies the matter within fourteen (14) days of receiving the Notice, the Employer may immediately terminate the Contract by Notice of termination. The date of termination shall be the date the Contractor receives this Notice of termination.
- (c) In the case of Sub-Clause 15.2 c (i) to (v), the Employer shall be entitled to terminate the Contract immediately by Notice of termination, without the Notice of intent to terminate, if the Contractor:
  - (i) fails to comply with its obligations under Clause 19 [*Insurance*];
  - (ii) subcontracts the whole, or any part of, the Works in breach of Clause 5 [*Subcontracting*], or assigns or novates the Contract without the required prior consent from the Employer under Sub-Clause 1.6 [*Assignment or Novation*];
  - (iii) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, 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;
  - (iv) is in breach of Sub-Clauses 4.25 [*Mines*], 4.26 [*Official Not to Benefit and Proscribed Practices*], 6.16 [*Fundamental Principles and Rights at Work*], 6.17 [*Child Labour*] and/or 6.18 [*Sexual Harassment, Exploitation and Abuse*];
  - (v) provides the Employer with a right to terminate under the provisions of Sub-Clause 8.7 [*Delay Damages*]; or
  - (vi) submits a security, insurance, certificate, statement, test result or any other document the Contractor is required to submit under the Contract that is false or intentionally misleading.
- (d) Termination of the Contract under this Sub-Clause 15.2 shall not prejudice any other rights of the Employer, under or in connection with the Contract or otherwise.
- (e) After termination of the Contract under this Sub-Clause 15.2, the Contractor shall:
  - (i) comply immediately with any reasonable instructions included in a Notice given by the Employer under this Sub-Clause 15.2 for the assignment of any subcontract and for the protection of life or property or for the safety of the Works;
  - (ii) deliver to the Engineer, any Goods which the Employer or the Engineer instructs, in writing, is to be used for the completion of the Works, two (2) copies of all Contractor's Documents including the relevant IPR, and all other design documents made by or for the Contractor; and
  - (iii) demobilize and leave the Site in a clean and safe condition and, if the Contractor does not do so, the Employer shall have the right to restrict the Contractor's access to the Site.

- (f) After termination under this Sub-Clause 15.2, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods and/or Contractor's Documents (and other design documents, if any) made by or on behalf of the Contractor to complete the Works.
- (g) After completion of the Works described in Sub-Clause 15.2 (f), the Employer shall then give Notice to the Contractor as to when the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. If by this time the Contractor has failed to make any payment due to the Employer, these items shall become the property of the Employer and may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

## 15.3 Valuation at Date of Termination

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- (a) After termination of Contract under Sub-Clause 15.2 [*Termination by Employer*], the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.
- (b) This valuation shall include any additions and/or deductions, and the balance due (if any), by reference to the matters described in Sub-Clause 14.13 [*Issue of Final Payment Certificate*].
- (c) This valuation shall not include the value of any Contractor's Documents, Materials, Plant and Permanent Works to the extent that they do not comply with the Contract.

## 15.4 Payment after Termination by Employer

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- (a) The Employer may withhold payment to the Contractor of the amounts agreed or determined under Sub-Clause 15.3 [*Valuation at Date of Termination*] until all the costs, losses and damages (if any) described in the following provisions of this Sub-Clause 15.4 have been established.
- (b) After termination of the Contract under Sub-Clause 15.2 [*Termination by Employer*], the Employer shall be entitled, subject to Sub-Clause 20.2 [*Employer's Claims*], to payment by the Contractor of:
  - (i) the additional costs of execution of the Works (and designs if any), and all other costs reasonably incurred by the Employer (including costs incurred in clearing, cleaning and reinstating the Site as described in Sub-Clause 11.11 [*Clearance of Site*]), after allowing for any sum due to the Contractor under Sub-Clause 15.3 [*Valuation at Date of Termination*];
  - (ii) any losses and damages suffered by the Employer in completing the Works, including, without limitation, the reasonable costs of technical, legal and other advisers incurred by the Employer in relation to the employment of a new contractor to rectify and complete the Works; and

- (iii) Delay Damages, if the Works or a Section have not been taken over under Sub-Clause 10.2 [*Taking Over of the Works and Sections*] and if the date of termination under Sub-Clause 15.2 [*Termination by Employer*] occurs after the date corresponding to the Time for Completion of the Works or Section (as the case may be). Such Delay Damages shall be paid for every day that has elapsed between these two (2) dates; and/or
- (iv) any outstanding advance payments.

## 15.5 Termination for Employer's Convenience

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- (a) The Employer may in its absolute discretion terminate the Contract at any time for the Employer's convenience, by giving Notice of such termination to the Contractor.
- (b) The termination shall take effect twenty-eight (28) days after the later of the dates on which the Contractor receives the Notice, or the Employer returns the Performance Security.
- (c) As soon as possible after termination in accordance with Sub-Clause 15.5 (a), the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*] and shall be paid in accordance with Sub-Clause 18.6 [*Optional Termination and Payment*] to which shall be added the amount of any loss of profit or other losses and damages suffered by the Contractor as a result of this termination.
- (d) The Engineer shall then proceed under Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine the value of work done, as adjusted by any amounts to which the Employer is entitled under the Contract. The Engineer shall issue a Payment Certificate for the amount so agreed or determined without the need for the Contractor to submit a Statement.
- (e) Unless and until the Contractor has received payment of the amount described in Sub-Clause 15.5 (d), the Employer shall not execute (any part of) the Works or arrange for (any part of) the Works to be executed by any other entities.

# 16 SUSPENSION AND TERMINATION BY CONTRACTOR

## 16.1 Contractor's Entitlement to Suspend Work

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(a) If:

- (i) the Engineer fails to certify in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificate*];
- (ii) the Employer fails to comply with Sub-Clause 14.7 [*Payment*]; or
- (iii) the Employer fails to comply with:
  - a binding agreement, or final and binding determination under Sub-Clause 3.5 [*Agreement or Determination*]; or
  - a decision in accordance with Clause 21 [*Dispute Resolution*] (whether binding or final and binding);

and such failure constitutes a material breach of the Employer's obligations under the Contract, the Contractor may, after giving not less than twenty-one (21) days Notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, payment, or the Employer has complied with the agreement, determination or decision (as the case may be).

- (b) This Contractor's action shall not prejudice its entitlements to financing charges under Sub-Clause 14.8 [*Delayed Payment*] or to termination under Sub-Clause 16.2 [*Termination by Contractor*].
- (c) If, subsequent to issuing the notice to the Employer under Sub-Clause 16.1 (a) and before giving a Notice of termination, the Employer remedies the default, as described in the Notice, the Contractor shall not terminate the Contract but shall resume normal working as soon as is reasonably practicable.
- (d) If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause 16.1, the Contractor shall give a Notice of Claim to the Engineer and shall be entitled, subject to Sub-Clause 20.3 [*Contractor's Claims*], to:
  - (i) an EOT for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
  - (ii) payment of any such Cost plus Profit, which shall be added to the Contract Price as a Variation.
- (e) After receiving the Notice of Claim under Sub-Clause 16.1 (d), the Engineer shall proceed in accordance with Sub-Clause 20.3 [*Contractor's Claims*] and Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine the matters described in Sub-Clause 16.1 (d).

## 16.2 Termination by Contractor

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- (a) Termination of the Contract under the Clause 16 [*Suspension and Termination by Contractor*] shall not prejudice any other rights of the Contractor, under the Contract or otherwise.
- (b) The Contractor shall be entitled to terminate the Contract, if:
  - (i) the Engineer fails, within fifty-six (56) days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate;
  - (ii) the Contractor does not receive the amount due under an IPC within forty-two (42) days after the Works have been suspended by the Contractor under Sub-Clause 16.1 (a) [*Contractor's Entitlement to Suspend Work*];
  - (iii) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [*Prolonged Suspension*] or
  - (iv) If the Employer fails to comply with the following and such failure constitutes a material breach of the Employer's obligations under the Contract;
    - a binding agreement, or final and binding determination under Sub-Clause 3.5 [*Agreement or Determination*]; or
    - a decision in accordance with Clause 21 [*Dispute Resolution*] (whether binding or final and binding).
- (c) In any of these events or circumstances, the Contractor may, upon giving twenty-eight (28) days' Notice to the Employer, notify the intention to terminate the contract. However, in the case of 16.2 (b) (iii), the Contractor may by notice terminate the contract immediately.
- (d) If the Employer remedies the alleged breach under Sub-Clause 16.2 (b) within the twenty-eight (28) day notice period, the Contractor shall not terminate the Contract but shall resume normal working as soon as reasonably practicable.
- (e) Unless the Employer remedies the matter described in a Notice issued under this Sub-Clause 16.2 within twenty-eight (28) days of receiving the Notice, the Contractor may by giving a second Notice to the Employer immediately terminate the Contract. The date of termination shall then be the date the Employer receives this second Notice.
- (f) If the Contractor suffers delay and/or incurs Cost during the period of twenty eight (28) days as under 16.2 (e), the Contractor shall be entitled, subject to Sub-Clause 20.3 [*Contractor's Claims*], to an EOT and/or payment of such Cost Plus Profit.

## 16.3 Cessation of Work and Removal of Contractor's Equipment

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- (a) After termination under Sub-Clause 15.5 [*Termination for Employer's Convenience*], Sub-Clause 16.2 [*Termination by Contractor*] or Sub-Clause 18.6 [*Optional Termination and Payment*] has taken effect, the Contractor shall promptly:
- (i) cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works;
  - (ii) hand over to the Employer the Contractor's Documents, all Plant, Materials and other work, for which the payment has been certified in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificate*];
  - (iii) remove all other Goods from the Site, except as necessary for safety and/or those owned by the Employer, and vacate the Site;
  - (iv) to the extent legally possible, procure the assignment or novation or otherwise to the Employer or an entity nominated by the Employer all rights, title and benefit of the Contractor to the Works and in the Plant, Materials and other work as at the date of termination;
  - (v) deliver to the Employer all Contractor's Documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Works; and
  - (vi) unless otherwise notified in writing by the Employer, remove all Contractor's Equipment from the Site and remove from the Site any wreckage, rubbish and debris of any kind and leave the whole of the Site in a clean and safe condition.

## 16.4 Payment after Termination by Contractor

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- (a) After a notice of termination under Sub-Clause 16.2 [*Termination by Contractor*] has taken effect, the Employer shall promptly:
- (i) return the Performance Security, or parts thereof, to the Contractor;
  - (ii) subject to the Contractor's compliance with Sub-Clause 20.3 [*Contractor's Claims*], pay the Contractor the amount of any loss of profit or other losses and damages suffered by the Contractor as a result of this termination; and
  - (iii) pay the Contractor in accordance with Sub-Clause 18.6 [*Optional Termination and Payment*].

## 17 RISK AND RESPONSIBILITY

### 17.1 Contractor's Care of the Works

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- (a) Unless the Contract is terminated, the Contractor shall take full responsibility for the care of the Works, Goods and Contractor's Documents from the Commencement Date, and the parts of the Site from the dates as set out in Schedule 2.2 [Site Plan], until the issue of the Taking-Over Certificate for the Works or any Section or Part of the Works as the case may be, under Clause 10 [Employer's Taking Over], at which time responsibility for the care of the Works (or any Section or part of the Works as the case maybe), shall pass to the Employer.
- (b) After responsibility has accordingly passed to the Employer, the Contractor shall continue to take responsibility for the care of any part of the Works or Sections which is outstanding on the Date of Completion until this outstanding work has been completed.
- (c) If any loss or damage occurs to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause whatsoever except as stated in Sub-Clause 17.2 [Employer's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.
- (d) The Contractor shall be liable for any loss or damage caused by the Contractor, or the Contractor's Personnel or any Subcontractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after the Taking-Over Certificate has been issued and which arose from an event that occurred before the issue of the Taking-Over Certificate for which the Contractor was liable.
- (e) If the Contract is terminated in accordance with these Conditions or otherwise, the Contractor shall cease to be responsible for the care of the Works from the date of termination.

### 17.2 Employer's Risks

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- (a) The Employer's risks are:
  - (i) any delay or disruption caused by any Variation, except where that Variation is caused by the Contractor's failure, act, omission or breach;
  - (ii) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site;
  - (iii) any negligent act, omission or breach by the Employer or its agents, employees or other contractors and consultants;
  - (iv) interference, whether temporary or permanent, with any right of way, light, air, water or other easement (other than that resulting from the Contractor's method of construction) which has been agreed upon with the Contractor or is necessary for the execution of the Works in accordance with the Contract;

- (v) use or occupation of any part of the Permanent Works by the Employer, except as may be specified in the Contract before the Taking-Over Certificate has been issued;
- (vi) fault, error, defect or omission in any element of the design of the Works provided by the Employer; and/or
- (vii) Force Majeure events under Clause 18 [Force Majeure].

### **17.3 Consequences of Employer's Risks**

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- (a) If and to the extent that any of the risks listed in Sub-Clause 17.2 [Employer's Risks] occurs and results in loss or damage to the Works, Materials, Plant and the Contractor's Documents, the Contractor shall promptly give Notice to the Engineer. Thereafter, the Contractor shall rectify any such loss and/or damage to the extent instructed by the Engineer. Such instruction shall be deemed to have been given under Sub-Clause 13.1 [Right to Vary].
- (b) If the Contractor suffers delay and/or incurs Cost from rectifying the loss and/or damage, the Contractor shall, subject to Sub-Clause 20.3 [Contractor's Claims], be entitled to:
  - (i) an EOT for any such delay, if the Time for Completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]; and
  - (ii) payment of any such Cost, which shall be added to the Contract Price as a Variation. In the case of Sub-Clause 17.2 (a) (i), (ii), (iii), (v) and (vi) [Employer's Risks] profit shall also be included.
- (c) After receiving this Notice of Claim, the Engineer shall proceed in accordance with Sub-Clause 20.3 [Contractor's Claims] and Sub-Clause 3.5 [Agreement or Determination] to agree or determine the matters described in Sub-Clause 17.3 (a).
- (d) If such delays and/or Costs arise as a consequence of any risk listed in Sub-Clause 17.2 [Employer's Risks] and any other risk not listed therein, then the agreement or determination in accordance with Sub-Clause 3.5 [Agreement or Determination] shall take into account the proportionate responsibility of the Contractor and the Employer.

### **17.4 Warranties relating to the Works**

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- (a) Without prejudice to any other warranties expressed elsewhere in the Contract, and despite any inclusion of the Employer's Documents in the Contract (including in the Specification and Drawings or any approval given or withheld by the Employer under the Contract), the Contractor warrants that:
  - (i) the Works will be executed with all the skill and care to be expected of appropriately qualified and experienced contractors with experience in performing works and services of a similar size, type, nature, scope and complexity to the Works and in accordance with Industry Best Practices;
  - (ii) the Works will be executed in accordance with the Contract, for the Contract Price, and by the Time for Completion and that it will furnish all parts of the Works and all materials and services necessary to make the Works fully and operationally complete as specified in the Contract;

- (iii) when the Works are completed they shall be fit for such purposes for which the Works are intended as are specified in the Specification;
- (iv) the Works will be executed with the highest regard for safety and protection of the environment and so that the Works are capable of being operated and utilized in accordance with all applicable Laws and the Contract;
- (v) the Works and the Plant and Materials utilize proven technology, being a technology that has operated commercially at other similar works and which, as of the Contract Effective Date is capable of being insured on a reasonable commercial basis;
- (vi) the Plant and Materials shall, when first used during the performance of the Works, be new and unused and shall also be, in accordance with the Contract and of a quality reasonably expected in the international construction and design industries, free from material defects and deficiencies of any kind, and free from any encumbrance or Security Interest and shall conform to the requirements set out in the Contract;
- (vii) the Works will comply with all applicable Laws and the requirements of all relevant Authorities at the time the Works are Complete; and
- (viii) the warranties provided under this Sub-Clause 17.4 survive the completion, termination or expiry of the Contract.

## 17.5 Liabilities and Indemnities

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- (a) The Employer and the Contractor shall be responsible for their respective obligations under the Contract and indemnify the other party for damages it may have suffered as a result of the breaching party's acts and omissions. Any claim and dispute between the Parties in this regard shall be addressed in accordance with Clause 20 [*Claims*] and Clause 21 [*Dispute Resolution*].
- (b) In defending the Employer, the Contractor shall not enter into any settlement agreement, or agree to any settlement or other compromise, or settlement of any claim, without the prior written approval of the Employer.
- (c) Neither Party shall be liable to the other Party for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, except as may be provided for under the Contract.
- (d) This Sub-Clause 17.5 shall not limit liability in any case of fraud, gross negligence, deliberate default or reckless misconduct by the defaulting Party.

## 18 FORCE MAJEURE

### 18.1 Force Majeure

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- (a) Subject to Sub-Clause 18.1 (b), Force Majeure may include, but is not limited to, the following events or circumstances, so long as the conditions set out in Sub-Clause 1.1 [Definitions] for Force Majeure are satisfied:
  - (i) war (whether war be declared or not), invasion or act of foreign enemies within the Country;
  - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war within the Country;
  - (iii) munitions of war, ionizing radiation or contamination by radio-activity within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radioactivity;
  - (iv) in-country epidemic or pandemic declared by health Authorities;
  - (v) measures and/or actions taken by Authorities, which prevent the execution of Works under the Contract. Such measures and/or actions do not constitute a Force Majeure event if the Authority's action is due to the Contractor's failure to comply with applicable Laws, regulations or procedures; or
  - (vi) earthquake, hurricane, typhoon, tsunami, volcanic activity, fire or other natural disaster that is outside the normal range for that place at that time of year, but excluding any other weather conditions which should reasonably have been foreseen by the Party claiming Force Majeure and which were not exceptionally adverse.
- (b) The Contractor acknowledges and agrees that, with respect to any of its obligations under the Contract, the Contractor will be performing such obligations in areas in which the United Nations, including the Employer, is engaged in, preparing to engage in, or disengaging from peacekeeping, humanitarian or disaster recovery or similar operations and any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, shall not, in and of itself, constitute a Force Majeure event, unless the conditions set out in Sub-Clause 1.1 [Definitions] for Force Majeure are satisfied.

### 18.2 Notice of Force Majeure

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

- (c) The Affected Party shall, having given a Notice, be excused from performance of such obligations for so long as such Force Majeure prevents it from performing them.
- (d) Notwithstanding any other provision of this Clause 18 [Force Majeure], Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.
- (e) Notwithstanding any other provision of this Clause 18 [Force Majeure], a Force Majeure shall not relieve any Party from an obligation which arose before the occurrence of that event, including the care of the Works prior to the issuance of a Taking-Over Certificate.

### **18.3 Duty to Minimize Delay**

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

### **18.4 Consequences of Force Majeure**

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- (a) If the Contractor is prevented from performing any of its obligations under the Contract by Force Majeure, of which a Notice has been issued under Sub-Clause 18.2 [Notice of Force Majeure], and the Works are delayed and/or suspended by reason of such Force Majeure, the Contractor shall be entitled, subject to Sub-Clause 20.3 [Contractor's Claims] to an EOT, if the Time for Completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion].
- (b) After receiving the Notice under Sub-Clause 18.2 [Notice of Force Majeure] and subject to Sub-Clause 20.3 [Contractor's Claims], the Engineer shall proceed in accordance with Sub-Clause 3.5 [Agreement or Determination] to agree or determine the matters described in Sub-Clause 18.4 (a).
- (c) Without prejudice to the Contractor's rights to Sub-Clause 17.3 [Consequences of Employer's Risks], the Contractor shall not be entitled to reimbursement of any additional Cost incurred and/or any corresponding adjustment to the Contract Price resulting from Force Majeure.
- (d) For the avoidance of doubt, if the Contractor is instructed by the Engineer to implement mitigation measures related to Force Majeure, these shall be deemed to have been given under Sub-Clause 13.1 [Right to Vary].

## 18.5 Force Majeure Affecting Subcontractor

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- (a) If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from Force Majeure, on terms additional to or broader than those specified in this Clause 18 [Force Majeure], such additional or broader Force Majeure events or circumstances shall not excuse the Contractor's non-performance or entitle it to relief under this Clause 18 [Force Majeure].

## 18.6 Optional Termination and Payment

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- (a) If the execution of substantially all the Works in progress is prevented for a continuous period of eighty-four (84) days by reason of Force Majeure of which Notice has been given under Sub-Clause 18.2 [Notice of Force Majeure], or for multiple periods which total more than one hundred and forty (140) days due to the same Force Majeure, then either Party may give to the other Party a Notice of termination of the Contract. In this event, the termination shall take effect fourteen (14) days after the receipt of the Notice by the other Party. The Contractor shall then proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].
- (b) After the date of termination, the Contractor shall, as soon as practicable, submit to the Engineer (with a copy to the Employer) detailed supporting particulars of the value of the work executed up to the date of termination which shall include:
- (i) the amounts payable for any work carried out for which a price is stated in the Contract and for which the Contractor has not been paid including variations and determinations made under the Contract;
  - (ii) the Cost for Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery. This Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
  - (iii) any other Cost which in the circumstances was reasonably and properly incurred by the Contractor in the expectation of completing the Works;
  - (iv) the reasonable and properly incurred Cost for the removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's place of business in its country (or to any other destination at no greater cost); and
  - (v) the reasonable and properly incurred Cost for the repatriation of the Contractor's Personnel employed wholly in connection with the Works at the date of termination.
- (c) The Engineer shall then proceed under Sub-Clause 3.5 [Agreement or Determination] to agree or determine the value of work done at the date of termination. The Engineer shall issue a Payment Certificate for the amount so agreed or determined in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificate], without the need for the Contractor to submit a Statement.

## 18.7 Release from Performance under the Laws

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- (a) Notwithstanding any other provision of the Contract, either Party shall by Notice inform the other Party of any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) that arises which:
  - (i) makes it impossible or unlawful for either or both of the Parties to fulfil its or their contractual obligations (despite such Affected Party using Industry Best Practices to overcome and/or minimize such circumstances); or
  - (ii) under Laws, entitles the Parties to be released from further performance of the obligations under the Contract.
- (b) Upon receiving or issuing such notice (as the case may be) under Sub-Clause 18.7 (a), the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine these matters. Where it is determined by the Engineer that it is impossible or unlawful for a Party or the Parties to complete their contractual obligations or that the Laws entitle the Parties to be released from such obligations:
  - (i) the Parties shall be discharged from further performance of obligations, without prejudice to the rights of either Party in respect of any previous breach of the Contract; and
  - (ii) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 18.6 [*Optional Termination and Payment*] if the Contract had been terminated under that Sub-Clause.

# 19 INSURANCE

## 19.1 Extent of Cover

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- (a) The Employer shall procure and maintain at all times as valid and enforceable, insurances as described in Schedule 3.10 [*Insurance Requirements*], if any, for the periods and requirements set out therein.
- (b) The Contractor shall at a minimum procure and maintain at all times valid and enforceable insurances described in Schedule 3.10 [*Insurance Requirements*] as “Contractor Insurances” for the periods and requirements as set out therein. The insurances required to be provided under this Sub-Clause 19.1 are the minimum required by the Employer, and the Contractor may, at the Contractor’s own cost, add such other insurances that the Contractor may deem prudent to obtain.
- (c) The Contractor shall, on or prior to the Commencement Date, effect and thereafter maintain the following valid and enforceable insurances in the joint names of the Parties (to the extent possible), as applicable:
  - (i) Construction all risks insurance: for loss and damage to the Works, Materials, Plant, Contractor’s Documents and the Contractor’s Equipment for not less than the full reinstatement cost, including the costs of demolition, removal of debris and professional fees and profit;
  - (ii) Public liability insurance: for liability of both Parties for loss, damage, death or injury to third parties or their property arising out of the Contractor’s performance of the obligations under the Contract, including the Contractor’s liability for damage to the Employer’s property other than the Works;
  - (iii) Workers’ compensation insurance: against liability for claims, damages, losses and expenses on no-fault basis or negligence (including legal fees and expenses) arising out of the execution of the Works in respect of injury, sickness, disease or death of any Contractor’s Personnel. The Employer and the Engineer shall also be indemnified, except losses and claims to the extent that arise from any act or neglect of the Employer or of the Employer’s Personnel; and
  - (iv) all other insurances required by Laws, trade associations and industry bodies in the Country and those identified in Schedule 3.10 [*Insurance Requirements*].
- (d) If stated in Schedule 3.10 [*Insurance Requirements*], the Contractor shall also effect and maintain professional indemnity insurance in relation to the Contractor’s obligations concerning the design of the part of Works to the extent specified in the Contract.
- (e) The Contractor shall also procure and maintain at all times any other valid and enforceable insurances as may be required by Laws and cause its Subcontractors to effect and maintain at all times such valid and enforceable insurance(s).
- (f) Unless otherwise instructed by the Employer, the “Contractor Insurances” shall be placed with insurers of good repute and with a financial rating of not lower than Standard & Poor’s BBB, Moody’s Baa or A.M.Best BBB+.

## 19.2 Arrangements

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- (a) A Party shall immediately notify the other Party in writing of the occurrence of any of the following events:
  - (i) any circumstance which may lead to the cancellation, non-renewal, suspension or impairment of any insurance taken out pursuant to this Clause 19 [*Insurance*];
  - (ii) an insurer denying coverage or liability for a claim;
  - (iii) an insurer asserting orally or in writing, that one (1) or more of the insurances is void, voidable or otherwise unenforceable; or
  - (iv) becoming aware of any circumstances which might lead to one (1) or more of the insurances becoming void, voidable or unenforceable.
- (b) The Parties shall each provide the other with not less than twenty-eight (28) days Notice in advance of the cancellation, non-renewal, suspension or impairment of any of the insurances taken out pursuant to the Sub-Clause 19.1 [*Extent of Cover*] or any material change to the terms and conditions of such insurances.
- (c) The Contractor shall, at the request of the Employer, disclose the following information to the insurers in relation to the insurances to be procured by the Employer:
  - (i) all information which the Contractor acting in accordance with Industry Best Practices believes that the insurers will require in their analysis of any risk;
  - (ii) all information which the insurers and Employer specifically require to be disclosed;
  - (iii) all other information which the Contractor acting in accordance with Industry Best Practices and in good faith could reasonably consider to be material to the relevant insurance cover; and
  - (iv) all information in respect of any problem or delay that is deemed material to the insurance in the opinion of the Employer.
- (d) The Contractor shall provide all such information in a timely manner so as to enable the Employer to comply with its obligations of disclosure to its insurers.
- (e) The Contractor shall keep the Employer informed of any material changes in its methods or procedures of working which may affect insurance cover. Neither Party shall make any material alteration to the terms of any insurance without the prior written consent 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.
- (f) The Contractor shall comply fully with, and shall require its Subcontractors to comply fully with, all procedures and services including completion of all necessary applications for insurance, prompt and full compliance with all audit requests and claim reporting procedures, and full participation in and compliance with safety and loss control programmes implemented by, or at the request of the Employer.

- (g) Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage.
- (h) The insurances referred to in Sub-Clause 19.1 [*Extent of Cover*] shall:
  - (i) name or firmly indicate the other Party as co-insured;
  - (ii) contain a clause waiving the insurers' subrogation rights against each insured party, its employees and agents (except where such rights are due to a vitiating act); and
  - (iii) provide that the Employer shall receive a written notice from the insurer not less than fourteen (14) days prior to any cancellation, non-renewal or amendment.
- (i) The Contractor shall, as soon as reasonably practicable, submit to the Employer copies of cover notes and/or a broker letter in evidence that:
  - (i) the insurances to be procured and maintained pursuant to Sub-Clause 19.1 [*Extent of Cover*] have been affected; and
  - (ii) all premiums due have been paid.
- (j) If the Contractor or the Employer is a co-insured to an insurance policy, it shall be entitled to:
  - (i) receive, as soon as reasonably practicable, a copy of the policy documents, including the policy wording and any endorsements; and
  - (ii) inspect during ordinary business hours such original policies of insurances.
- (k) Renewal certificates in relation to such insurances shall be obtained as and when necessary and copies thereof (certified in a manner acceptable to the other Party) shall be forwarded to the other Party as soon as possible but in any event at least twenty-eight (28) days before the renewal date.
- (l) Subject to Sub-Clause 19.2 (o) to (r), the Employer shall be responsible for handling any claims under the insurance that are Employer insurances and the Contractor shall be responsible for handling any claims under the Contractor Insurances.
- (m) The Contractor shall give the Employer, and the insurer (as may be required by the applicable insurance) Notice immediately upon:
  - (i) the occurrence of any loss which shall or may exceed the deductible on a Contractor Insurance policy; and
  - (ii) becoming aware of any circumstances which might give rise to a loss which will exceed the deductible of the applicable insurance.
- (n) Any notice given by the Contractor shall include full details of the nature of the loss or the circumstances which may give rise to the loss, its amount and the steps that have been taken, or will be taken in respect of such loss or circumstances subject to the insurer's consent (as may be required under the applicable insurance). The Contractor shall keep the Employer fully informed in respect of any material developments as soon as they occur.

- (o) The Contractor shall not, without obtaining the prior written consent of the Employer and the insurer (as may be required under the applicable insurance):
  - (i) make any admission of liability to a third party;
  - (ii) enter into any negotiation to settle or compromise a claim under a Contractor Insurance;
  - (iii) enter into a settlement or compromise a claim on the Contractor Insurances; or
  - (iv) commence litigation or arbitration proceedings.
- (p) In handling a claim with an insurer, the Contractor shall keep the Employer fully informed and seek the cooperation of the Employer and its professional advisors.
- (q) The insurances required under Sub-Clause 19.1 [*Extent of Cover*] shall be primary to and not in excess to (except in respect of any layers of third party cover effected specifically for the Works) or contributing with any other insurance maintained by any insured.
- (r) Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve the Contractor of its liabilities and obligations under the Contract. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities.
- (s) Where there is a shared liability the loss shall be borne by each Party in proportion to each Party's liability, provided the non-recovery from insurers has not been caused by a breach of this Clause 19 [*Insurance*] by the Contractor or the Employer. In the event that non-recovery from insurers has been caused by such a breach, the defaulting Party shall bear the loss suffered.
- (t) The insurances required under Sub-Clause 19.1 [*Extent of Cover*] shall be procured with insurers, and in terms, approved in writing by the Employer. Such approval shall not be unreasonably withheld or delayed by the Employer.
- (u) The Contractor shall be responsible under any of the insurance policies required under Sub-Clause 19.1 [*Extent of Cover*] for any deductible, fees and other costs or failure to recover in whole or part, in which case the Contractor shall indemnify the Employer in respect of such deductible, fees and other costs or failure to recover.
- (v) Any comment, review or approval by the Employer or the Engineer under Sub-Clause 19.1 [*Extent of Cover*] shall not relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with this Clause 19 [*Insurance*] or otherwise under the Contract. The Contractor will be deemed to have undertaken its own analysis of the suitability, enforceability and adequacy of all insurance policies procured under Sub-Clause 19.1 [*Extent of Cover*]. The Contractor acknowledges and agrees that neither the Employer nor the Engineer will be liable to the Contractor arising out of or in connection with any comment, review or no-objection given by them under this Clause 19 [*Insurance*].

- (w) If the Contractor fails to procure or maintain at all times any of the insurances required under Sub-Clause 19.1 [*Extent of Cover*], or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause 19.2, the Employer may, at its option and without prejudice to any other right or remedy, after having notified the Contractor in writing, pay any premiums or take any such other steps as may be required to procure or maintain such insurance in force at the expense of the Contractor.
- (x) The obligations in the Clause 19 [*Insurance*] shall survive the completion, termination or expiry of the Contract.

### **19.3 Failure to Insure**

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- (a) If the Contractor fails to procure or maintain at all times any of the insurances required under Sub-Clause 19.1 [*Extent of Cover*], or fails to provide satisfactory evidence and copies of policies in accordance with Sub-Clause 19.2 [*Arrangements*], the Employer may, at its option and without prejudice to any other right or remedy, terminate the Contract immediately by Notice of termination in accordance with Sub-Clause 15.2 [*Termination by Employer*].

## 20 CLAIMS

### 20.1 Claims

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- (a) A Claim may arise:
- (i) if the Employer considers that it is entitled to any additional payment from the Contractor (or reduction in the Contract Price) and/or to an extension of the DNP;
  - (ii) if the Contractor considers that the Contractor is entitled to any additional payment from the Employer and/or EOT; or
  - (iii) if either Party considers that it is entitled to another entitlement or relief against the other Party. Such other entitlement or relief may be of any kind whatsoever (including in connection with any certificate, determination, instruction, Notice, opinion or valuation of the Engineer) except to the extent that it involves any entitlement referred to in Sub-Clause 20.1 (a) (i) and/or (ii).
- (b) In the case of a Claim under Sub-Clause 20.1 (a) (i) and/or (ii), Sub-Clause 20.2 [*Employer's Claims*] and Sub-Clause 20.3 [*Contractor's Claims*] shall apply respectively.
- (c) In the case of a Claim under Sub-Clause 20.1 (a) (iii), where the other Party or the Engineer has disagreed with the requested entitlement or relief (or is deemed to have disagreed if he/she does not respond within a reasonable time), a Dispute shall not be deemed to have arisen but the claiming Party may, by giving a Notice refer the Claim to the Engineer and Sub-Clause 3.5 [*Agreement or Determination*] shall apply. This Notice shall be given as soon as practicable after the claiming Party becomes aware of the disagreement (or deemed disagreement) and includes details of the claiming Party's case and the other Party's or the Engineer's disagreement (or deemed disagreement).

### 20.2 Employer's Claims

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- (a) If the Employer considers itself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the DNP, the Employer or the Engineer shall give Notice and particulars to the Contractor. However, Notice is not required for payments due under Sub-Clause 4.18 [*Electricity, Water and Gas*], under Sub-Clause 2.4 [*Employer-Supplied Materials, Employer's Equipment and Employer's Facilities*], or for other services requested by the Contractor.
- (b) The Notice shall be given as soon as practicable after the Employer became aware of the event or circumstances giving rise to the Claim. A Notice relating to any extension of the DNP shall be given before the expiry of such period.
- (c) The particulars shall specify the Clause or other basis of the Claim, and shall include substantiation of the amount and/or extension to which the Employer considers itself to be entitled in connection with the Contract.

- (d) The Engineer shall then proceed in accordance with Sub-Clause 3.5 [Agreement or Determination] to agree or determine:
- (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or
  - (ii) the extension (if any) of the DNP in accordance with Sub-Clause 11.3 [Extension of Defects Notification Period].
- (e) This amount to which the Employer is entitled to shall be included as a deduction in the Contract Price and Payment Certificates. The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise Claim against the Contractor, in accordance with this Sub-Clause 20.2.

## 20.3 Contractor's Claims

---

- (a) If the Contractor considers itself to be entitled to an EOT and/or any additional payment, Cost and/or other entitlements or relief from obligations, under any Clause of these Conditions or otherwise arising out of or in connection with the Contract, then the Contractor shall give a Notice of Claim stating that it is a notice pursuant to this Sub-Clause 20.3 to the Engineer, describing the event or circumstance giving rise to the Claim. The Notice shall be given as soon as practicable, and not later than fourteen (14) days after the Contractor becomes aware, or should have become aware (acting in accordance with Industry Best Practices) of the event or circumstance.
- (b) If the Contractor fails to give a Notice of Claim duly completed and signed within fourteen (14) days of the event arising, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment or Cost and the Contractor shall be deemed to have waived its entitlement to make such Claim, and the Employer shall be discharged from all liability arising out of or in connection with the Claim and the Contractor shall comply with its obligations to perform the Works by the Time for Completion and for the Contract Price.
- (c) Where an event has a continuing effect or where the Contractor is unable to determine whether the effect of an event will actually cause a delay to the progress of the Works or entitle it to any additional payment or Cost and/or other relief from its obligations, so that it is not practicable for the Contractor to give notice in accordance with Sub-Clause 20.3 (a), the Contractor shall immediately but no later than fourteen (14) days after the event has first arisen, give Notice to the Engineer, to that effect with reasons and interim written particulars (including details of the likely consequences of the event on the progress of the Works and an estimate of the likelihood or likely extent of the delay and/or resultant costs) and such Notice shall be submitted in place of the notice required under Sub-Clause 20.3 (a). The Contractor shall then submit to the Engineer, at intervals of thirty (30) days, further interim written particulars until the actual event or delay caused (if any) is, or should be, ascertainable, whereupon the Contractor shall as soon as practicable but in any event within fourteen (14) days give a final Notice of Claim to the Engineer including the particulars set out in Sub-Clause 20.3 (a).

- (d) If the Contractor fails to give the initial notice, the further interim particulars and the final Notice of Claim duly completed and signed including all the particulars required within the times stated in Sub-Clause 20.3 (c), then the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment or Cost, the Contractor shall be deemed to have waived its entitlement to make such claim, and the Employer shall be discharged from all liability arising out of or in connection with the claim and the Contractor shall comply with its obligations to perform the Works by the Time for Completion and for the Contract Price. Otherwise, the following provisions of this Sub-Clause 20.3 shall apply.
- (e) The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, as relevant to such event or circumstance.
- (f) The Contractor shall keep such contemporary records as shall be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer shall, after receiving any notice under this Sub-Clause 20.3, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.
- (g) Within forty-two (42) days after the Contractor has given a Notice of Claim in accordance with either Sub-Clause 20.3 (a) or (c), the Contractor shall give to the Engineer a fully detailed Claim which shall include full supporting particulars of the basis of the Claim including:
  - (i) the material circumstances of the event including the cause or causes;
  - (ii) the legal basis of the Claim;
  - (iii) the nature and extent of any delay;
  - (iv) the nature and extent of any resultant additional Cost;
  - (v) the corrective action already undertaken or to be undertaken;
  - (vi) the effect on the critical path noted on the Programme, including any milestone dates;
  - (vii) the period, if any, by which in its opinion the Time for Completion should be extended;
  - (viii) the adjustment, if any, which in its opinion should be made to the Contract Price; and
  - (ix) a statement that it is a further Notice pursuant to this Sub-Clause 20.3.
- (h) If the Contractor fails to give a final Notice of Claim in accordance with Sub-Clause 20.3 (g), the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment or Cost, the Contractor shall be deemed to have waived its entitlement to make such Claim, and the Employer shall be discharged from all liability arising out of or in connection with the Claim and the Contractor shall comply with its obligations to perform the Works by the Time for Completion and for the Contract Price.

- (i) Within forty-two (42) days after receiving the fully detailed Claim in accordance with Sub-Clause 20.3 (g), or within such other period as may be agreed in writing between the Parties, the Engineer shall respond with approval, or with disapproval and detailed comments. The Engineer may also request any necessary further particulars.
- (j) The Engineer shall proceed in accordance with Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine:
  - (i) the EOT (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*]; and/or
  - (ii) the additional payment of Cost (if any) to which the Contractor is entitled under the Contract.
- (k) The requirements of this Sub-Clause 20.3 are in addition to those of any other clause which shall apply to a claim. If the Contractor fails to comply with this or another Sub-Clause of the Contract in relation to any claim, the Time for Completion shall not be extended and the Contractor shall not be entitled to additional payment and/or other relief under the Contract or otherwise in relation to such claim.
- (l) Nothing in this Sub-Clause 20.3 creates an additional right or entitlement of the Contractor to an EOT, additional payment and/or relief from obligations, where such right or entitlement did not otherwise exist under the Contract.
- (m) Despite any other provision of the Contract, the Contractor shall use its best endeavours, acting in accordance with Industry Best Practices, to minimize the effects of any event or circumstance which has or may adversely affect the Works, increase the Contract Price or delay the execution of the Works.

## 21 DISPUTE RESOLUTION

### 21.1 Right to Joinder

---

- (a) The Contractor and the Employer agree to resolve Disputes under or in relation with the Contract in accordance with this Clause 21 [*Dispute Resolution*].
- (b) They further agree that if the Employer, after the signature of this Contract, enters into a subsequent contract with another party that is related to the Works, then the other party (such as another consultant or a works contractor) may become party to this Clause 21 [*Dispute Resolution*] by incorporation by reference in the subsequent contract entered into between the Employer and the other party. In this case, the Employer shall inform the Contractor in writing of such incorporation by reference.

### 21.2 Amicable Resolution

---

- (a) In the event of a Dispute between the Parties, either Party may provide Notice of such Dispute to the respective representative(s) of the other Party(ies). That Notice shall:
  - (i) set out the legal and contractual basis of the Dispute;
  - (ii) set out the facts upon which the Dispute is based;
  - (iii) have annexed copies of correspondence and any relevant background material;
  - (iv) contain detailed particulars of the quantification of the Dispute; and
  - (v) be duly signed by the authorized signatory of the Party issuing the Notice.
- (b) Upon receipt of such Notice, the Party that has received the Notice may join any other party(ies) that may have become party to this Clause 21 [*Dispute Resolution*] by incorporation by reference under Sub-Clause 21.1 [*Right to Joinder*] with copy to the Party that provided the Notice.
- (c) Then, the Parties' representatives shall attempt to resolve the Dispute amicably. If the Engineer and the Contractor's Representative are unable to resolve the Dispute amicably within twenty-eight (28) days of receipt of the Notice, the Dispute shall be referred by either Party to Senior Representatives of the Parties, to be designated in writing by the Parties at that time.
- (d) If the Senior Representatives of the Parties are unable to resolve the Dispute amicably within twenty-eight (28) days of such reference of a Dispute, the Dispute shall be finally resolved, at the request of either Party, through arbitration in accordance with the provisions of Sub-Clause 21.3 [*Arbitration*].

## 21.3 Arbitration

---

- (a) Any Disputes between the Parties arising out of or in connection with the Contract and the contracts set out in Sub-Clause 21.1 [*Right to Joinder*] shall be finally resolved, at the request of either Party, through arbitration in accordance with the United Nations Commission on International Trade Law Arbitration Rules (UNCITRAL) then in effect (the “Procedural Rules”).
- (b) Any Party to this Clause 21 [*Dispute Resolution*] (either directly or under Sub-Clause 21.1 [*Right to Joinder*]) may, either separately or together with any other party to this Clause 21 [*Dispute Resolution*], initiate arbitration proceedings against one or multiple parties to this Clause 21 [*Dispute Resolution*].
- (c) Any Party to this Clause 21 [*Dispute Resolution*] named as Respondent in a Notice of Arbitration may join any other party(ies) that may have become party to this Clause 21 [*Dispute Resolution*] by incorporation by reference under Sub-Clause 21.1 [*Right to Joinder*] in the arbitration by giving a Notice of Joinder to the other party(ies) within thirty (30) days from the receipt by such Respondent of the relevant Notice of Arbitration, together with its response to the Notice of Arbitration to the Party that requested the arbitration. In this case, the party(ies) that received the Notice of Joinder shall have thirty (30) days to respond to the Notice of Arbitration and the Notice of Joinder before the proceedings can continue.
- (d) There shall be three (3) arbitrators, selected according to the procedure set out in Sub-Clauses 21.3 (e) to 21.3 (g).
- (e) If the Notice of Arbitration names only one (1) Claimant and one (1) Respondent and no Party has exercised its right to joinder in accordance with Sub-Clause 21.1 [*Right to Joinder*], each Party shall appoint one (1) Arbitrator within fourteen (14) days after the expiry of the period during which Parties can exercise their right to joinder. The two (2) Arbitrators shall appoint the third Arbitrator, who shall act as chairperson.
- (f) If more than two (2) Parties are named in the Notice of Arbitration, or at least one (1) Party exercises its right to joinder, the Claimant(s) shall (jointly) appoint one (1) Arbitrator and the Respondent(s) shall (jointly) appoint the other Arbitrator, both within fourteen (14) days after the expiry of the period during which the Parties can exercise their right to joinder. If the Claimant(s) and the Respondent(s) appoint the arbitrators as provided, the two (2) Arbitrators shall then appoint the third Arbitrator, who shall act as chairperson. If one (1) or both of the Parties fail to appoint an Arbitrator as provided, the Secretary General of the Permanent Court of Arbitration shall, upon the request of any party, appoint all three (3) arbitrator(s) on their behalf and designate one (1) of them to act as chairperson.
- (g) If more than one (1) arbitration is initiated under this Clause 21 [*Dispute Resolution*] (either directly or under Sub-Clause 21.1 [*Right to Joinder*]) and any Party thereto contends that two (2) or more arbitrations are substantially related and that the issues should be heard in one (1) proceeding, the arbitrators selected in the first filed of such arbitrations shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before those Arbitrators.
- (h) The arbitration shall be conducted delocalized without a place of arbitration

and shall not be subject to the laws and jurisdiction of any country. In the event of an in-person hearing, the Parties may agree on the physical location of the hearing or, in the absence of such an agreement between the Parties, the arbitral tribunal may decide on the physical location of the hearing. However, an agreement or decision on such physical location shall not constitute an agreement or decision on a place of arbitration and shall not lead to the application of the laws and jurisdiction of any country, nor shall it be construed as a waiver, express or implied, of the privileges and immunities of the United Nations, including its subsidiary organs.

- (i) The language of the arbitration shall be English.
- (j) The decisions of the Arbitrators shall be guided by the general principles of international commercial law as codified in the International Institute for the Unification of Private Law (UNIDROIT) in effect at the Contract Effective Date, as the Law Applicable to the Contract.
- (k) The Arbitrators shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of the United States Federal Reserve Bank of New York's Secured Overnight Financing Rate (SOFR) then prevailing, and any such interest shall be simple interest only.
- (l) The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such Dispute.
- (m) The arbitral proceedings and any information and documents relating to these proceedings shall be regarded as confidential, subject to Sub-Clause 1.11 [*Confidential Nature of Documents and Information*].

## **21.4 Dispute Resolution Not to Delay Execution of the Works**

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- (a) Despite any activation of the dispute resolution procedures under this Clause 21 [*Dispute Resolution*], the Contractor shall continue to execute the Works and its other obligations under or in connection with the Contract.

## **21.5 Survival**

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- (a) This Clause 21 [*Dispute Resolution*] survives the completion, expiry or termination of the Contract.

3

# **CONSTRUCTION CONTRACT FOR MAJOR WORKS**

## **PARTICULAR CONDITIONS OF CONTRACT**



# PARTICULAR CONDITIONS OF CONTRACT

## Part 1: Amended Clauses

The General Conditions are amended in the following manner (if nothing is stated, then no amended conditions apply):

No.	Clause/Sub-Clause No. and Title	Amended General Condition
1		
2		
3		
4		
5		

## Part 2: Additional Clauses

The General Conditions are supplemented by the inclusion of the following additional conditions (if nothing is stated, then no additional conditions apply):

No.	Clause/Sub-Clause No. and Title	Additional General Condition
1		
2		
3		
4		
5		



4

# **CONSTRUCTION CONTRACT FOR MAJOR WORKS**

## **SCHEDULES**



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# SCHEDULE 1: CONTRACT DETAILS

## 1.1 Details Provided by the Employer

Sub-Clause No.	Description	Details
1.3	Employer's address for communication	<p><b>Name:</b>  <input type="text"/></p> <p><b>Position title:</b>  <input type="text"/></p> <p><b>Address:</b>  <input type="text"/></p> <p><b>Email address:</b>  <input type="text"/></p> <p><b>Telephone/Mobile number:</b>  <input type="text"/></p> <p><i>With copy to:</i></p> <p><b>Name:</b>  <input type="text"/></p> <p><b>Position title:</b>  <input type="text"/></p> <p><b>Address:</b>  <input type="text"/></p> <p><b>Email address:</b>  <input type="text"/></p> <p><b>Telephone/Mobile number:</b>  <input type="text"/></p>
1.3	Agreed system of electronic transmission	<p><input type="checkbox"/> <b>Email:</b>  <input type="text"/></p> <p><input type="checkbox"/> <b>If others, specify:</b>  <input type="text"/></p>
1.14	Description of parts of the Works that shall be designated as a Section for the purposes of the Contract	<p><b>Section 1:</b> <input type="text"/></p> <p><b>Section 2:</b> <input type="text"/></p> <p><b>Section 3:</b> <input type="text"/></p>
3.1	Engineer	<p><b>Name:</b>  <input type="text"/></p> <p><b>Address:</b>  <input type="text"/></p> <p><b>Email address:</b>  <input type="text"/></p> <p><b>Telephone/Mobile number:</b>  <input type="text"/></p>
4.2	Performance Security amount	<input type="text"/> % of the Accepted Contract Amount and to be increased when Contract Price varies by 10%.

4.2	Currency of the Performance Security	<input type="text"/>
4.2	Permitted guarantors for Performance Security	<input type="checkbox"/> Bank or financial institutions approved by the Employer <input type="checkbox"/> Bank approved by the Employer
4.2	Release of Performance Security at issue of Taking-Over Certificate	<input type="checkbox"/> ___ % of Contract Price <input type="checkbox"/> Not applicable
4.4	Training	<input type="checkbox"/> Required <input type="checkbox"/> Not required
6.5	Normal working hours Normal working days	<input type="text"/> <input type="text"/>
8.2	Time for Completion	<b>For whole of the Works:</b> <input type="text"/> months/ <input type="text"/> days  <b>For Sections:</b> <b>Section 1:</b> <input type="text"/> months/ <input type="text"/> days <b>Section 2:</b> <input type="text"/> months/ <input type="text"/> days <b>Section 3:</b> <input type="text"/> months/ <input type="text"/> days
8.7	Delay Damages	<b>For whole of the Works:</b> <input type="checkbox"/> Amount per day: <input type="text"/> USD <input type="checkbox"/> <input type="text"/> % of the Accepted Contract Amount per day  <b>For Sections:</b> <b>Section 1:</b> <input type="checkbox"/> Amount per day: <input type="text"/> USD <input type="checkbox"/> <input type="text"/> % of the value of the Section per day  <b>Section 2:</b> <input type="checkbox"/> Amount per day: <input type="text"/> USD <input type="checkbox"/> <input type="text"/> % of the value of the Section per day  <b>Section 3:</b> <input type="checkbox"/> Amount per day: <input type="text"/> USD <input type="checkbox"/> <input type="text"/> % of the value of the Section per day
8.7	Aggregate maximum amount of Delay Damages	<input type="text"/> % of the Accepted Contract Amount
11.1	Defects Notification Period (DNP)	<input type="text"/> months
11.10	Latent Defect Period	<input type="text"/> Years

13.4	Percentage of overhead and profit for the Works under Provisional Sums	<input type="text"/> %
14.2	Advance payment amount	<input type="checkbox"/> <input type="text"/> % of the Accepted Contract Amount <input type="checkbox"/> <input type="text"/> USD <input type="checkbox"/> Not applicable
14.2	Permitted guarantors for advance payment	<input type="checkbox"/> Bank or financial institutions approved by the Employer <input type="checkbox"/> Bank approved by the Employer
14.2	Rate of advance payment deductions	<input type="text"/> % of the relevant value of the Works completed
14.2	Period of repayment of advance payment	<input type="checkbox"/> <input type="text"/> months <input type="checkbox"/> <input type="text"/> Interim Payment Certificates (IPCs)
14.3	Retention Money to be deducted from Interim Payment Certificate (IPC)	<input type="text"/> % of amounts as indicated in Sub-Clause 14.3 (b) (iii) of the General Conditions
14.3	Limit of Retention Money	<input type="checkbox"/> <input type="text"/> USD <input type="checkbox"/> <input type="text"/> % of Accepted Contract Amount or Contract Price as relevant
14.8	Annual rate of financing charges for delayed payment	<input type="text"/> %
14.9	Retention Money to be released at taking over of Works or Sections	<input type="checkbox"/> <input type="text"/> % of the Retention Money deducted for the value of the Section or whole of the Works, as applicable <input type="checkbox"/> Not applicable
14.15	Currencies of payment	Local currency: <input type="text"/> Foreign currency: <input type="text"/>
14.15	Proportions of currencies for payment	Local currency: <input type="text"/> % Foreign currency: <input type="text"/> %
14.15	Rate of exchange	<input type="text"/>

## 1.2 Details Provided by the Contractor

Sub-Clause No.	Description	Details
4.10	Accepted Contract Amount	<p><b>Amount in words:</b>  <input type="text"/></p> <p><b>Amount in figures:</b>  <input type="text"/></p>
1.3	Contractor's address for communication	<p><b>Name:</b>  <input type="text"/></p> <p><b>Position title:</b>  <input type="text"/></p> <p><b>Address:</b>  <input type="text"/></p> <p><b>Email address:</b>  <input type="text"/></p> <p><b>Telephone/Mobile number:</b>  <input type="text"/></p>
4.3	Contractor's Representative	<p><b>Name:</b>  <input type="text"/></p> <p><b>Position title:</b>  <input type="text"/></p> <p><b>Address:</b>  <input type="text"/></p> <p><b>Email address:</b>  <input type="text"/></p> <p><b>Telephone/Mobile number:</b>  <input type="text"/></p>

## SCHEDULE 2: PROJECT SPECIFIC INFORMATION

### 2.1 Project Details

*(Brief description of the project including title, location and background and any other relevant details for which the Works are being executed)*

### 2.2 Site Plan

- 1. General description of location and boundaries including the GPS coordinates:**

- 2. General description of the parts of the Site that will be provided access to and the times of access (in accordance with Sub-Clause 2.1 of the General Conditions):**

**3. Description of access routes, access timing and any access restrictions:****4. Description of other surrounding sites and any related interface issues:****5. Description of approved location for the Contractor's Site facilities including storage, accommodation, work areas and likewise and where Plant and Materials should be delivered and stored (in accordance with Sub-Clause 6.6 of the General Conditions and Sub-Clause 1.1 of General Conditions respectively):****6. Description of Site arrangements that is to be provided for the Employer's use:**

**7. Description of disposal areas (within the Site or outside the Site in accordance with Sub-Clause 7.8 of the General Conditions):**

**8. Description of any Site security requirements (in accordance with Sub-Clause 4.20 of the General Conditions):**

**9. Any other Site details:**

## SCHEDULE 3: REQUIREMENTS OF THE EMPLOYER

### 3.1 Scope of Works

1. Demolition:

2. New construction:

3. Renovation:

4. Design:

5. Supply of Plant and Materials:

## 3.2 Specifications

### 3.2.A List of the technical specifications

*(General and particular Specifications including testing/sampling details/performance based standards)*

### 3.2.B Tests after Completion

*(List of Tests after Completion required for assessment of performance)*

### 3.2.C Requirements for Contractor's design

**1. The background and purpose for the design:**

**2. Comprehensive and explicit scope of the Contractor's design:**

**3. Any pertinent details and technical information:**

**4. The standards, codes and regulatory requirements the Contractor shall use and comply with in the performance of its obligations under the Contract, for the design:**

**5. Key responsibility and liability matrix for the Contractor's design:****6. Health, safety, social and environmental (HSSE) requirements related to the Contractor's design (if any):****7. Quality Management System related to the Contractor's design:****8. The list of all deliverables and/or the Contractor's Documents related to the design:**

**9. Specific tools required such as software to be used to develop the design and the format of presentation of the Contractor's Documents:**

**10. Information on the design approval process (UNOPS and any other as required):**

### 3.2.D Quality Management System requirements

*(Description of Quality Management System requirements in accordance with Sub-Clause 4.8 of the General Conditions)*

### 3.2.E Health and safety requirements

*(Description of health and safety requirements in accordance with Sub-Clause 4.7 of the General Conditions. At a minimum, these requirements must include the UNOPS [minimum health and safety requirements for Contractors](#).)*

### 3.2.F Social and environmental requirements

(*Description of social and environmental requirements in accordance with Sub-Clause 4.17 of the General Conditions. At a minimum, these requirements must include the UNOPS [minimum social and environmental requirements for Contractors](#).*)

### 3.2.G Sustainability requirements

(*Description of sustainability requirements if any*)

### 3.2.H Permits and licences

*(List of permits and licences to be obtained by the Employer in accordance with Sub-Clause 1.12 of the General Conditions)*

### 3.2.I Publications on Site(s)

*(List of the publications to be retained on Site(s) in accordance with Sub-Clause 1.7 of the General Conditions)*

### 3.2.J Warranties

*(Description of the warranties required and their relevant validity period in accordance with Sub-Clause 4.23 of the General Conditions)*

No.	Description of items for which warranties are required	Validity period	Remarks (any other conditions)
1			
2			
3			
4			
5			

### 3.2.K Works not to be subcontracted

*(Description of works that are not permitted to be subcontracted)*

### 3.2.L Employer-Supplied Materials, Employer's Equipment and Employer's Facilities

*(Details of facilities, equipment, materials and other resources provided by the Employer in accordance with Sub-Clause 2.4 of the General Conditions)*

	No.	Description of the item	Rate	Unit
<b>Facilities</b>	1			
	2			
	3			
	4			
	5			
<b>Equipment</b>	1			
	2			
	3			
	4			
	5			
<b>Materials</b>	1			
	2			
	3			
	4			
	5			
<b>Utilities</b>	1			
	2			
	3			
	4			
	5			

### 3.2.M Training requirements

*(Details of trainings to be provided by the Contractor in accordance with Sub-Clause 4.4 of the General Conditions)*

#### Training Topic 1

- **Description:**
- **Details of trainees:**
- **Training duration/dates:**
- **Trainer requirements:**
- **Training facilities:**
- **Training materials:**

#### Training Topic 2

- **Description:**
- **Details of trainees:**
- **Training duration/dates:**
- **Trainer requirements:**
- **Training facilities:**
- **Training materials:**

#### Training Topic 3

- **Description:**
- **Details of trainees:**
- **Training duration/dates:**
- **Trainer requirements:**
- **Training facilities:**
- **Training materials:**

### 3.2.N As-built drawings, spare parts and operation and maintenance manuals

(Description of requirements and details such as formats and presentation, timelines, review and approval process of as-built drawings, spare parts and operation and maintenance manuals to be provided by the Contractor in accordance with Sub-Clauses 4.1 and 10.1 of the General Conditions)

### 3.2.O Auxiliary Works

(Description of Auxiliary Works in accordance with Sub-Clause 4.24 of the General Conditions)

No.	Description of the Auxiliary Works (including nature of works and location)	Date the Auxiliary Works are intended to be available	Works it should be connected with
1			
2			
3			
4			
5			

### 3.3 Drawings

(List of Drawings and the link to the Drawings)

### 3.4 Valuation and Payment

Sub-Clause No.	Description	Details
1.1	Applicable profit percentage for Cost Plus Profit	_____ %
12.2	Method of valuation	<input type="checkbox"/> Lump sum only <input type="checkbox"/> Measure and pay only <input type="checkbox"/> Combination of measure and pay and lump sum
14.3	Timing for application of Interim Payment Certificate	_____
14.6	Minimum amount of Interim Payment Certificate	Local currency: _____ Foreign currency: _____
14.1	Installments or schedule of payments (in the case of lump sum payments)	1. _____ : _____ % of Accepted Contract Amount 2. _____ : _____ % of Accepted Contract Amount 3. _____ : _____ % of Accepted Contract Amount
13.4	Provisional Sum Items	1. _____ : _____ USD 2. _____ : _____ USD 3. _____ : _____ USD
13.7	Adjustment for rises or falls in the cost of labour, Goods and other inputs to the Works	<input type="checkbox"/> Applicable (if applicable, refer to the Particular Conditions) <input type="checkbox"/> Not applicable
14.5	Plant and Materials listed for payment when delivered to Site	1. _____ 2. _____ 3. _____
14.5	Plant and Materials listed for payment when shipped to the Country	1. _____ 2. _____ 3. _____

### 3.5 Programme Requirements

(Description of the requirements associated with the Programme in accordance with Sub-Clause 8.3 of the General Conditions)

### 3.6 Nominated Subcontractors

(Details of Nominated Subcontractors in accordance with Sub-Clause 5.2 of the General Conditions)

No.	Description of Works or Services to be Subcontracted	Name of Nominated Subcontractor
1		
2		
3		
4		
5		

### 3.7 Limits to Engineer's Duties and Authority

*(Details of additional limitations other than those listed in Sub-Clause 3.1 of the General Conditions)*

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### 3.8 Key Personnel Requirements

*(Details of Key Personnel requirements in accordance with Sub-Clause 6.9 of the General Conditions)*

No.	Position description/Title	Required qualification	Area of experience required	Years of relevant experience required
1				
2				
3				
4				
5				

### 3.9 Equipment and Machinery Requirements

*(Details of equipment and machinery to be provided by the Contractor in accordance with Sub-Clause 4.16 of the General Conditions )*

No.	Description of item (Equipment or Machinery)	Units	Remarks
1			
2			
3			
4			
5			

### 3.10 Insurance Requirements

(Details in accordance with Sub-Clause 19.1 of the General Conditions)

Insurances	Additional details on scope of cover	Validity Period	Limit of liability
<b>Construction all risk insurance for Works, Plants and Materials</b>			
<b>Public liability insurance</b>			
<b>Workers' compensation insurance</b>			
<b>Insurances required by Laws and by local practice</b>			
<b>Any other insurances</b>			
<b>Professional indemnity insurance (if applicable)</b>			

# SCHEDULE 4: CONTRACT SCHEDULES FROM THE CONTRACTOR

## 4.1 Quantities and Rates

### 4.1.A Bill of Quantities

(Details including description, quantities and unit rates of items - including preliminaries and provisional sums)

### 4.1.B Daywork Schedule

(Details in accordance with Sub-Clause 13.5 of the General Conditions)

No.	Item description	Rates	Payment schedule (Daily/Weekly/Monthly)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

## 4.2 Programme

(In accordance with Sub-Clause 8.3 of the General Conditions)

## 4.3 Method Statement

(Description of the arrangements and methods which the Contractor proposes to adopt for carrying out the Works including the Health and Safety Management Plan, Quality Management System and Social and Environmental Plan)

## 4.4 Key Personnel

(Details of Key Personnel in accordance with Sub-Clause 6.9 of the General Conditions)

No.	Position description	Name	Qualification	Years of relevant experience
1				
2				
3				
4				
5				

## 4.5 Organizational Structure



## 4.6 Subcontractors

(Details of Subcontractors in accordance with Clause 5 of the General Conditions)

No.	Description of the Subcontractors Work or Services	Name of the Subcontractors
1		
2		
3		
4		
5		

## 4.7 Contractor's Equipment and Machinery

(Details of Contractor's Equipment and machinery in accordance with Sub-Clause 4.16 of the General Conditions)

No.	Description of item (Equipment or Machinery)	Units	Remarks
1			
2			
3			
4			
5			

## 4.8 Sources of Naturally Occurring Materials

(Details of any pre-identified sources of construction materials such as borrow pits, quarry sites, water sources, sand sources and likewise)

No.	Description of Materials	Description of identified sources and location
1		
2		
3		
4		
5		

## 4.9 Insurance Details and Insurances

(Details of insurances that are available in accordance with Sub-Clause 19.1 of the General Conditions)

### 1. Construction all risks insurance

Name of Insurer:	
Policy No.:	
Insured Amount:	
Renewal Date:	
Name of Broker:	
Contact details of Broker:	

### 2. Public liability insurance

Name of Insurer:	
Policy No.:	
Insured Amount:	
Renewal Date:	
Name of Broker:	
Contact details of Broker:	

### 3. Workers' compensation insurance

Name of Insurer:	
Policy No.:	
Insured Amount:	
Renewal Date:	
Name of Broker:	
Contact details of Broker:	

### 4. Insurances required by Laws and local practices

Name of Insurer:	
Policy No.:	
Insured Amount:	
Renewal Date:	
Name of Broker:	
Contact details of Broker:	

### 5. Any other insurance

Name of Insurer:	
Policy No.:	
Insured Amount:	
Renewal Date:	
Name of Broker:	
Contact details of Broker:	

**6. Professional indemnity insurance**

Name of Insurer:	
Policy No.:	
Insured Amount:	
Renewal Date:	
Name of Broker:	
Contact details of Broker:	

## SCHEDULE 5: FORMS

### 5.1 Form for Advance Payment Security

#### ADVANCE PAYMENT SECURITY

[On the letterhead of the institution issuing the security]

Date: \_\_\_ / \_\_\_ / \_\_\_

Advance Payment Security Number: [#####]

To: UNOPS  
[insert address of the Employer]

We have been informed that you have entered into a Contract dated [insert date] with [insert company name] (hereinafter called the "**Contractor**") titled [insert contract title] with Contract No. [insert number] for the [insert name of the project] for certain works and services (hereinafter called the "**Works**") to be undertaken by the Contractor (hereinafter called the "**Contract**").

Furthermore, we understand that, according to the conditions of the Contract, an advance is to be made against an Advance Payment Security. At the request of the Contractor, we irrevocably and unconditionally notwithstanding any objection which may be made by the Contractor and without any right of set-off or counterclaim, undertake with you that whenever you give written notice we agree to pay you on demand immediately any sum or sums not exceeding in total an amount of [insert amount(s) in words (and figures) with the relevant currency], (hereinafter called the "**Guaranteed Sum**") upon receipt by us of your first demand in writing declaring that the supplier is in breach of its obligation under the Contract with respect to the advance payment. It is a condition for any claim and payment under this guarantee to be made, that the advance payment referred to above must have been received by the Contractor.

This Guarantee for Advance Payment (hereinafter called the "**Guarantee**") is valid and will continue to be valid from the date of this letter and until the Guaranteed Sum has been recovered by you. The Guaranteed Sum shall reduce automatically proportionally to the part of the advance payment you have recovered according to the terms and conditions for the advance payment. This Guarantee will automatically expire upon us receiving from you certification that the Guaranteed Sum has been fully repaid by the Contractor.

Any payment by us to you in accordance with this Guarantee must be in immediately available and freely transferable [insert currency] free and clear of and without any deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, set off, counterclaims, deductions or withholdings of any nature whatsoever and by whomever imposed.

Our obligations under this Guarantee constitute direct primary, irrevocable and unconditional obligations. Additionally, our obligations do not require any previous notice to be given to the Contractor and do not require that any claim be made against the Contractor. Further, our obligations will not be discharged and will not be otherwise prejudiced or adversely affected by any:

- time, lenience or tolerance which you may grant to the Contractor;
- amendment, modification or extension which may be made to the Contract or the Works performed under the Contract;
- intermediate payment or other fulfilment made by us;
- change in the constitution or organization of the Contractor; or
- other matter or thing which in the absence of this provision would or might have that effect, except a discharge or amendment expressly made or agreed to by you in writing.

This Guarantee may not be assigned by you to any third party, without our prior written consent, which must not be unreasonably withheld. You must notify us in writing of any assignment, after which we must make any payment claimed under this Guarantee to the person, firm or company specified in the notice which will constitute a full and valid release by us in relation to that payment.

Any notice required by this Guarantee is deemed to be given when delivered (in the case of personal delivery) or forty-eight (48) hours after being dispatched by prepaid registered post or recorded delivery (in the case of letter) or as otherwise advised by and between the parties.

We agree that part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this security may be exchanged or surrendered without in any way impairing or affecting our abilities under this Guarantee without notice to us and without the necessity of any additional endorsement, consent or guarantee by us, provided, however, that the Guaranteed Sum does not increase.

No action, event or condition which by any applicable law may operate to free us from liability under this Guarantee will have any effect. We waive any right we may have to apply such law so that in all respects our liability under this Guarantee will be irrevocable and, except as stated in this Guarantee, unconditional in all respects.

Capitalized words and phrases used within this Guarantee have the same meanings as are given to them in the Contract.

This Guarantee is governed by the Uniform Rules for Demand Guarantees (2010 Revision), International Chamber of Commerce Publication No. 758, provided that the supporting statement under Article 15 (a), and Articles 34 and 35 are excluded. Any disputes arising out of or in connection with this Guarantee, or the breach, termination, or invalidity thereof will be referred to and finally resolved by arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules then in effect, the language of the proceedings being English.

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

IN WITNESS of which the [insert name of the institution issuing the guarantee] has duly executed this Guarantee on the date stated above.

**SIGNED** by

Name:

Title:

Institution:

Date:

Signature:

Name of witness (block letters):

Occupation of witness:

Address of witness:

Signature of witness:

ADDRESS FOR NOTICES [insert address]

## 5.2 Form for Performance Security

### PERFORMANCE SECURITY

[On the letterhead of the institution issuing the security]

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Performance Security Number: [#####]

To: UNOPS  
[insert address of the Employer]

We have been informed that you have entered into a Contract dated [insert date] with [insert company name] (hereinafter called the “**Contractor**”) titled [insert contract title] with Contract No. [insert number] for the [insert name of the project] for certain works and services (hereinafter called the “**Works**”) to be undertaken by the Contractor (hereinafter called the “**Contract**”).

We, irrevocably and unconditionally, undertake with you that whenever you give written notice to us stating that in your sole and absolute judgment the Contractor has failed to observe or perform any of the terms, conditions or provisions of the Contract on its part to be observed or performed, we will, notwithstanding any objection which may be made by the Contractor and without any right of set-off or counterclaim, immediately pay to you or as you may direct such an amount as you may in such notice require not exceeding the sum of [insert amount equivalent to 5 to 10 per cent of the Accepted Contract Amount in words (and figures) with the relevant currency] (hereinafter called the “**Guaranteed Sum**”).

This Performance Security (hereinafter called the “**Guarantee**”) is valid and will continue to be valid and enforceable from the date of this letter for the Guaranteed Sum until the issue of the Final Completion Certificate. The Guaranteed Sum may reduce to [insert amount equivalent to 2.5 to 5] per cent of the Contract Price upon the issue of the Taking-Over Certificate for the whole of the Works. This Guarantee will automatically expire on the issue of the Final Completion Certificate or, if a dispute arises under the Contract, after the final determination of that dispute, whichever occurs later. Promptly after expiration of the Guarantee, UNOPS shall return the Guarantee to the Contractor.

Any payment by us in accordance with this Guarantee must be in immediately available and freely transferable [insert currency] free and clear of and without any deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, set off, counterclaims, deductions or withholdings of any nature whatsoever and by whomever imposed.

Our obligations under this Guarantee constitute direct primary, irrevocable and unconditional obligations, do not require any previous notice to or claim against the Contractor and will not be discharged or otherwise prejudiced or adversely affected by any:

- time, lenience or tolerance which you may grant to the Contractor;
- amendment, modification or extension which may be made to the Contract or the Works executed under the Contract;
- intermediate payment or other fulfilment made by us;
- change in the constitution or organization of the Contractor; or
- other matter or thing which in the absence of this provision would or might have that effect, except a discharge or amendment expressly made or agreed to by you in writing.

This Guarantee may not be assigned by you to any third party, without our prior written consent, which must not be unreasonably withheld. You must notify us in writing of any assignment, after which we must make any payment claimed under this Guarantee to the person, firm or company specified in the notice which will constitute a full and valid release by us in relation to that payment.

Any notice required by this Guarantee is deemed to be given when delivered (in the case of personal delivery) or forty-eight (48) hours after being dispatched by prepaid registered post or recorded delivery (in the case of letter) or as otherwise advised by and between the parties.

We agree that part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this Guarantee may be exchanged or surrendered without in any way impairing or affecting our liabilities under this Guarantee without notice to us and without the necessity of any additional endorsement, consent or guarantee by us, provided, however, that the Guaranteed Sum does not increase or decrease.

No action, event or condition which by any applicable law may operate to free us from liability under this Guarantee will have any effect. We waive any right we may have to apply such law so that in all respects our liability under this Guarantee will be irrevocable and, except as stated in this Guarantee, unconditional in all respects.

Capitalized words and phrases used within this Guarantee have the same meanings as are given to them in the Contract.

This Guarantee is governed by the Uniform Rules for Demand Guarantees (2010 Revision), International Chamber of Commerce Publication No. 758, provided that the supporting statement under Article 15 (a), and Articles 34 and 35 are excluded. Any disputes arising out of or in connection with this Guarantee, or the breach, termination, or invalidity thereof will be referred to and finally resolved by arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules then in effect, the language of the proceedings being English.

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

IN WITNESS of which then [insert name of the institution issuing the Guarantee] has duly executed this Guarantee on the date stated above.

**SIGNED** by \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Institution:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name of witness (block letters):** \_\_\_\_\_

**Occupation of witness:** \_\_\_\_\_

**Address of witness:** \_\_\_\_\_

**Signature of witness:** \_\_\_\_\_  
\_\_\_\_\_

**ADDRESS FOR NOTICES** [insert address]

## 5.3 Form of Discharge

### FORM OF DISCHARGE

[On contractor's letterhead]

Date: \_\_\_/\_\_\_/\_\_\_

To: UNOPS  
[insert address of the Employer]

Dear \_\_\_\_\_,

[insert Contract title]  
[insert Contract Number]  
[insert Project Title]

Reference is made to Sub-Clause 14.12 [*Discharge*] of the Contract.

The Contractor has submitted its Final Statement (or Partially Agreed Final Statement) under Sub-Clause 14.11 [*Final Statement*] of the General Conditions, and warrants that it has submitted all claims for full and final settlement of all moneys due to the Contractor under or in connection with the Contract in relation to all works and services performed in connection with the Contract. The total of the Statement is subject to any payment that may become due in respect of any dispute proceedings or arbitration which is in progress.

The Contractor releases the Employer from all claims, actions, suits and demands which it presently has or which might in the future arise out of or in connection with the Contract or the works and services performed in connection with the Contract.

This Discharge shall become effective after the Contractor has received:

- (i) full payment of the amount certified in the Final Payment Certificate (or Partially Agreed Final Statement); and
- (ii) the Performance Guarantee.

The Contractor acknowledges that the Employer will make the Final Payment pursuant to Sub-Clause 14.13 [*Issue of Final Payment Certificate*] of the Contract and that such payment will be made in reliance on the warranties and releases contained in this Discharge.

This Discharge is executed by an official representative duly authorized to bind the Contractor.

Yours sincerely,

**Contractor's Representative**

---

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
  

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Published and maintained  
by the Infrastructure and  
Project Management Group

