

Fédération Internationale des Ingénieurs-Conseils
International Federation of Consulting Engineers
Internationale Vereinigung Beratender Ingenieure
Federación Internacional de Ingenieros Consultores

Conditions of Contract for EPC/Turnkey Projects

GUIDANCE FOR THE PREPARATION
OF PARTICULAR CONDITIONS AND ANNEXES:
FORMS OF SECURITIES
FORMS OF LETTER OF TENDER, CONTRACT AGREEMENT
AND DISPUTE ADJUDICATION/AVOIDANCE AGREEMENT

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GENERAL CONDITIONS

GUIDANCE FOR THE PREPARATION OF PARTICULAR CONDITIONS AND ANNEXES: FORMS OF SECURITIES

FORMS OF LETTER OF TENDER, CONTRACT AGREEMENT AND DISPUTE ADJUDICATION/ AVOIDANCE AGREEMENT

FIDIC® Conditions of Contract for
EPC/TURNKEY PROJECTS

Second Edition 2017
ISBN 978-2-88432-083-2

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES

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The ultimate decision on the form and content of the document rests with FIDIC.

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NOTES

This Second Edition of the Conditions of Contract for EPC/Turnkey Projects has been published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) as an update of the FIDIC 1999 Conditions of Contract for EPC/Turnkey Projects (Silver Book), First Edition.

Along with the FIDIC 1999 Red Book (the Conditions of Contract for Construction) and the FIDIC 1999 Yellow Book (the Conditions of Contract for Plant and Design-Build), the FIDIC 1999 Silver Book has been in widespread use for nearly two decades.

These Conditions of Contract for EPC/Turnkey Projects are <u>not</u> suitable for use in the following circumstances:

- **If there is insufficient time or information for tenderers to scrutinise and check the Employer's Requirements or for them to carry out their designs, risk assessment studies and estimating;**
- **If construction will involve substantial work underground or work in other areas which tenderers cannot inspect, unless special provisions are provided to account for unforeseen conditions or**
- **If the Employer intends to supervise closely or control the Contractor's work, or to review most of the construction drawings.**

FIDIC recommends that the Second Edition of the FIDIC Yellow Book (Conditions of Contract for Plant and Design-Build) be used in the above circumstances for Works designed by (or on behalf of) the Contractor.

This Second Edition of the FIDIC Silver Book maintains the principles of risk sharing established in the 1999 edition, while seeking to build on the substantial experience gained from its use over the past 18 years. For example, this edition provides:

1) greater detail and clarity on the requirements for notices and other communications;
2) provisions to address Employers' and Contractors' claims treated equally and separated from disputes;
3) mechanisms for dispute avoidance and
4) detailed provisions for quality management, and verification of Contractor's contractual compliance.

These Conditions of Contract for EPC/Turnkey Projects include conditions, which are likely to apply to the majority of such contracts. Essential items of information which are particular to each individual contract are to be included in the Particular Conditions Part A – Contract Data.

In addition it is recognised that many Employers, especially governmental agencies, may require special conditions of contract, or particular procedures, which differ from those included in the General Conditions. These should be included in Part B – Special Provisions.

It should be noted, that the General Conditions and the Particular Conditions (Part A – Contract Data and Part B – Special Provisions) are all part of the Conditions of Contract.

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To assist Employers in preparing tender documents and in drafting Particular Conditions of Contract for specific contracts, this publication includes Notes on the Preparation of Tender Documents and Notes on the Preparation of Special Provisions, which provide important advice to drafters of contract documents, in particular the Employer's Requirements and Special Provisions. In drafting Special Provisions, if clauses in the General Conditions are to be replaced or supplemented and before incorporating any example wording, Employers are urged to seek legal and engineering advice in an effort to avoid ambiguity and to ensure completeness and consistency with the other provisions of the contract.

This publication begins with a series of comprehensive flow charts which typically show, in visual form, the sequences of activities which characterise the FIDIC EPC/ Turnkey form of contract. The charts are illustrative, however, and must not be taken into consideration in the interpretation of the Conditions of Contract.

This publication also includes a number of sample forms to help both Parties to develop a common understanding of what is required by third parties such as providers of securities and guarantees.

Drafters of contract documents are reminded that the General Conditions of all FIDIC contracts are protected by copyright and trademark and may not be changed without specific written consent, usually in the form of a licence to amend, from FIDIC. If drafters wish to amend the provisions found in the General Conditions, the place for doing this is in the Particular Conditions Part B – Special Provisions, as mentioned above, and not by making changes in the General Conditions as published.

FIDIC considers the official and authentic texts to be the versions in the English language.

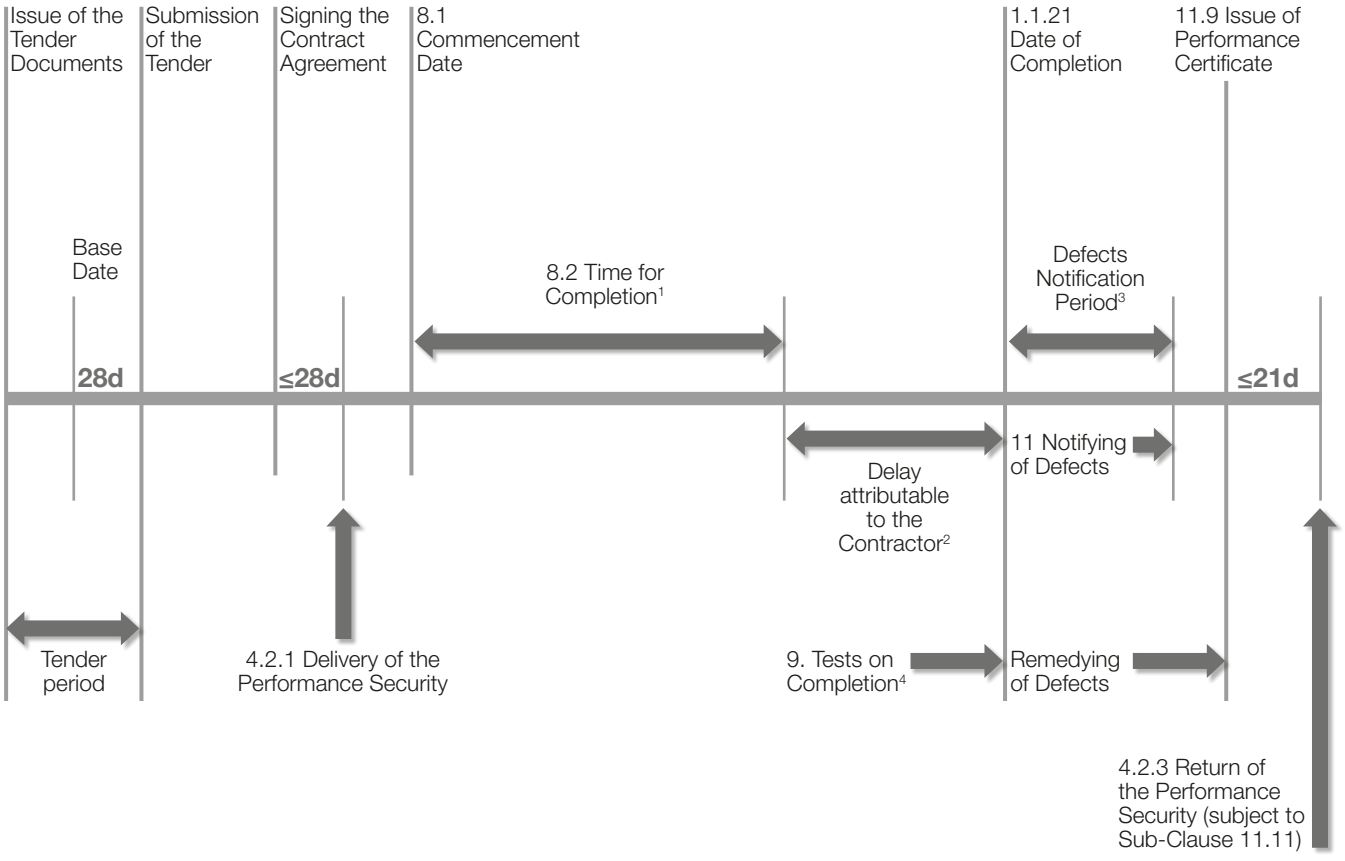
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Typical Sequence of Principal Events During Contracts for EPC/Turnkey Projects

1. The Time for Completion is to be stated (in the Contract Data) as a number of days, to which is added any extensions of time under Sub-Clause 8.5.
2. In order to indicate the sequence of events, the above diagram is based upon the example of the Contractor failing to comply with Sub-Clause 8.2.
3. The Defects Notification Period is to be stated (in the Contract Data) as a number of days, to which is added any extensions under Sub-Clause 11.3.
4. Depending on the type of Works, Tests after Completion may also be required.

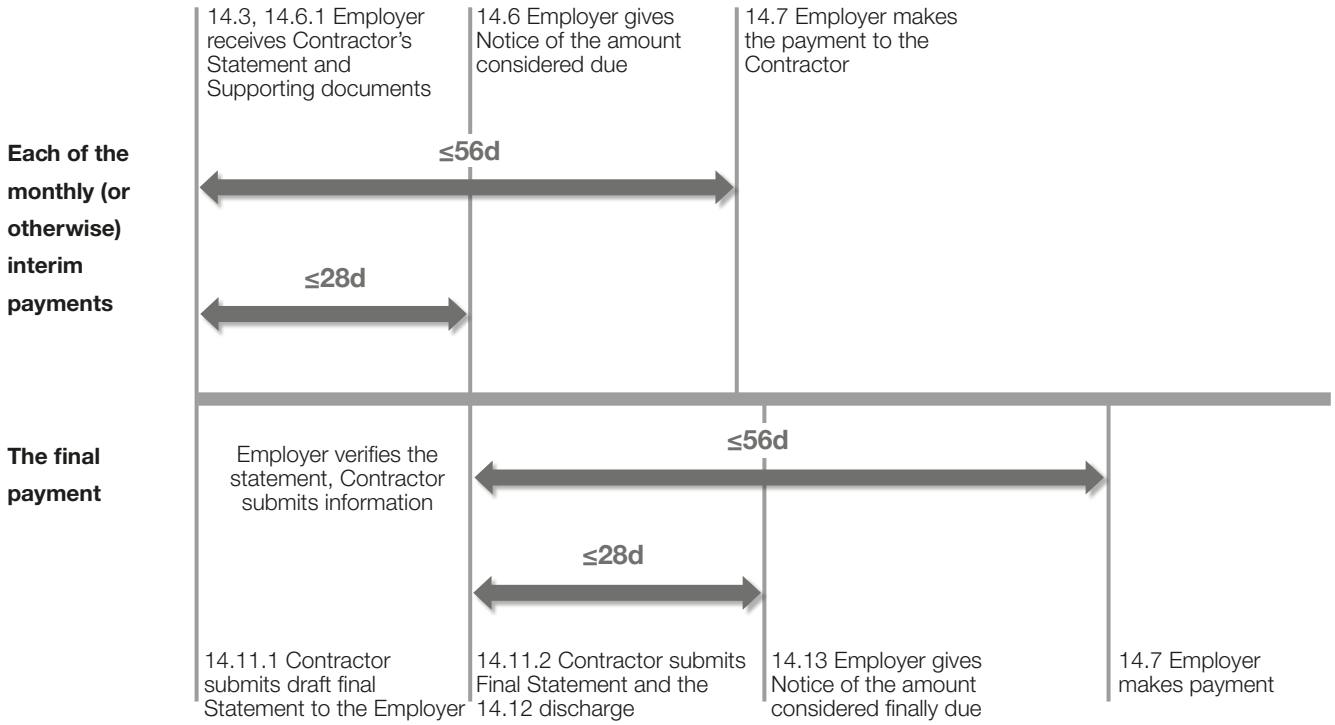


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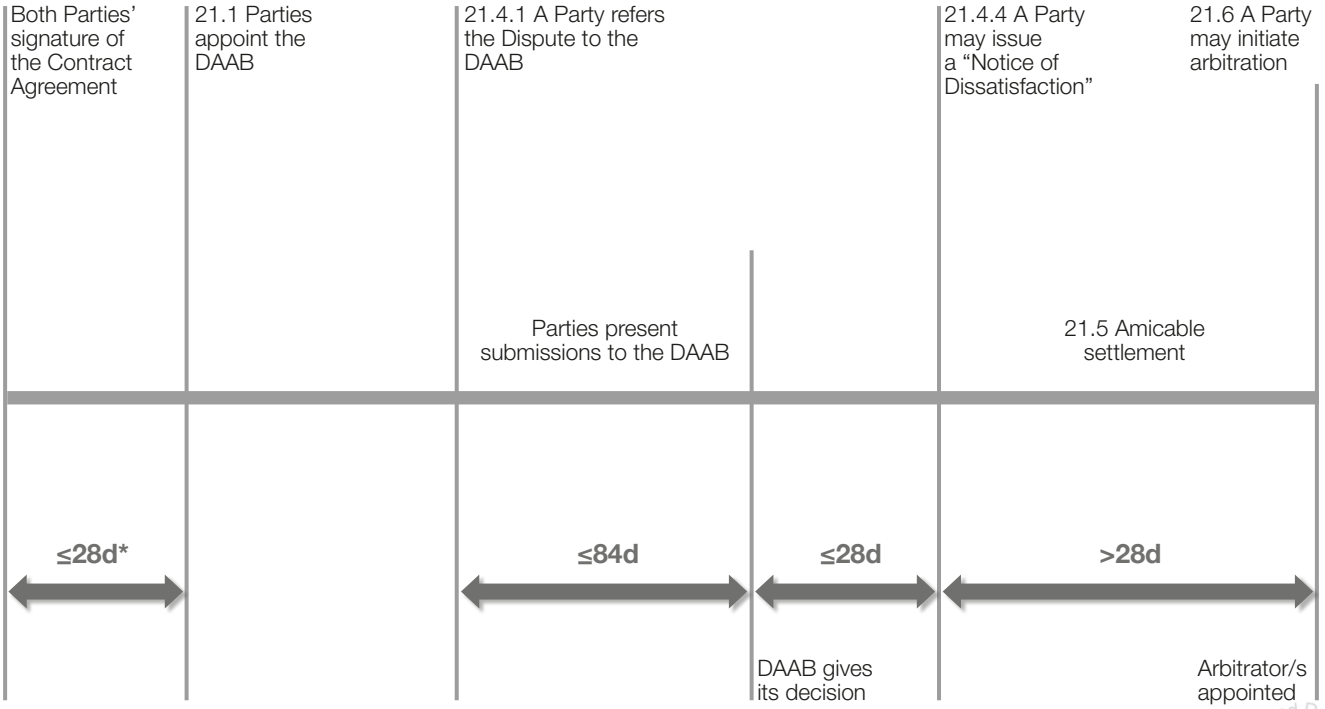
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Typical Sequence of Payment Events Envisaged in Clause 14



Typical Sequence of Dispute Events Envisaged in Clause 21



* If not stated otherwise in the Contract Data (Sub-Clause 21.1)

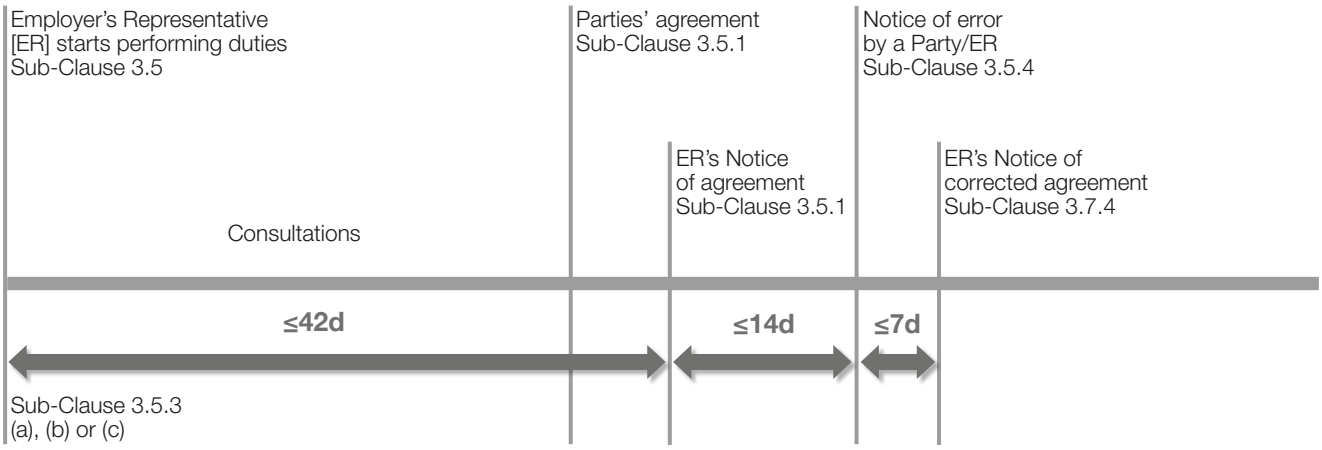
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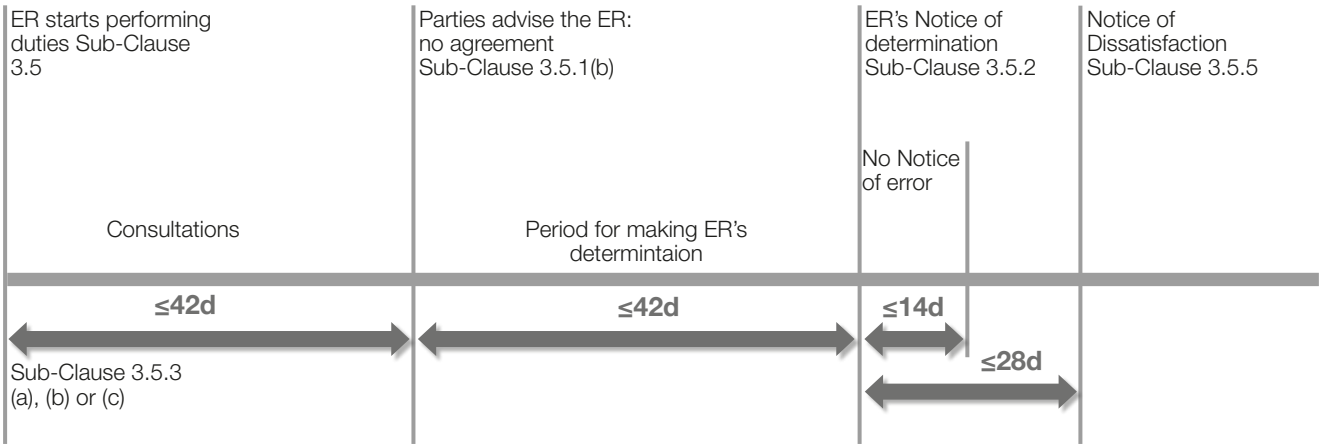
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Typical Sequence of Events in Agreement or Determination under Sub-Clause 3.5

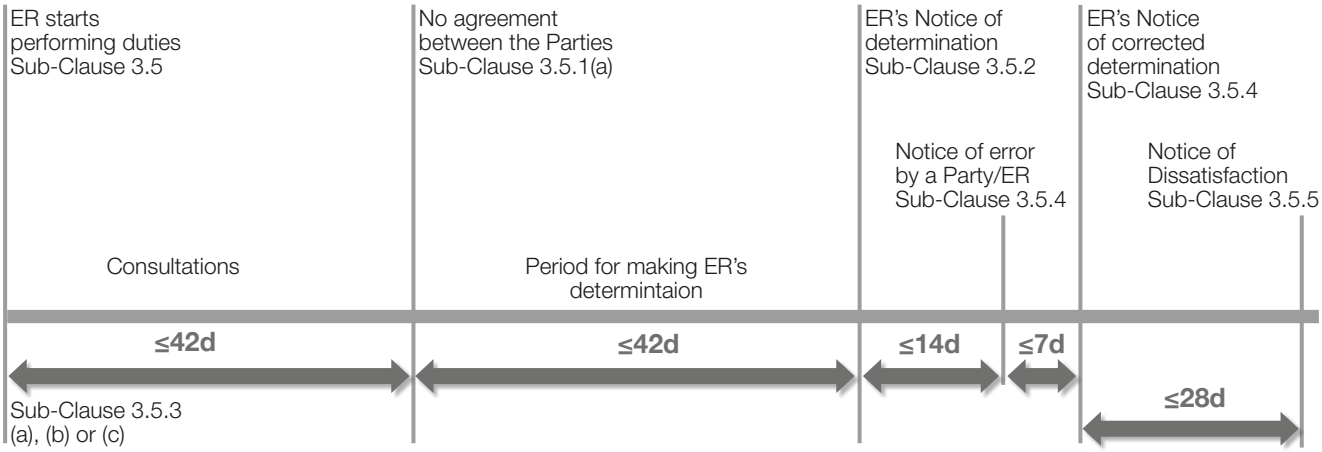
Scenario 1[1]



Scenario 2[2]



Scenario 3[3]



1. Agreement is reached within 42 days, error found in the ER's Notice of agreement and corrected.
2. The Parties' early advice that agreement cannot be reached and so ER's determination is necessary, no error in ER's determination.
3. No agreement within 42 days, ER determines within 42 days, error found in the ER's determination and corrected.

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FORMS OF LETTER OF TENDER, CONTRACT AGREEMENT AND DISPUTE ADJUDICATION/ AVOIDANCE AGREEMENT

FIDIC® Conditions of Contract for **EPC/TURNKEY PROJECTS**

General Conditions

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES

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General Conditions

1 General Provisions

1.1 Definitions

In the Contract the following words and expressions shall have the meanings stated, except where the context requires otherwise

1.1.1 "**Advance Payment Guarantee**" means the guarantee under Sub-Clause 14.2.1 [*Advance Payment Guarantee*].

1.1.2 "**Base Date**" means the date 28 days before the latest date for submission of the Tender.

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

1.1.4 "**Commencement Date**" means the date as stated in the Employer's Notice issued under Sub-Clause 8.1 [*Commencement of Works*].

1.1.5 "**Compliance Verification System**" means the compliance verification system to be prepared and implemented by the Contractor for the Works in accordance with Sub-Clause 4.9.2 [*Compliance Verification System*].

1.1.6 "**Conditions of Contract**" or "**these Conditions**" means these General Conditions as amended by the Particular Conditions.

1.1.7 "**Contract**" means the Contract Agreement, any addenda referred to in the Contract Agreement, these Conditions, the Employer's Requirements, the Schedules, the Tender, the JV Undertaking (if applicable) and the further documents (if any) which are listed in the Contract Agreement.

1.1.8 "**Contract Agreement**" means the agreement entered into by both Parties in accordance with Sub-Clause 1.6 [*Contract Agreement*], including any annexed memoranda.

1.1.9 "**Contract Data**" means the pages, entitled contract data which constitute Part A of the Particular Conditions.

1.1.10 "**Contract Price**" means the agreed amount stated in the Contract Agreement for the execution of the Works, and includes adjustments (if any) in accordance with the Contract.

1.1.11 "**Contractor**" means the person(s) named as contractor in the Contract Agreement and the legal successors in title of such person(s).

1.1.12 "**Contractor's Documents**" means the documents prepared by the Contractor as described in Sub-Clause 5.2 [*Contractor's Documents*], including calculations, digital files, computer programs and other software, drawings, manuals, models, specifications and other documents of a technical nature.

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1.1.13 "**Contractor's Equipment**" means all apparatus, equipment, machinery, construction plant, vehicles and other items required by the Contractor for the execution of the Works. Contractor's Equipment excludes Temporary Works, Plant, Materials and any other things intended to form or forming part of the Permanent Works.

1.1.14 "**Contractor's Personnel**" means the Contractor's Representative and all personnel whom the Contractor utilises on Site or other places where the Works are being carried out, including the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.

1.1.15 "**Contractor's Representative**" means the natural person named by the Contractor in the Contract or appointed by the Contractor under Sub-Clause 4.3 [*Contractor's Representative*], who acts on behalf of the Contractor.

1.1.16 "**Cost**" means all expenditure reasonably incurred (or to be incurred) by the Contractor in performing the Contract, whether on or off the Site, including taxes, overheads and similar charges, but does not include profit. Where the Contractor is entitled under a Sub-Clause of these Conditions to payment of Cost, it shall be added to the Contract Price.

1.1.17 "**Cost Plus Profit**" means Cost plus the applicable percentage for profit stated in the Contract Data (if not stated, five percent (5%)). 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.

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

1.1.19 "**DAAB**" or "**Dispute Avoidance/Adjudication Board**" means the sole member or three members (as the case may be) so named in the Contract, or appointed under Sub-Clause 21.1 [*Constitution of the DAAB*] or Sub-Clause 21.2 [*Failure to Appoint DAAB Member(s)*].

1.1.20 "**DAAB Agreement**" means the agreement signed or deemed to have been signed by both Parties and the sole member or each of the three members (as the case may be) of the DAAB in accordance with Sub-Clause 21.1 [*Constitution of the DAAB*] or Sub-Clause 21.2 [*Failure to Appoint DAAB Member(s)*], incorporating by reference the General Conditions of Dispute Avoidance/Adjudication Agreement contained in the Appendix to these General Conditions with such amendments as are agreed.

1.1.21 "**Date of Completion**" means the date stated in the Taking-Over Certificate issued by the Employer; or, if the last paragraph of Sub-Clause 10.1 [*Taking Over the Works and Sections*] applies, the date on which the Works or Section are deemed to have been completed in accordance with the Contract; or, if taking over of part(s) of the Works is permitted under Sub-Clause 10.2 [*Taking Over of Parts of the Works*], the date on which such part(s) are taken over or used by the Employer.

1.1.22 "**day**" means a calendar day.

1.1.23 "**Daywork Schedule**" means the document entitled daywork schedule (if any) included in the Contract, 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*].

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1.1.24 "**Defects Notification Period**" or "**DNP**" means the period for notifying defects and/or damage in the Works or a Section (or a part of the Works, if Sub-Clause 10.2 [*Taking Over of Parts of the Works*] applies), as the case may be, under Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*], as stated in the Contract Data (if not stated, one year), and as may be extended under Sub-Clause 11.3 [*Extension of Defects Notification Period*]. This period is calculated from the Date of Completion of the Works or Section (or part of the Works).

1.1.25 "**Delay Damages**" means the damages for which the Contractor shall be liable under Sub-Clause 8.8 [*Delay Damages*] for failure to comply with Sub-Clause 8.2 [*Time for Completion*].

1.1.26 "**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 Employer's Representative under these Conditions, or otherwise);

(b) the other Party (if the Employer, under Sub-Clause 3.5.2 [*Employer's Representative's determination*] or otherwise) rejects the claim in whole or in part; and

(c) the first Party does not acquiesce (if the Contractor, by giving a NOD under Sub-Clause 3.5.5 [*Dissatisfaction with Employer's Representative's determination*] or otherwise),

provided however that a failure by the other Party to oppose or respond to the claim, in whole or in part, may constitute a rejection if, in the circumstances, the DAAB or the arbitrator(s), as the case may be, deem it reasonable for it to do so.

1.1.27 "**Employer**" means the person named as the employer in the Contract Agreement and the legal successors in title to this person.

1.1.28 "**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 under Sub-Clause 2.6 [*Employer-Supplied Materials and Employer's Equipment*]; but does not include Plant which has not been taken over under Clause 10 [*Employer's Taking Over*].

1.1.29 "**Employer's Personnel**" means the Employer's Representative, the assistants described in Sub-Clause 3.2 [*Other Employer's Personnel*] and all other staff, labour and other employees of the Employer and of the Employer's Representative, engaged in fulfilling the Employer's obligations under the Contract; and any other personnel identified as Employer's Personnel, by a Notice from the Employer or the Employer's Representative to the Contractor.

1.1.30 "**Employer's Representative**" means the person named by the Employer in the Contract Data appointed by the Employer for the purposes of the Contract, or any replacement appointed under Sub-Clause 3.1 [*The Employer's Representative*].

1.1.31 "**Employer's Requirements**" means the document entitled employer's requirements, as included in the Contract, and any additions and modifications to such document in accordance with the Contract. Such document describes the purpose(s) for which the Works are intended, and specifies Key Personnel (if any), the scope, and/or design and/or other performance, technical and evaluation criteria, for the Works.

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1.1.32 "**Employer-Supplied Materials**" means the materials (if any) to be supplied by the Employer to the Contractor under Sub-Clause 2.6 [*Employer-Supplied Materials and Employer's Equipment*].

1.1.33 "**Exceptional Event**" means an event or circumstance as defined in Sub-Clause 18.1 [*Exceptional Events*].

1.1.34 "**Extension of Time**" or "**EOT**" means an extension of the Time for Completion under Sub-Clause 8.5 [*Extension of Time for Completion*].

1.1.35 "**FIDIC**" means the Fédération Internationale des Ingénieurs-Conseils, the International Federation of Consulting Engineers.

1.1.36 "**Final Statement**" means the Statement defined in Sub-Clause 14.11.2 [*Agreed Final Statement*].

1.1.37 "**Foreign Currency**" means a currency in which part (or all) of the Contract Price is payable, but not the Local Currency.

1.1.38 "**General Conditions**" means this document entitled "Conditions of Contract for EPC/Turnkey Projects", as published by FIDIC.

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

1.1.40 "**Joint Venture**" or "**JV**" means a joint venture, association, consortium or other unincorporated grouping of two or more persons, whether in the form of a partnership or otherwise.

1.1.41 "**JV Undertaking**" means the letter provided to the Employer as part of the Tender setting out the legal undertaking between the two or more persons constituting the Contractor as a JV. This letter shall be signed by all the persons who are members of the JV, shall be addressed to the Employer and shall include:

(a) each such member's undertaking to be jointly and severally liable to the Employer for the performance of the Contractor's obligations under the Contract;

(b) identification and authorisation of the leader of the JV; and

(c) identification of the separate scope or part of the Works (if any) to be carried out by each member of the JV.

1.1.42 "**Key Personnel**" means the positions (if any) of the Contractor's Personnel, other than the Contractor's Representative, that are stated in the Specification.

1.1.43 "**Laws**" means all national (or state or provincial) legislation, statutes, acts, decrees, rules, ordinances, orders, treaties, international law and other laws, and regulations and by-laws of any legally constituted public authority.

1.1.44 "**Local Currency**" means the currency of the Country.

1.1.45 "**Materials**" means things of all kinds (other than Plant), whether on the 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.

1.1.46 "**month**" is a calendar month (according to the Gregorian calendar).

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1.1.47 "**No-objection**" means that the Employer has no objection to the Contractor's Documents, or other documents submitted by the Contractor under these Conditions, and such Contractor's Documents or other documents may be used for the Works.

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

1.1.49 "**Notice of Dissatisfaction**" or "**NOD**" means the Notice one Party may give to the other Party if it is dissatisfied, either with an Employer's Representative's determination under Sub-Clause 3.5 [*Agreement or Determination*] or with a DAAB's decision under Sub-Clause 21.4 [*Obtaining DAAB's Decision*].

1.1.50 "**Particular Conditions**" means the document entitled particular conditions of contract included in the Contract, which consists of Part A - Contract Data and Part B – Special Provisions.

1.1.51 "**Party**" means the Employer or the Contractor, as the context requires. "**Parties**" means both the Employer and the Contractor.

1.1.52 "**Performance Certificate**" means the certificate issued by the Employer (or deemed to be issued) under Sub-Clause 11.9 [*Performance Certificate*].

1.1.53 "**Performance Damages**" means the damages to be paid by the Contractor to the Employer for the failure to achieve the guaranteed performance of the Plant and/or the Works or any part of the Works (as the case may be), as set out in the Schedule of Performance Guarantees.

1.1.54 "**Performance Security**" means the security under Sub-Clause 4.2 [*Performance Security*].

1.1.55 "**Permanent Works**" means the works of a permanent nature which are to be executed by the Contractor under the Contract.

1.1.56 "**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.

1.1.57 "**Programme**" means a detailed time programme prepared and submitted by the Contractor to which the Employer has given (or is deemed to have given) a Notice of No-objection under Sub-Clause 8.3 [*Programme*].

1.1.58 "**Provisional Sum**" means a sum (if any) which is specified in the Contract by the Employer as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.4 [*Provisional Sums*].

1.1.59 "**QM System**" means the Contractor's quality management system (as may be updated and/or revised from time to time) in accordance with Sub-Clause 4.9.1 [*Quality Management System*].

1.1.60 "**Retention Money**" means the accumulated retention moneys which the Employer retains under Sub-Clause 14.3 [*Application for Interim Payment*] and pays under Sub-Clause 14.9 [*Release of Retention Money*].

1.1.61 "**Review**" means examination and consideration by the Employer 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

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in connection with the Contract.

1.1.62 "**Schedules**" means the document(s) entitled schedules prepared by the Employer and completed by the Contractor, as attached to the Tender and included in the Contract. Such document(s) may include data, lists and schedules of payments and/or rates and prices, and guarantees.

1.1.63 "**Schedule of Payments**" means the document(s) entitled schedule of payments (if any) in the Schedules showing the amounts and manner of payments to be made to the Contractor.

1.1.64 "**Schedule of Performance Guarantees**" means the document(s) entitled schedule of performance guarantees (if any) in the Schedules showing the guarantees required by the Employer for performance of the Works and/or the Plant or any part of the Works (as the case may be), and stating the applicable Performance Damages payable in the event of failure to attain any of the guaranteed performance(s).

1.1.65 "**Schedule of Rates and Prices**" means the document(s) entitled schedule of rates and prices (if any) in the Schedules.

1.1.66 "**Section**" means a part of the Works specified in the Contract Data as a Section (if any).

1.1.67 "**Site**" means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places specified in the Contract as forming part of the Site.

1.1.68 "**Special Provisions**" means the document (if any), entitled special provisions which constitutes Part B of the Particular Conditions.

1.1.69 "**Statement**" means a statement submitted by the Contractor as part of an application for payment under Sub-Clause 14.3 [*Application for Interim Payment*], Sub-Clause 14.10 [*Statement at Completion*] or Sub-Clause 14.11 [*Final Statement*].

1.1.70 "**Subcontractor**" means any person named in the Contract as a subcontractor, or any person appointed by the Contractor as a subcontractor or designer, for a part of the Works; and the legal successors in title to each of these persons.

1.1.71 "**Taking-Over Certificate**" means a certificate issued (or deemed to be issued) by the Employer in accordance with Clause 10 [*Employer's Taking Over*].

1.1.72 "**Temporary Works**" means all temporary works of every kind (other than Contractor's Equipment) required on Site for the execution of the Works.

1.1.73 "**Tender**" means the Contractor's signed offer for the Works, the JV Undertaking (if applicable) and all other documents which the Contractor submitted with the Tender (other than these Conditions, the Schedules and the Employer's Requirements, if so submitted), as included in the Contract.

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

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1.1.75 "**Tests on Completion**" means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [*Tests on Completion*] before the Works or a Section (as the case may be) are taken over under Clause 10 [*Employer's Taking Over*].

1.1.76 "**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 the Contract Data as may be extended under Sub-Clause 8.5 [*Extension of Time for Completion*], calculated from the Commencement Date.

1.1.77 "**Unforeseeable**" means not reasonably foreseeable by an experienced contractor by the Base Date.

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

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

1.1.80 "**year**" means 365 days.

1.2 Interpretation

In the Contract, except where the context requires otherwise:

(a) words indicating one gender include all genders; and "he", "his" and "himself" shall be read as "he/she", "his/her" and "himself/herself" respectively;

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

(c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;

(d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;

(e) "may" means that the Party or person referred to has the choice of whether to act or not in the matter referred to;

(f) "shall" means that the Party or person referred to has an obligation under the Contract to perform the duty referred to;

(g) "consent" means that the Employer or the Contractor (as the case may be) agrees to, or gives permission for, the requested matter;

(h) "including", "include" and "includes" shall be interpreted as not being limited to, or qualified by, the stated items that follow;

(i) words indicating persons or parties shall be interpreted as referring to natural and legal persons (including corporations and other legal entities); and

(j) "execute the Works" or "execution of the Works" means the design, construction and completion of the Works and the remedying of any defects.

In any list in these Conditions, where the second-last item of the list is followed by "and" or "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" or "and/or" (as the case may be).

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

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1.3 Notices and Other Communications

Wherever these Conditions provide for the giving of a Notice (including a Notice of Dissatisfaction) or the issuing, providing, sending, submitting or transmitting of another type of communication (including acceptance, acknowledgement, advising, agreement, approval, certificate, Claim, consent, decision, determination, discharge, instruction, No-objection, record(s) of meeting, permission, proposal, record, reply, report, request, Review, Statement, statement, submission or any other similar type of communication), the Notice or other communication shall be in writing and:

(a) shall be:

(i) a paper-original signed by the Contractor's Representative, or the Employer's Representative (as the case may be); or

(ii) an electronic original generated from any of the systems of electronic transmission stated in the Contract Data (if not stated, system(s) acceptable to the Employer), where the electronic original is transmitted by the electronic address uniquely assigned to each of such authorised representatives,

or both, as stated in these Conditions; and

(b) if it is a Notice, it shall be identified as a Notice. If it is another form of communication, it shall be identified as such and include reference to the provision(s) of the Contract under which it is issued where appropriate;

(c) delivered by hand (against receipt), or sent by mail or courier (against receipt), or transmitted using any of the systems of electronic transmission under sub-paragraph (a)(ii) above; and

(d) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract Data. However, if the recipient gives a Notice of another address, all Notices and other communications shall be delivered accordingly after the sender receives such Notice.

Where these Conditions state that a Notice or NOD or other communication is to be delivered, given, issued, provided, sent, submitted or transmitted, it shall have effect when it is received (or deemed to have been received) at the recipient's current address under sub-paragraph (d) above. An electronically transmitted Notice or other communication is deemed to have been received on the day after transmission, provided no non-delivery notification was received by the sender.

All Notices, and all other types of communication referred to above, shall not be unreasonably withheld or delayed.

When a Notice or NOD is issued by a Party or the Employer's Representative, the paper and/or electronic original shall be sent to the intended recipient and a copy shall be sent to the Employer's Representative or the other Party, as the case may be. All other communications shall be copied to the Parties and/or the Employer's Representative as stated under these Conditions or elsewhere in the Contract.

1.4 Law and Language

The Contract shall be governed by the law of the country (or other jurisdiction) stated in the Contract Data (if not stated, the law of the Country), excluding any conflict of law rules.

The ruling language of the Contract shall be that stated in the Contract Data (if not stated, the language of these Conditions). If there are versions of any

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part of the Contract which are written in more than one language, the version which is in the ruling language shall prevail.

The language for communications shall be that stated in the Contract Data. If no language is stated there, the language for communications shall be the ruling language of the Contract.

1.5
Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. If there is any conflict, ambiguity or discrepancy, the priority of the documents shall be in accordance with the following sequence:

(a) the Contract Agreement;
(b) the Particular Conditions Part A – Contract Data;
(c) the Particular Conditions Part B – Special Provisions;
(d) these General Conditions;
(e) the Employer's Requirements;
(f) the Schedules;
(g) the Tender;
(h) the JV Undertaking (if the Contractor is a JV); and
(i) any other documents forming part of the Contract.

If a Party finds an ambiguity or discrepancy in the documents, that Party shall promptly give a Notice to the other Party, describing the ambiguity or discrepancy. After giving or receiving such Notice, the Employer shall issue the necessary clarification or instruction.

1.6
Contract Agreement

The Contract shall come into full force and effect on the date stated in the Contract Agreement. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

If the Contractor comprises a JV, the authorised representative of each member of the JV shall sign the Contract Agreement.

1.7
Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

(a) may assign the whole or any part of the Contract with the prior agreement of the other Party, at the sole discretion of such other Party; and
(b) may, as security in favour of a bank or financial institution, assign the Party's right to any moneys due, or to become due, under the Contract without the prior agreement of the other Party.

1.8
Care and Supply of Documents

Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until submitted to the Employer. The Contractor shall supply to the Employer one paper-original, one electronic copy (in the form as specified in the Employer's Requirements or, if not stated, a form acceptable to the Employer) and additional paper copies (if any) as stated in the Contract Data of each of the Contractor's Documents.

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The Contractor shall keep at all times, on the Site, a copy of:

(a) the Contract;
(b) the records under Sub-Clause 6.10 [*Contractor's Records*] and Sub-Clause 20.2.3 [*Contemporary records*];
(c) the publications (if any) named in the Employer's Requirements;
(d) the Contractor's Documents; and
(e) Variations, Notices and other communications given under the Contract.

The Employer's Personnel shall have right of access to all these documents during all normal working hours, or as otherwise agreed with the Contractor.

If a Party becomes aware of an error or defect (whether of a technical nature or otherwise) in a document which was prepared by (or on behalf of) the Contractor for use in the execution of the Works, the Party shall promptly give a Notice of such error or defect to the other Party. The Contractor shall then promptly rectify the error or defect at the Contractor's risk and cost.

1.9 Employer's Use of Contractor's Documents

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

The Contractor shall be deemed (by signing the Contract Agreement) to give to the Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents and such other design documents, including making and using modifications of them. This licence shall:

(a) apply throughout the actual or intended operational life (whichever is longer) of the relevant parts of the Works;
(b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents and such other design documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works;
(c) in the case of Contractor's Documents and such other design documents which are in the form of electronic or digital files, computer programs and other software, permit their use on any computer on the Site and/or at the locations of the Employer and the Employer's Representative and/or at other places as envisaged by the Contract; and
(d) in the event of termination of the Contract:
    (i) under Sub-Clause 15.2 [*Termination for Contractor's Default*], entitle the Employer to copy, use and communicate the Contractor's Documents and the other design documents made by or for the Contractor; or
    (ii) under Sub-Clause 15.5 [*Termination for Employer's Convenience*], Sub-Clause 16.2 [*Termination by Contractor*] or Sub-Clause 18.5 [*Optional Termination*], entitle the Employer to copy, use and communicate the Contractor's Documents for which the Contractor has received payment

for the purpose of completing the Works and/or arranging for any other entities to do so.

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The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's prior consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Sub-Clause.

1.10 Contractor's Use of Employer's Documents

As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Employer's Requirements and other documents made by (or on behalf of) the Employer. The Contractor may, at the Contractor's cost, copy, use and communicate these documents for the purposes of the Contract.

These documents (in whole or in part) shall not, without the Employer's prior consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

1.11 Confidentiality

The Contractor shall disclose all such confidential and other information as the Employer may reasonably require in order to verify the Contractor's compliance with the Contract.

The Contractor shall treat all documents forming the Contract as confidential, except to the extent necessary to carry out the Contractor's obligations under the Contract. The Contractor shall not publish, permit to be published, or disclose any particulars of the Contract in any trade or technical paper or elsewhere without the Employer's prior consent.

The Employer and the Employer's Personnel shall treat all information provided by the Contractor and marked "confidential", as confidential. The Employer and the Employer's Personnel shall not disclose or permit to be disclosed any such information to third parties, except as may be necessary when exercising the Employer's rights under Sub-Clause 15.2 [*Termination for Contractor's Default*].

A Party's obligation of confidentiality under this Sub-Clause shall not apply where the information:

(a) was already in that Party's possession without an obligation of confidentiality before receipt from the other Party;

(b) becomes generally available to the public through no breach of these Conditions; or

(c) is lawfully obtained by the Party from a third party which is not bound by an obligation of confidentiality.

1.12 Compliance with Laws

The Contractor and the Employer shall, in performing the Contract, comply with all applicable Laws. Unless otherwise stated in the Employer's Requirements:

(a) the Employer shall have obtained (or shall obtain) the planning, zoning or building permit or similar permits, permissions, licences and/or approvals for the Permanent Works, and any other permits, permissions, licenses and/or approvals described in the Employer's Requirements as having been (or being) obtained by the Employer. The Employer shall indemnify and hold the Contractor harmless against and from the consequences of any delay or failure to do so,

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unless the failure is caused by the Contractor's failure to comply with sub-paragraph (c) below;

(b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all other permits, permissions, licences and/or approvals, as required by the Laws in relation to the execution of the Works. The Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so unless the failure is caused by the Employer's failure to comply with Sub-Clause 2.2 [*Assistance*];

(c) within the time(s) stated in the Employer's Requirements the Contractor shall provide such assistance and all documentation, as described in the Employer's Requirements or otherwise reasonably required by the Employer, so as to allow the Employer to obtain any permit, permission, licence or approval under sub-paragraph (a) above; and

(d) the Contractor shall comply with all permits, permissions, licences and/or approvals obtained by the Employer under sub-paragraph (a) above.

If, having complied with sub-paragraph (c) above, 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-paragraph (a) above, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost Plus Profit.

If the Employer incurs additional costs as a result of the Contractor's failure to comply with:

(i) sub-paragraph (c) above; or

(ii) sub-paragraph (b) or (d) above, provided that the Employer shall have complied with Sub-Clause 2.2 [*Assistance*],

the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment of these costs by the Contractor.

1.13 Joint and Several Liability

If the Contractor is a Joint Venture:

(a) the members of the JV shall be jointly and severally liable to the Employer for the performance of the Contractor's obligations under the Contract;

(b) the JV leader shall have authority to bind the Contractor and each member of the JV; and

(c) neither the members nor (if known) the scope and parts of the Works to be carried out by each member nor the legal status of the JV shall be altered without the prior consent of the Employer (but such consent shall not relieve the altered JV from any liability under sub-paragraph (a) above).

1.14 Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under:

(a) Sub-Clause 8.8 [*Delay Damages*];

(b) sub-paragraph (c) of Sub-Clause 13.3.1 [*Variation by Instruction*];

(c) Sub-Clause 15.7 [*Payment after Termination for Employer's Convenience*];

(d) Sub-Clause 16.4 [*Payment after Termination by Contractor*];

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(e) Sub-Clause 17.3 [*Intellectual and Industrial Property Rights*];

(f) the first paragraph of Sub-Clause 17.4 [*Indemnities by Contractor*]; and

(g) Sub-Clause 17.5 [*Indemnities by Employer*].

The total liability of the Contractor to the Employer under or in connection with the Contract, other than:

(i) under Sub-Clause 2.6 [*Employer-Supplied Materials and Employer's Equipment*];

(ii) under Sub-Clause 4.19 [*Temporary Utilities*];

(iii) under Sub-Clause 17.3 [*Intellectual and Industrial Property Rights*]; and

(iv) under the first paragraph of Sub-Clause 17.4 [*Indemnities by Contractor*],

shall not exceed the sum stated in the Contract Data or (if a sum is not so stated) the Contract Price stated in the Contract Agreement.

This Sub-Clause shall not limit liability in any case of fraud, gross negligence, deliberate default or reckless misconduct by the defaulting Party.

1.15

Contract Termination

Subject to any mandatory requirements under the governing law of the Contract, termination of the Contract under any Sub-Clause of these Conditions shall require no action of whatsoever kind by either Party other than as stated in the Sub-Clause.

2 The Employer

2.1

Right of Access to the Site

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Contract Data. The right and possession may not be exclusive to the Contractor. 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 the Employer's Requirements. However, the Employer may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Contract Data, the Employer shall give the Contractor right of access to, and possession of, the Site with effect from the Commencement Date.

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost Plus Profit.

However, if and to the extent that the Employer'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 applicable Contractor's Documents, the Contractor shall not be entitled to such EOT and/or Cost Plus Profit.

If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in

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accordance with Contractor's Documents, the Contractor shall submit such Contractor's Documents to the Employer in the time and manner stated in the Employer's Requirements.

2.2

Assistance

If requested by the Contractor, the Employer shall promptly provide reasonable assistance to the Contractor so as to allow the Contractor to obtain:

(a) copies of the Laws of the Country which are relevant to the Contract but are not readily available; and

(b) any permits, permissions, licences or approvals required by the Laws of the Country (including information required to be submitted by the Contractor in order to obtain such permits, permissions, licences or approvals):

(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

(iii) for the export of Contractor's Equipment when it is removed from the Site.

2.3

Employer's Personnel and Other Contractors

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:

(a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [*Co-operation*]; and

(b) comply with the same obligations which the Contractor is required to comply with under sub-paragraphs (a) to (e) of Sub-Clause 4.8 [*Health and Safety Obligations*] and under Sub-Clause 4.18 [*Protection of the Environment*].

The Contractor may require the Employer to remove (or cause to be removed) any person of the Employer's Personnel or of the Employer's other contractors (if any) who is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice.

2.4

Employer's Financial Arrangements

The Employer's arrangements for financing the Employer's obligations under the Contract shall be detailed in the Contract Data.

If the Employer intends to make any material change (affecting the Employer's ability to pay the part of the Contract Price remaining to be paid at that time as estimated by the Employer) to these financial arrangements, or has to do so because of changes in the Employer's financial situation, the Employer shall immediately give a Notice to the Contractor with detailed supporting particulars.

If the Contractor:

(a) receives an instruction to execute a Variation with a price greater than ten percent (10%) of the Contract Price stated in the Contract Agreement, or the accumulated total of Variations exceeds thirty percent (30%) of the Contract Price stated in the Contract Agreement;

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(b) does not receive payment in accordance with Sub-Clause 14.7 [*Payment*]; or

(c) becomes aware of a material change in the Employer's financial arrangements of which the Contractor has not received a Notice under this Sub-Clause,

the Contractor may request and the Employer shall, within 28 days after receiving this request, provide reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the part of the Contract Price remaining to be paid at that time (as estimated by the Employer).

2.5 Site Data and Items of Reference

The Employer shall have made available to the Contractor for information, before the Base Date, all relevant data in the Employer's possession on the topography of the Site and on sub-surface, hydrological, climatic and environmental conditions at the Site. The Employer shall promptly make available to the Contractor all such data which comes into the Employer's possession after the Base Date.

The original survey control points, lines and levels of reference (the "items of reference" in these Conditions) shall be specified in the Employer's Requirements.

The Employer shall have no responsibility for the accuracy, sufficiency or completeness of such data and/or items of reference, except as stated in Sub-Clause 5.1 [*General Design Obligations*].

2.6 Employer-Supplied Materials and Employer's Equipment

If Employer-Supplied Materials and/or Employer's Equipment are listed in the Employer's Requirements for the Contractor's use in the execution of the Works, the Employer shall make such materials and/or equipment available to the Contractor in accordance with the details, times, arrangements, rates and prices stated in the Employer's Requirements.

The Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it, using it, or in control of it.

3 The Employer's Administration

3.1 The Employer's Representative

The Employer shall appoint the Employer's Representative who, except as otherwise stated in these Conditions, shall be deemed to act on the Employer's behalf under the Contract.

The Employer's Representative shall be vested with, and (unless and until the Employer notifies the Contractor otherwise) shall be deemed to have, the full authority of the Employer under the Contract except in respect of Clause 15 [*Termination by Employer*].

The Employer's Representative (or, if a legal entity, the natural person appointed to act on its behalf) shall:

(a) carry out the duties assigned to him/her, and exercise the authority

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delegated to him/her, by the Employer;

(b) be competent to carry out these duties and exercise this authority;

(c) act as a skilled professional; and

(d) be fluent in the ruling language defined in Sub-Clause 1.4 [*Law and Language*].

Where the Employer's Representative is a legal entity, the Employer's Representative shall give a Notice to the Parties of the natural person (or any replacement) appointed and authorised to act on its behalf. The authority shall not take effect until this Notice has been received by both Parties. The Employer's Representative shall similarly give a Notice of any revocation of such authority.

If the Employer wishes to replace any person appointed as the Employer's Representative, the Employer shall, not less than 14 days before the intended date of replacement, give a Notice to the Contractor of the replacement's name, address, duties and authority, and of the date of appointment.

The Employer shall not replace the Employer's Representative with a person (whether a legal entity or a natural person) against whom the Contractor has raised reasonable objection by a Notice under this Sub-Clause.

3.2

Other Employer's Personnel

The Employer or the Employer's Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation, by giving a Notice to the Contractor of the name, assigned duties and delegated authority of the assistant. The assignment, delegation or revocation shall not take effect until this Notice has been received by the Contractor.

However, the Employer's Representative shall not delegate the authority to:

(a) act under Sub-Clause 3.5 [*Agreement or Determination*]; and/or

(b) issue a Notice to Correct under Sub-Clause 15.1 [*Notice to Correct*].

Assistants shall be suitably qualified natural persons, who are 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 [*Law and Language*].

3.3

Delegated Persons

All persons, including the Employer's Representative and assistants, to whom duties have been assigned or authority has been delegated by a Notice of delegation given under Sub-Clause 3.1 [*The Employer's Representative*] or Sub-Clause 3.2 [*Other Employer's Personnel*] (as the case may be), shall only be authorised to issue instructions and communications and/or to give Notices to the Contractor to the extent defined by the Notice of delegation. Any acceptance, agreement, approval, check, certificate, comment, consent, disapproval, examination, inspection, instruction, Notice, No-objection, record(s) of meeting, permission, proposal, record, reply, report, request, Review, test, valuation, or similar act (including the absence of any such act) by a delegated person, in accordance with the Notice of delegation, shall have the same effect as though the act had been an act of the Employer.

However:

(a) unless otherwise stated in the delegated person's communication relating to such act, it shall not relieve the Contractor from any duty,

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obligation or responsibility the Contractor has under or in connection with the Contract; and

(b) if the Contractor questions any instruction, communication or Notice given by a delegated person, the Contractor may by giving a Notice refer the matter to the Employer. The Employer shall be deemed to have confirmed such instruction, communication or Notice if the Employer does not respond within 7 days after receiving the Contractor's Notice, reversing or varying the delegated person's instruction, communication or Notice.

3.4 Instructions

The Employer may, through the Employer's Representative or an assistant as stated below, issue to the Contractor (at any time) instructions which may be necessary for the execution of the Works, all in accordance with the Contract. Each instruction shall state the obligation(s) to which it relates and the Sub-Clause (or other term of the Contract) in which the obligation(s) are specified.

The Contractor shall only take instructions from the Employer's Representative or an assistant to whom the appropriate authority to give instruction has been delegated by a Notice given under Sub-Clause 3.2 [*Other Employer's Personnel*].

Subject to the following provisions of this Sub-Clause, the Contractor shall comply with the instructions given by the Employer's Representative or delegated assistant, on any matter related to the Contract.

If an instruction states that it constitutes a Variation, Sub-Clause 13.3.1 [*Variation by Instruction*] shall apply.

If not so stated, and the Contractor considers that the instruction:

(a) constitutes a Variation (or involves work that is already part of an existing Variation); or

(b) 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 Employer with reasons. If the Employer does not respond within 7 days (or such other time as may be agreed between the Parties) after receiving this Notice, by giving a Notice confirming, reversing or varying the instruction, the Employer shall be deemed to have revoked the instruction. Otherwise the Contractor shall comply with and be bound by the terms of the Employer's response.

3.5 Agreement or Determination

When carrying out his/her duties under this Sub-Clause, the Employer's Representative shall not be deemed to act for the Employer.

Whenever these Conditions provide that the Employer's Representative shall proceed under this Sub-Clause to agree or determine any matter or Claim, the following procedure shall apply:

3.5.1 Consultation to reach agreement

The Employer's Representative shall consult with both Parties jointly and/or separately, and shall encourage discussion between the Parties in an endeavour to reach agreement. The Employer's Representative shall commence such consultation promptly to allow adequate time to comply

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with the time limit for agreement under Sub-Clause 3.5.3 [*Time limits*]. Unless otherwise proposed by the Employer's Representative and agreed by the Parties, the Employer's Representative shall provide both Parties with a record of the consultation.

If agreement is achieved within the time limit for agreement under Sub-Clause 3.5.3 [*Time limits*], the Employer's Representative shall give a Notice to both Parties of the agreement, which agreement shall be signed by both Parties. This Notice shall state that it is a "Notice of the Parties' Agreement" and shall include a copy of the agreement.

If:

(a) no agreement is achieved within the time limit for agreement under Sub-Clause 3.5.3 [*Time limits*]; or

(b) both Parties advise the Employer's Representative that no agreement can be achieved within this time limit

whichever is the earlier, the Employer's Representative shall give a Notice to the Parties accordingly and shall immediately proceed under Sub-Clause 3.5.2 [*Employer's Representative's determination*].

3.5.2 Employer's Representative's determination

The Employer's Representative 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 3.5.3 [*Time limits*], the Employer's Representative shall give a Notice to both Parties of his/her determination. This Notice shall state that it is a "Notice of the Employer's Representative's Determination", and shall describe the determination in detail with reasons and detailed supporting particulars.

3.5.3 Time limits

The Employer's Representative shall give the Notice of agreement, if agreement is achieved, within 42 days, or within such other time limit as may be proposed by the Employer's Representative and agreed by both Parties (the "time limit for agreement" in these Conditions), after:

(a) in the case of a matter to be agreed or determined (not a Claim), the date of commencement of the time limit for agreement as stated in the applicable Sub-Clause of these Conditions;

(b) in the case of a Claim under sub-paragraph (c) of Sub-Clause 20.1 [*Claims*], the date the Employer's Representative receives a Notice under Sub-Clause 20.1 from the claiming Party; or

(c) in the case of a Claim under sub-paragraph (a) or (b) of Sub-Clause 20.1 [*Claims*], the date the Employer's Representative receives:

  (i) a fully detailed Claim under Sub-Clause 20.2.4 [*Fully Detailed Claim*]; or

  (ii) in the case of a Claim under Sub-Clause 20.2.6 [*Claims of continuing effect*], an interim or final fully detailed Claim (as the case may be).

The Employer's Representative shall give the Notice of his/her determination within 42 days, or within such other time limit as may be proposed by the Employer's Representative and agreed by both Parties, (the "time limit for determination" in these Conditions), after the date corresponding to his/her obligation to proceed under the last paragraph of Sub-Clause 3.5.1

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[*Consultation to reach agreement*].

If the Employer's Representative does not give the Notice of agreement or determination within the relevant time limit,

(i) in the case of a Claim, the Employer's Representative shall be deemed to have given a determination rejecting the Claim; or

(ii) in the case of a matter to be agreed or determined, the matter shall be deemed to be a Dispute which may be referred by either Party to the DAAB for its decision under Sub-Clause 21.4 [*Obtaining DAAB's Decision*] without the need for a NOD (and Sub-Clause 3.5.5 [*Dissatisfaction with Employer's Representative's determination*] and sub-paragraph (a) of Sub-Clause 21.4.1 [*Reference of a Dispute to the DAAB*] shall not apply).

3.5.4 Effect of the agreement or determination

Each agreement or determination shall be binding on both Parties unless and until corrected under this Sub-Clause or, in the case of a determination, it is revised under Clause 21 [*Disputes and Arbitration*].

If an agreement or determination concerns the payment of an amount from one Party to the other Party, the Contractor shall include such an amount in the next Statement and the Employer shall include such amount in the next payment under Sub-Clause 14.7 [*Interim Payment*] or 14.13 [*Final Payment*] (as the case may be) that follows that Statement.

If, within 14 days after giving or receiving the Employer's Representative's Notice of agreement or determination, any error of a typographical or clerical or arithmetical nature is found:

(a) by the Employer's Representative: then he/she shall immediately advise the Parties accordingly; or

(b) by a Party: then that Party shall give a Notice to the other Employer's Representative stating that it is given under this Sub-Clause 3.5.4 and clearly identifying the error. If the Employer's Representative does not agree there was an error he/she shall immediately advise the Parties accordingly.

The Employer's Representative shall within 7 days after finding the error, or after receiving a Notice under sub-paragraph (b) above (as the case may be), give a Notice to both Parties of the corrected agreement or determination. Thereafter, the corrected agreement or determination shall be treated as the agreement or determination for the purpose of these Conditions.

3.5.5 Dissatisfaction with Employer's Representative's determination

If either Party is dissatisfied with a determination of the Employer's Representative:

(a) the dissatisfied Party may give a NOD to the other Party, with a copy to the Employer's Representative;

(b) this NOD shall state that it is a "Notice of Dissatisfaction with the Employer's Representative's Determination" and shall set out the reason(s) for dissatisfaction;

(c) this NOD shall be given within 28 days after receiving the Employer's Representative's Notice of the determination under Sub-Clause 3.5.2 [*Employer's Representative's Determination*] or, if applicable, his/

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her Notice of the corrected determination under Sub-Clause 3.5.4 [*Effect of the agreement or determination*] (or, in the case of a deemed determination rejecting the Claim, within 28 days after the time limit for determination under Sub-Clause 3.5.3 [*Time limits*] has expired); and

(d) thereafter, either Party may proceed under Sub-Clause 21.4 [*Obtaining DAAB's Decision*].

If no NOD is given by either Party within the period of 28 days stated in sub-paragraph (c) above, the determination of the Employer's Representative shall be deemed to have been accepted by both Parties and be final and binding on them.

If the dissatisfied Party is dissatisfied with only part(s) of the Employer's Representative's determination:

(i) this part(s) shall be clearly identified in the NOD;

(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 both Parties as if the NOD had not been given.

In the event that a Party fails to comply with an agreement of the Parties under this Sub-Clause 3.5 or a final and binding determination of the Employer's Representative, the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under Sub-Clause 21.6 [*Arbitration*] in which case the first and the third paragraphs of Sub-Clause 21.7 [*Failure to Comply with DAAB's Decision*] shall apply to such reference in the same manner as these paragraphs apply to a final and binding decision of the DAAB.

3.6 Meetings

Either Party may require the other Party to attend a management meeting to discuss arrangements for future work and/or other matters in connection with execution of the Works.

The Employer's other contractors, the personnel of legally constituted public authorities and/or private utility companies, and/or Subcontractors may attend any such meeting, if requested by either Party.

The Employer shall keep a record of each management meeting and supply copies of the record to those attending. At any such meeting, and in the record, responsibilities for any actions to be taken shall be in accordance with the Contract.

4 The Contractor

4.1 Contractor's General Obligations

The Contractor shall execute the Works in accordance with the Contract. When completed, the Works (or Section or major item of Plant, if any) shall be fit for the purpose(s) for which they are intended, as defined and described in the Employer's Requirements or, where no purpose(s) are so defined and described, fit for their ordinary purpose(s).

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The Contractor shall provide the Plant (and spare parts, if any) and Contractor's Documents specified in the Employer's Requirements, 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.

The Works shall include any work which is necessary to satisfy the Employer's Requirements and Schedules, or is implied by the Contract, and all works which (although not mentioned in the Contract) are necessary for stability or for the completion, or safe and proper operation, of the Works.

The Contractor shall be responsible for the adequacy, stability and safety of all the Contractor's operations and activities, of all methods of construction and of all the Works.

The Contractor shall, whenever required by the Employer, submit 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 this alteration having been submitted to the Employer.

4.2 Performance Security

The Contractor shall obtain (at the Contractor's cost) a Performance Security to secure the Contractor's proper performance of the Contract, in the amount and currencies stated in the Contract Data. If no amount is stated in the Contract Data, this Sub-Clause shall not apply.

4.2.1 Contractor's obligations

The Contractor shall deliver the Performance Security to the Employer within 28 days after both Parties have signed the Contract Agreement. The Performance Security shall be issued by an entity and from within a country (or other jurisdiction) to which the Employer gives his/her consent and shall be in the form annexed to the Particular Conditions, or in another form agreed by the Employer (but such consent and/or agreement shall not relieve the Contractor from any obligation under this Sub-Clause).

The Contractor shall ensure that the Performance Security remains valid and enforceable until the issue of the Performance Certificate and the Contractor has complied with Sub-Clause 11.11 [*Clearance of Site*]. If the terms of the Performance Security specify an expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days before the expiry date, the Contractor shall extend the validity of the Performance Security until the issue of the Performance Certificate and the Contractor has complied with Sub-Clause 11.11 [*Clearance of Site*].

Whenever Variations and/or adjustments under Clause 13 [*Variations and Adjustments*] result in an accumulative increase or decrease of the Contract Price by more than twenty percent (20%) of the Contract Price stated in the Contract Agreement:

(a) in the case of such an increase, at the Employer's request the Contractor shall promptly increase the amount of the Performance Security in that currency by a percentage equal to the accumulative increase. If the Contractor incurs Cost as a result of this Employer's request, Sub-Clause 13.3.1 [*Variation by Instruction*] shall apply as if the increase had been instructed by the Employer; or

(b) in the case of such a decrease, subject to the Employer's prior consent

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the Contractor may decrease the amount of the Performance Security in that currency by a percentage equal to the accumulative decrease.

4.2.2 Claims under the Performance Security

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:

(a) failure by the Contractor to extend the validity of the Performance Security, as described in this Sub-Clause, in which event the Employer may claim the full amount (or, in the case of previous reduction(s), the full remaining amount) of the Performance Security;

(b) 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 [*Disputes and Arbitration*], within 42 days after the date of the agreement or determination or decision or arbitral award (as the case may be);

(c) failure by the Contractor to remedy a default stated in a Notice given under Sub-Clause 15.1 [*Notice to Correct*] within 42 days or other time (if any) stated in the Notice;

(d) circumstances which entitle the Employer to terminate the Contract under Sub-Clause 15.2 [*Termination for Contractor's Default*], irrespective of whether a Notice of termination has been given; or

(e) if under Sub-Clause 11.5 [*Remedying of Defective Work off Site*] 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).

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent that the Employer was not entitled to make the claim.

Any amount which is received by the Employer under the Performance Security shall be taken into account:

(i) in the final payment to the Contractor under Sub-Clause 14.13 [*Final Payment*]; or

(ii) if the Contract is terminated, in payment due to the Contractor under Sub-Clause 15.4 [*Payment after Termination for Contractor's Default*], Sub-Clause 15.7 [*Payment after Termination for Employer's Convenience*], Sub-Clause 16.4 [*Payment after Termination by Contractor*], Sub-Clause 18.5 [*Optional Termination*], or Sub-Clause 18.6 [*Release from Performance under the Law*] (as the case may be).

4.2.3 Return of the Performance Security

The Employer shall return the Performance Security to the Contractor:

(a) within 21 days after the issue of the Performance Certificate and the Contractor has complied with Sub-Clause 11.11 [*Clearance of Site*]; or

(b) promptly after the date of termination if the Contract is terminated in accordance with Sub-Clause 15.5 [*Termination for Employer's Convenience*], Sub-Clause 16.2 [*Termination by Contractor*], Sub-Clause 18.5 [*Optional Termination*] or Sub-Clause 18.6 [*Release from Performance under the Law*].

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4.3 Contractor's Representative

The Contractor shall appoint the Contractor's Representative and shall give him/her all authority necessary to act on the Contractor's behalf under the Contract, except to replace the Contractor's Representative.

The Contractor's Representative shall be qualified, experienced and competent in the main engineering discipline applicable to the Works and fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

Unless the Contractor's Representative is named in the Contract, the Contractor shall, before the Commencement Date, submit to the Employer 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 Employer does not respond within 28 days after receiving this submission, by giving a Notice to the Contractor objecting to the proposed person or replacement, the Employer shall be deemed to have given the Employer's consent.

The Contractor shall not, without the Employer's prior consent, revoke the appointment of the Contractor's Representative or appoint a replacement (unless the Contractor's Representative is unable to act as a result of death, illness, disability or resignation, in which case his/her appointment shall be deemed to have been revoked with immediate effect and the appointment of a replacement shall be treated as a temporary appointment until the Employer gives his/her consent to this replacement, or another replacement is appointed, under this Sub-Clause).

Unless otherwise agreed by the Employer, the whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. The Contractor's Representative shall act for and on behalf of the Contractor at all times during the performance of the Contract, including issuing and receiving all Notices and other communications under Sub-Clause 1.3 [*Notices and Other Communications*] and for receiving instructions under Sub-Clause 3.4 [*Instructions*].

Unless otherwise agreed by the Employer, the Contractor's Representative shall be based at the Site for the whole time that the Works are being executed at the Site. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement shall be temporarily appointed, subject to the Employer's prior consent.

The Contractor's Representative may delegate any powers, functions and authority except:

(a) the authority to issue and receive Notices and other communications under Sub-Clause 1.3 [*Notices and Other Communications*]; and

(b) the authority to receive instructions under Sub-Clause 3.4 [*Instructions*]),

to any suitably competent and experienced person and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Employer has received a Notice from the Contractor's Representative, naming the person, specifying the powers, functions and authority being delegated or revoked, and stating the timing of the delegation or revocation.

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All these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

4.4 Subcontractors

The Contractor shall not subcontract:

(a) works with a total accumulated value greater than the percentage stated in the Contract Data of the Contract Price stated in the Contract Agreement (if no such percentage is stated, the whole of the Works); or

(b) any part of the Works for which subcontracting is not permitted as stated in the Contract Data.

The Contractor shall be responsible for the work of all Subcontractors, for managing and coordinating all the Subcontractors' works, and for the acts or defaults of any Subcontractor, any Subcontractor's agents or employees, as if they were the acts or defaults of the Contractor.

Where specified in the Contract Data, the Contractor shall give a Notice to the Employer not less than 28 days before:

(i) the intended appointment of a Subcontractor, with detailed particulars which shall include the Subcontractor's relevant experience,

(ii) the intended commencement of the Subcontractor's work, and

(iii) the intended commencement of the Subcontractor's work on the Site.

4.5 Nominated Subcontractors

In this Sub-Clause, "nominated Subcontractor" means a Subcontractor named as such in the Employer's Requirements or whom the Employer, under Sub-Clause 13.4 [*Provisional Sums*], instructs the Contractor to employ as a Subcontractor.

4.5.1 Objection to Nomination

The Contractor shall not be under any obligation to employ a nominated Subcontractor whom the Employer instructs and against whom the Contractor raises reasonable objection by giving a Notice to the Employer, with detailed supporting particulars, no later than 14 days after receiving the Employer's instruction. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Employer agrees to indemnify the Contractor against and from the consequences of the matter:

(a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;

(b) 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, the nominated Subcontractor's agents and employees; or

(c) the subcontract does not specify that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:

(i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge the Contractor's corresponding obligations and liabilities under the Contract; and

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(ii) 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 Subcontractor to perform these obligations or to fulfil these liabilities.

4.5.2 Payments to nominated Subcontractors

The Contractor shall pay to the nominated Subcontractor the amounts due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with sub-paragraph (b) of Sub-Clause 13.4 [*Provisional Sums*], except as stated in Sub-Clause 4.5.3 [*Evidence of Payments*].

4.5.3 Evidence of Payments

Before making an interim payment under Sub-Clause 14.7 [*Interim Payment*] which includes an amount payable to a nominated Subcontractor, the Employer may request the Contractor to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous interim payments by the Employer, less applicable deductions for retention or otherwise. Unless the Contractor:

(a) submits this reasonable evidence, or

(b) (i) satisfies the Employer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and

(ii) submits to the Employer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement,

then the Employer may (at the Employer's sole discretion) pay, directly to the nominated Subcontractor, part or all of such amounts included in previous payments (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above.

Thereafter, the Employer shall give a Notice to the Contractor stating the amount paid directly to the nominated Subcontractor by the Employer and, in the next interim payment after this Notice, shall include this amount as a deduction under sub-paragraph (b) of Sub-Clause 14.6.1 [*Notice of Interim Payment*].

4.6 Co-operation

The Contractor shall, as specified in the Employer's Requirements or as instructed by the Employer, co-operate with and allow appropriate opportunities for carrying out work by:

(a) the Employer's Personnel;

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

(c) the personnel of any legally constituted public authorities and private utility companies,

who may be employed in the carrying out, on or near the Site, of any work not included in the Contract. Such appropriate opportunities may include the use of Contractor's Equipment, Temporary Works, access arrangements which are the responsibility of the Contractor, and/or other Contractor's facilities or services on the Site.

The Contractor shall be responsible for the Contractor's construction activities on the Site, and shall use all reasonable endeavours to co-ordinate

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these activities with those of other contractors to the extent (if any) specified in the Employer's Requirements or as instructed by the Employer.

If the Contractor suffers delay and/or incurs Cost as a result of an instruction under this Sub-Clause, to the extent (if any) that co-operation, allowance of opportunities and coordination was Unforeseeable having regard to that specified in the Employer's Requirements, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost Plus Profit.

4.7
Setting Out

The Contractor shall set out the Works in relation to the items of reference under Sub-Clause 2.5 [*Site Data and Items of Reference*].

The Contractor shall:

(a) verify the accuracy of all these items of reference before they are used for the Works;

(b) rectify any error in the items of reference, positions, levels, dimensions or alignment of the Works; and

(c) be responsible for the correct positioning of all parts of the Works.

4.8
Health and Safety Obligations

The Contractor shall:

(a) comply with all applicable health and safety regulations and Laws;

(b) comply with all applicable health and safety obligations specified in the Contract;

(c) comply with all directives issued by the Contractor's health and safety officer (appointed under Sub-Clause 6.7 [*Health and Safety of Personnel*]);

(d) take care of the health and safety of all persons entitled to be on the Site and other places (if any) where the Works are being executed;

(e) keep the Site, Works (and the other places (if any) where the Works are being executed) clear of unnecessary obstruction so as to avoid danger to these persons;

(f) provide fencing, lighting, safe access, guarding and watching of:

  (i) the Works, until the Works are taken over under Clause 10 [*Employer's Taking Over*]; and

  (ii) any part of the Works where the Contractor is executing outstanding works or remedying any defects during the DNP; and

(g) 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 property.

Within 21 days of the Commencement Date and before commencing any construction on the Site, the Contractor shall submit to the Employer for information a health and safety manual which has been specifically prepared for the Works, the Site and other places (if any) where the Contractor intends to execute the Works. This manual shall be in addition to any other similar document required under applicable health and safety regulations and Laws.

The health and safety manual shall set out all the health and safety requirements:

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(i) specified in the Employer's Requirements;

(ii) that comply with all the Contractor's health and safety obligations under the Contract; and

(iii) that are necessary to effect and maintain a healthy and safe working environment for all persons entitled to be on the Site and other places (if any) where the Works are being executed.

This manual shall be revised as necessary by the Contractor or the Contractor's health and safety officer, or at the reasonable request of the Employer. Each revision of the manual shall be submitted promptly to the Employer.

In addition to the reporting requirement of sub-paragraph (g) of Sub-Clause 4.20 [*Progress Reports*], the Contractor shall submit to the Employer details of any accident as soon as practicable after its occurrence and, in the case of an accident causing serious injury or death, shall inform the Employer immediately.

The Contractor shall, as specified in the Employer's Requirements and as the Employer may reasonably require, maintain records and make reports (in compliance with the applicable health and safety regulations and Laws) concerning the health and safety of persons and any damage to property.

4.9 Quality Management and Compliance Verification Systems

4.9.1 Quality Management System

The Contractor shall prepare and implement a QM System to demonstrate compliance with the requirements of the Contract. The QM System shall be specifically prepared for the Works and submitted to the Employer within 28 days of the Commencement Date. Thereafter, whenever the QM System is updated or revised, a copy shall promptly be submitted to the Employer.

The QM System shall be in accordance with the details stated in the Employer's Requirements (if any) and shall include the Contractor's procedures:

(a) to ensure that all Notices and other communications under Sub-Clause 1.3 [*Notices and Other Communications*], Contractor's Documents, as-built records, O&M Manuals, and contemporary records can be traced, with full certainty, to the Works, Goods, work, workmanship or test to which they relate;

(b) to ensure proper coordination and management of interfaces between the stages of execution of the Works, and between Subcontractors; and

(c) for the submission of Contractor's Documents to the Employer for Review.

The Contractor shall carry out internal audits of the QM System regularly, and at least once every 6 months. The Contractor shall submit to the Employer a report listing the results of each internal audit within 7 days of completion. Each report shall include, where appropriate, the proposed measures to improve and/or rectify the QM System and/or its implementation.

If the Contractor is required by the Contractor's quality assurance certification to be subject to external audit, the Contractor shall immediately give a Notice to the Employer describing any failing(s) identified in any external audit. If the

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Contractor is a JV, this obligation shall apply to each member of the JV.

4.9.2 Compliance Verification System

The Contractor shall prepare and implement a Compliance Verification System to demonstrate that the design, Materials, Employer-Supplied Materials (if any), Plant, work and workmanship comply in all respects with the Contract.

The Compliance Verification System shall be in accordance with the details stated in the Employer's Requirements (if any) and shall include a method for reporting the results of all inspections and tests carried out by the Contractor. In the event that any inspection or test identifies a non-compliance with the Contract, Sub-Clause 7.5 [*Defects and Rejection*] shall apply.

4.9.3 General provision

Compliance with the QM System and/or Compliance Verification System shall not relieve the Contractor from any duty, obligation or responsibility under or in connection with the Contract.

4.10
Use of Site Data

The Contractor shall be responsible for verifying and interpreting all data made available by the Employer under Sub-Clause 2.5 [*Site Data and Items of Reference*].

4.11
Sufficiency of the Contract Price

The Contractor shall be deemed to have satisfied himself/herself as to the correctness and sufficiency of the Contract Price stated in the Contract Agreement.

Unless otherwise stated in the Contract, the Contract Price stated in the Contract Agreement shall be deemed to cover all the Contractor's obligations under the Contract and all things necessary for the proper execution of the Works in accordance with the Contract.

4.12
Unforeseeable Difficulties

Except as otherwise stated in the Particular Conditions:

(a) the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works;

(b) by signing the Contract Agreement, the Contractor accepts total responsibility for having foreseen all difficulties and costs of successfully completing the Works; and

(c) the Contract Price shall not be adjusted to take account of any Unforeseeable or unforeseen difficulties or costs.

4.13
Rights of Way and Facilities

The Contractor shall bear all costs and charges for special and/or temporary rights-of-way which may be required for the purposes of the Works, including those for access to the Site.

The Contractor shall also obtain, at the Contractor's risk and cost, any additional facilities outside the Site which may be required for the purposes of the Works.

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4.14

Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

(a) the convenience of the public; or

(b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

4.15

Access Route

The Contractor shall be deemed to have been satisfied, at the Base Date, as to the suitability and availability of the access routes to the Site. The Contractor shall take all necessary measures to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These measures shall include the proper use of appropriate vehicles (conforming to legal load and width limits (if any) and any other restrictions) and routes.

Except as otherwise stated in these Conditions:

(a) the Contractor shall (as between the Parties) be responsible for repair of any damage caused to, and any maintenance which may be required for the Contractor's use of, access routes;

(b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permissions or permits which may be required from the relevant authorities, for the Contractor's use of routes, signs and directions;

(c) the Employer shall not be responsible for any third party claims which may arise from the Contractor's use or otherwise of any access route;

(d) the Employer does not guarantee the suitability or availability of particular access routes; and

(e) all Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

To the extent that non-suitability or non-availability of an access route arises as a result of 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 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost.

4.16

Transport of Goods

The Contractor shall:

(a) give a Notice to the Employer not less than 21 days before the date on which any Plant, or a major item of other Goods (as specified in the Employer's Requirements), will be delivered to the Site;

(b) be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works;

(c) 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; and

(d) indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the import, transport and handling of all Goods, and

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shall negotiate and pay all third party claims arising from their import, transport and handling.

4.17

Contractor's Equipment

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the Employer's consent. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

In addition to any Notice given under Sub-Clause 4.16 [*Transport of Goods*], the Contractor shall give a Notice to the Employer of the date on which any major item of Contractor's Equipment has been delivered to the Site. This Notice shall be given within 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, shall identify the rental or leasing entity.

4.18

Protection of the Environment

The Contractor shall take all necessary measures to:

(a) protect the environment (both on and off the Site);

(b) comply with the environmental impact statement for the Works (if any); and

(c) limit damage and nuisance to people and property resulting from pollution, noise and other results of the Contractor's operations and/or activities.

The Contractor shall ensure that emissions, surface discharges, effluent and any other pollutants from the Contractor's activities shall exceed neither the values indicated in the Employer's Requirements, nor those prescribed by applicable Laws.

4.19

Temporary Utilities

The Contractor shall, except as stated below, be responsible for the provision of all temporary utilities, including electricity, gas, telecommunications, water and any other services the Contractor may require for the execution of the Works.

The following provisions of this Sub-Clause shall only apply if, as stated in the Employer's Requirements, the Employer is to provide utilities for the Contractor's use. The Contractor shall be entitled to use, for the purposes of the Works, the utilities on the Site for which details and prices are given in the Employer's Requirements. The Contractor shall, at the Contractor's risk and cost, provide any apparatus necessary for the Contractor's use of these services and for measuring the quantities consumed. The apparatus provided for measuring quantities consumed shall be subject to the Employer's consent. The quantities consumed (if any) during each period of payment stated in the Contract Data (if not stated, each month) shall be measured by the Contractor, and the amount to be paid by the Contractor for such quantities (at the prices stated in the Employer's Requirements) shall be included in the relevant Statement.

4.20

Progress Reports

Monthly progress reports, in the format stated in the Employer's Requirements (if not stated, in a format acceptable to the Employer) shall be prepared by the Contractor and submitted to the Employer. Each progress report shall

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be submitted in one paper-original, one electronic copy and additional paper copies (if any) as stated in the Contract Data. The first report shall cover the period up to the end of the first month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the month to which it relates.

Reporting shall continue until the Date of Completion of the Works or, if outstanding work is listed in the Taking-Over Certificate, the date on which such outstanding work is completed. Unless otherwise stated in the Employer's Requirements, each progress report shall include:

(a) charts, diagrams and detailed descriptions of progress, including each stage of design, Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation;

(b) photographs and/or video recordings showing the status of manufacture and of progress on and off the Site;

(c) 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:

  (i) commencement of manufacture,

  (ii) Contractor's inspections,

  (iii) tests, and

  (iv) shipment and arrival at the Site;

(d) the details described in Sub-Clause 6.10 [*Contractor's Records*];

(e) copies of quality management documents, inspection reports, test results, and compliance verification documentation (including certificates of Materials);

(f) a list of Variations, and any Notices given (by either Party) under Sub-Clause 20.2.1 [*Notice of Claim*];

(g) health and safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and

(h) comparisons of actual and planned progress, with details of any events or circumstances which may adversely affect the completion of the Works in accordance with the Programme and the Time for Completion, and the measures being (or to be) adopted to overcome delays.

However, nothing stated in any progress report shall constitute a Notice under a Sub-Clause of these Conditions.

4.21 Security of the Site

The Contractor shall be responsible for the security of the Site, and:

(a) for keeping unauthorised persons off the Site; and

(b) authorised persons shall be limited to the Contractor's Personnel, the Employer's Personnel, and to any other personnel identified as authorised personnel (including the Employer's other contractors on the Site), by a Notice from the Employer to the Contractor.

4.22 Contractor's Operations on Site

The Contractor shall confine the Contractor's operations to the Site, and to any additional areas which may be obtained by the Contractor and acknowledged by the Employer as working areas. The Contractor shall take

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all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

At all times, the Contractor shall keep the Site free from all unnecessary obstruction, and shall properly store or remove from the Site any Contractor's Equipment (subject to 4.17 [*Contractor's Equipment*]) and/or surplus materials. The Contractor shall promptly clear away and remove from the Site any wreckage, rubbish, hazardous waste and Temporary Works which are no longer required.

Promptly after the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish, hazardous waste and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain at locations on the Site agreed with the Employer, during the DNP, such Goods as are required for the Contractor to fulfil obligations under the Contract.

4.23 Archaeological and Geological Findings

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 Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, as soon as practicable after discovery of any such finding, give a Notice to the Employer in good time to give the Employer opportunity to promptly inspect and/or investigate the finding before it is disturbed. This Notice shall describe the finding and the Employer shall issue instructions for dealing with it.

If the Contractor suffers delay and/or incurs Cost from complying with the Employer's instructions, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost.

5 Design

5.1 General Design Obligations

The Contractor shall be deemed to have scrutinised, prior to the Base Date, the Employer's Requirements (including design criteria and calculations, if any).

The Contractor shall carry out, and be responsible for, the design of the Works and for the accuracy of such Employer's Requirements (including design criteria and calculations), except as stated in this Sub-Clause below.

Design shall be prepared by designers who:

(a) are engineers or other professionals, qualified, experienced and competent in the disciplines of the design for which they are responsible;

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(b) comply with the criteria (if any) stated in the Employer's Requirements; and

(c) are qualified and entitled under applicable Laws to design the Works.

The Employer shall not be responsible for any error, inaccuracy or omission of any kind in the Employer's Requirements as originally included in the Contract and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated in this Sub-Clause below. Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from the Contractor's responsibility for the execution of the Works.

However, the Employer shall be responsible for the correctness of the following portions of the Employer's Requirements and of the following data and information provided by (or on behalf of) the Employer:

(a) portions, data and information which are stated in the Contract as being immutable or the responsibility of the Employer,

(b) definitions of intended purposes of the Works or any parts thereof,

(c) criteria for the testing and performance of the completed Works, and

(d) portions, data and information which cannot be verified by the Contractor, except as otherwise stated in the Contract.

5.2 Contractor's Documents

The Contractor's Documents shall comprise the documents:

(a) specified in the Employer's Requirements (if any);

(b) 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

(c) described in Sub-Clause 5.6 [*As-Built Records*] and/or Sub-Clause 5.7 [*Operation and Maintenance Manuals*], where applicable.

5.2.1 Preparation by Contractor

Unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

The Contractor shall prepare all Contractor's Documents, and any other documents necessary to complete and implement the design during execution of the Works and to instruct the Contractor's Personnel.

5.2.2 Review by Employer

In this Sub-Clause 5.2.2:

- "Review Period" means the period not exceeding 21 days, or as otherwise stated in the Employer's Requirements, calculated from the date on which the Employer receives a Contractor's Document and a Contractor's Notice;
- "Contractor's Document" excludes any of the Contractor's Documents which is not specified in the Employer's Requirements or these Conditions as being required to be submitted for Review, but includes all documents on which a specified Contractor's Document relies for completeness; and

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- "Contractor's Notice" means the Notice which shall state that the relevant Contractor's Document is considered by the Contractor to be ready for Review under this Sub-Clause 5.2.2 and for use, and that it complies with the Employer's Requirements and these Conditions, or the extent to which it does not do so.

If the Employer's Requirements or these Conditions specify that a Contractor's Document is to be submitted to the Employer for Review, it shall be submitted accordingly, together with a Contractor's Notice.

The Employer shall, within the Review Period, give a Notice to the Contractor:

(a) of No-objection (which may include comments concerning minor matters which will not substantially affect the Works); or

(b) that the Contractor's Document fails (to the extent stated) to comply with the Employer's Requirements and/or the Contract, with reasons.

If the Employer gives no Notice within the Review Period, the Employer shall be deemed to have given a Notice of No-objection to the Contractor's Document (provided that all other Contractor's Documents on which that Contractor's Document relies (if any) have been given, or are deemed to have been given, a Notice of No-objection).

If the Employer instructs that further Contractor's Documents are reasonably required to demonstrate that the Contractor's design complies with the Contract, the Contractor shall prepare and submit them promptly to the Employer at the Contractor's cost.

If the Employer gives a Notice under sub-paragraph (b) above, the Contractor shall:

(i) revise the Contractor's Document;

(ii) resubmit it to the Employer for Review in accordance with this Sub-Clause 5.2.2, and the Review Period shall be calculated from the date that the Employer receives it; and

(iii) not be entitled to EOT for any delay caused by any such revision and resubmission and/or by subsequent Review by the Employer.

If the Employer incurs additional costs as a result of such resubmission and subsequent Review, the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment by the Contractor of the costs reasonably incurred.

5.2.3 Construction

Except for Contractor's Documents under Sub-Clause 5.6 [*As-Built Records*] and Sub-Clause 5.7 [*Operation and Maintenance Manuals*], for each part of the Works requiring Contractor's Documents to be submitted for Review:

(a) construction of such part shall not commence until a Notice of No-objection is given (or is deemed to have been given) by the Employer for all the Contractor's Documents which are relevant to its design and execution;

(b) construction of such part shall be in accordance with these Contractor's Documents; and

(c) the Contractor may modify any design or Contractor's Documents which have previously been submitted for Review, by giving a Notice to the Employer with reasons. If the Contractor has commenced

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construction of the part of the Works to which such design or Contractor's Documents are relevant:

(i) work on this part shall be suspended;

(ii) the provisions of Sub-Clause 5.2.2 [*Review by Employer*] shall apply as if the Employer had given a Notice in respect of the Contractor's Documents under sub-paragraph (b) of Sub-Clause 5.2.2; and

(iii) work on this part shall not resume until a Notice of No-objection is given (or is deemed to have been given) by the Employer for the revised documents.

5.3 Contractor's Undertaking

The Contractor undertakes that the design, the Contractor's Documents, the execution of the Works and the completed Works will be in accordance with:

(a) the Laws of the Country; and

(b) the documents forming the Contract, as altered or modified by Variations.

5.4 Technical Standards and Regulations

The Contractor's Documents, the execution of the Works and the completed Works (including defects remedied by the Contractor) shall comply with the Country's technical standards, building, construction and environmental Laws, Laws applicable to the product being produced from the Works, and other standards specified in the Employer's Requirements, applicable to the Works, or defined by applicable Laws.

All these technical or other standards and Laws shall, in respect of the Works, and each Section, be those in force when the Works or Section are taken over under Clause 10 [*Employer's Taking Over*].

References in the Contract to published standards shall be understood to be references to the edition applicable on the Base Date, unless stated otherwise. If changed or new applicable standards come into force in the Country after the Base Date, the Contractor shall promptly give a Notice to the Employer and (if appropriate or requested by the Employer) submit proposals for compliance. To the extent that:

(a) the Employer considers that compliance is required and such compliance requires change(s) to the execution of the Works; and

(b) the Contractor's proposals for compliance constitute a Variation;

then the Employer shall initiate a Variation in accordance with Clause 13 [*Variations and Adjustments*].

5.5 Training

If no training of employees of the Employer (and/or other identified personnel) by the Contractor is specified in the Employer's Requirements, this Sub-Clause shall not apply.

The Contractor shall carry out training of employees of the Employer (and/or other personnel identified in the Employer's Requirements) in the operation and maintenance of the Works, and any other aspect of the Works, to the extent specified in the Employer's Requirements.

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If the Employer's Requirements specify training which is to be carried out before taking-over, the Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over the Works and Sections*] until this training has been completed in accordance with the Employer's Requirements.

The timing of the training shall be as stated in the Employer's Requirements (if not stated, as acceptable to the Employer). The Contractor shall provide qualified and experienced training staff, training facilities and all training materials as necessary and/or as stated in the Employer's Requirements.

5.6 As-Built Records

If no as-built records to be prepared by the Contractor are specified in the Employer's Requirements, this Sub-Clause shall not apply.

The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed by the Contractor. The format, referencing system, system of electronic storage and other relevant details of the as-built records shall be as stated in the Employer's Requirements (if not stated, as acceptable to the Employer). These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause.

The Contractor shall submit to the Employer under Sub-Clause 5.2.2 [*Review by Employer*]:

(a) the as-built records for the Works or Section (as the case may be) before the commencement of the Tests on Completion; and

(b) updated as-built records to the extent that any work is executed by the Contractor:

  (i) during and/or after the Tests on Completion, before the issue of any Taking-Over Certificate under Sub-Clause 10.1 [*Taking Over the Works and Sections*]; and

  (ii) after taking over under Sub-Clause 10.1 [*Taking Over the Works and Sections*], before the issue of the Performance Certificate.

The number of copies of as-built records to be submitted by the Contractor under this Sub-Clause shall be as required under Sub-Clause 1.8 [*Care and Supply of Documents*].

5.7 Operation and Maintenance Manuals

If no operation and maintenance manuals to be prepared by the Contractor are specified in the Employer's Requirements, this Sub-Clause shall not apply.

The Contractor shall prepare, and keep up-to-date, a complete set of operation and maintenance manuals for the Works (the "O&M Manuals" in these Conditions).

The format and other relevant details of the O&M Manuals shall be as stated in the Employer's Requirements and, in any case, these manuals shall:

(a) be in sufficient detail for the Employer to:

  (i) operate, maintain and adjust the Works to ensure that the performance of the Works, Section and/or Plant (as the case may be) continues to comply with the performance criteria specified in

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the Employer's Requirements and the Schedule of Performance Guarantees; and

(ii) operate, maintain, dismantle, reassemble, adjust and repair the Plant; and

(b) include an inventory of spare parts required for the Employer's future operation and maintenance of the Plant.

Before commencement of the Tests on Completion, the Contractor shall submit provisional O&M Manuals for the Works or Section (as the case may be) to the Employer under Sub-Clause 5.2.2 [*Review by Employer*].

If during the Tests on Completion any error or defect is found in the provisional O&M Manuals, the Contractor shall promptly rectify the error or defect at the Contractor's risk and cost.

Before the issue of any Taking-Over Certificate under Sub-Clause 10.1 [*Taking Over the Works and Sections*], the final O&M Manuals shall be submitted to the Employer under Sub-Clause 5.2.2 [*Review by Employer*].

5.8 Design Error

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's design and/or the Contractor's Documents, they and the Works shall be corrected in accordance with Sub-Clause 7.5 [*Defects and Rejection*]. If such Contractor's Documents were previously the subject of a Notice of No-objection given (or deemed to be given) by the Employer under Sub-Clause 5.2.2 [*Review by Employer*], the provisions of Sub-Clause 5.2.2 shall apply as if the Employer had given a Notice in respect of the Contractor's Documents under sub-paragraph (b) of Sub-Clause 5.2.2.

All corrections and resubmissions under this Sub-Clause shall be at the Contractor's risk and cost.

6 Staff and Labour

6.1 Engagement of Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all Contractor's Personnel, and for their payment, accommodation, feeding, transport and welfare.

6.2 Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages, and observe conditions of labour, which comply with all applicable Laws and are not lower than those established for the trade or industry where the work is 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 level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

6.3 Recruitment of Persons

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

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

6.4 Labour Laws

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment (including wages and working hours), health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require the Contractor's Personnel to obey all applicable Laws, including those concerning health and safety at work.

6.5 Working Hours

No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the Contract Data, unless:

(a) otherwise stated in the Contract;

(b) the Employer gives consent; or

(c) 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 give a Notice to the Employer with reasons and describing the work required.

6.6 Facilities for Staff and Labour

Except as otherwise stated in the Employer's Requirements, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel.

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 the Employer's Requirements. 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. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Employer's Requirements.

6.7 Health and Safety of Personnel

In addition to the requirements of Sub-Clause 4.8 [*Health and Safety Obligations*], the Contractor shall at all times take all necessary precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that:

(a) medical staff, first aid facilities, sick bay, ambulance services and any other medical services stated in the Employer's Requirements are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel; and

(b) suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint a health and safety officer at the Site, responsible for maintaining health, safety and protection against accidents. This officer shall:

(i) be qualified, experienced and competent for this responsibility; and

(ii) have the authority to issue directives for the purpose of maintaining

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the health and safety of all personnel authorised to enter and/or work on the Site and to take protective measures to prevent accidents.

Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

6.8 Contractor's Superintendence

From the Commencement Date until the issue of the Performance Certificate, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect, test and monitor the execution of the Works.

Superintendence shall be given by a sufficient number of persons:

(a) who are fluent in or have adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [*Law and Language*]); and

(b) who have 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 satisfactory and safe execution of the Works.

6.9 Contractor's Personnel

The Contractor's Personnel (including Key Personnel, if any) shall be appropriately qualified, skilled, experienced and competent in their respective trades or occupations.

The Employer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative and Key Personnel (if any), who:

(a) persists in any misconduct or lack of care;

(b) carries out duties incompetently or negligently;

(c) fails to comply with any provision of the Contract;

(d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment;

(e) is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice; or

(f) has been recruited from the Employer's Personnel in breach of Sub-Clause 6.3 [*Recruitment of Persons*].

If appropriate, the Contractor shall then promptly appoint (or cause to be appointed) a suitable replacement. In the case of the replacement of the Contractor's Representative, Sub-Clause 4.3 [*Contractor's Representative*] shall apply. In the case of the replacement of Key Personnel (if any), Sub-Clause 6.12 [*Key Personnel*] shall apply.

6.10 Contractor's Records

Unless otherwise proposed by the Contractor and agreed by the Employer, in each progress report under Sub-Clause 4.20 [*Progress Reports*], the Contractor shall include records of:

(a) occupations and actual working hours of each class of Contractor's Personnel;

(b) the type and actual working hours of each of the Contractor's Equipment;

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(c) the types of Temporary Works used;

(d) the types of Plant installed in the Permanent Works; and

(e) the quantities and types of Materials used

for each work activity shown in the Programme, at each work location and for each day of work.

6.11
Disorderly Conduct

The Contractor shall at all times take all necessary 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
Key Personnel

If no Key Personnel are specified in the Employer's Requirements this Sub-Clause shall not apply.

The Contractor shall appoint the natural persons named in the Tender to the positions of Key Personnel. If not so named, or if an appointed person fails to act in the relevant position of Key Personnel, the Contractor shall submit to the Employer for consent the name and particulars of another person the Contractor proposes to appoint to such position. If consent is withheld or subsequently revoked, the Contractor shall similarly submit the name and particulars of a suitable replacement for such position.

If the Employer does not respond within 14 days after receiving any such submission, by giving a Notice stating an objection to the appointment of such person (or replacement) with reasons, the Employer shall be deemed to have given the Employer's consent.

The Contractor shall not, without the Employer's prior consent, revoke the appointment of any of the Key Personnel or appoint a replacement (unless the person is unable to act as a result of death, illness, disability or resignation, in which case the appointment shall be deemed to have been revoked with immediate effect and the appointment of a replacement shall be treated as a temporary appointment until the Employer gives his/her consent to this replacement, or another replacement is appointed, under this Sub-Clause).

All Key Personnel shall be based at the Site (or, where Works are being executed off the Site, at the location of the Works) for the whole time that the Works are being executed. If any of the Key Personnel is to be temporarily absent during execution of the Works, a suitable replacement shall be temporarily appointed, subject to the Employer's prior consent.

All Key Personnel shall be fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

7 Plants, Materials and Workmanship

7.1
Manner of Execution

The Contractor 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:

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(a) in the manner (if any) specified in the Contract;

(b) in a proper workmanlike and careful manner, in accordance with recognised good practice; and

(c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

7.2 Samples

The Contractor shall submit the following samples of Materials, and relevant information, to the Employer for consent prior to using the Materials in or for the Works:

(a) samples of Materials specified in the Contract, at the Contractor's cost; and

(b) additional samples instructed by the Employer as a Variation.

Each sample shall be labelled as to origin and intended use in the Works.

7.3 Inspection

The Employer's Personnel shall, during all the normal working hours stated in the Contract Data and at all other reasonable times:

(a) have full access to all parts of the Site and to all places from which natural Materials are being obtained;

(b) during production, manufacture and construction (at the Site and, to the extent specified in the Employer's Requirements, elsewhere), be entitled to:

  (i) examine, inspect, measure and test (to the extent stated in the Employer's Requirements) the Materials, Plant and workmanship,

  (ii) check the progress of manufacture of Plant and production and manufacture of Materials, and

  (iii) make records (including photographs and/or video recordings); and

(c) carry out other duties and inspections, as specified in these Conditions and the Employer's Requirements.

The Contractor shall give the Employer's Personnel full opportunity to carry out these activities, including providing safe access, facilities, permissions and safety equipment.

In respect of the work which the Employer's Personnel are entitled to examine, inspect, measure and/or test, the Contractor shall give a Notice to the Employer whenever any Materials, Plant or work is ready for inspection, and before it is to be 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 Employer shall promptly give a Notice to the Contractor that the Employer's Personnel do not require to do so. If the Employer 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.

If the Contractor fails to give a Notice in accordance with this Sub-Clause, the Contractor shall, if and when required by the Employer, uncover the work and thereafter reinstate and make good, all at the Contractor's risk and cost.

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7.4

Testing by the Contractor

This Sub-Clause shall apply to all tests specified in the Contract, except as otherwise stated under Sub-Clause 12 [*Tests after Completion*].

The Contractor shall provide all apparatus, assistance, documents and other information, temporary supplies of electricity and water, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified, experienced and competent staff, as are necessary to carry out the specified tests efficiently and properly. All apparatus, equipment and instruments shall be calibrated in accordance with the standards specified in the Employer's Requirements or defined by applicable Laws and, if requested by the Employer, the Contractor shall submit calibration certificates before carrying out testing.

The Contractor shall give a Notice to the Employer, stating the time and place for the specified testing of any Plant, Materials and other parts of the Works. This Notice shall be given in reasonable time, having regard to the location of the testing, for the Employer's Personnel to attend.

The Employer may, under Clause 13 [*Variations and Adjustments*], vary the location or timing 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, the Cost and any delay incurred in carrying out this Variation shall be borne by the Contractor.

The Employer shall give a Notice to the Contractor of not less than 72 hours of the Employer's intention to attend the tests. If the Employer does not attend at the time and place stated in the Contractor's Notice under this Sub-Clause, the Contractor may proceed with the tests, unless otherwise instructed by the Employer. These tests shall then be deemed to have been made in the Employer's presence. If the Contractor suffers delay and/or incurs Cost from complying with any such instruction or as a result of a delay for which the Employer is responsible, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of Cost Plus Profit.

If the Contractor causes any delay to specified tests (including varied or additional tests) and such delay causes the Employer to incur costs, the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment of these costs by the Contractor.

The Contractor shall promptly forward to the Employer duly certified reports of the tests. When the specified tests have been passed, the Employer shall endorse the Contractor's test certificate, or issue a test certificate to the Contractor, to that effect. If the Employer has not attended the tests, the Employer shall be deemed to have accepted the readings as accurate.

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

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 Employer shall give a Notice to the Contractor describing the item of Plant, Materials, design or workmanship that has been found to be defective. The Contractor shall then promptly prepare and submit a proposal for necessary remedial work.

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The Employer may Review this proposal, and may give a Notice to the Contractor stating the extent to which the proposed work, if carried out, would not result in the Plant, Materials, design or workmanship complying with the Contract. After receiving such a Notice the Contractor shall promptly submit a revised proposal to the Employer. If the Employer gives no such Notice within 14 days after receiving the Contractor's proposal (or revised proposal), the Employer shall be deemed to have given a Notice of No-objection.

If the Contractor fails to promptly submit a proposal (or revised proposal) for remedial work, or fails to carry out the proposed remedial work to which the Employer has given (or is deemed to have given) a Notice of No-objection, the Employer may:

(a) instruct the Contractor under sub-paragraph (a) and/or (b) of Sub-Clause 7.6 [*Remedial Work*]; or

(b) reject the design, Plant, Materials or workmanship by giving a Notice to the Contractor, with reasons, in which case sub-paragraph (a) of Sub-Clause 11.4 [*Failure to Remedy Defects*] shall apply.

After remedying defects in any Plant, Materials, design or workmanship, if the Employer requires any such items to be retested, the tests shall be repeated in accordance with Sub-Clause 7.4 [*Testing by the Contractor*] at the Contractor's risk and cost. If the rejection and retesting cause the Employer to incur additional costs, the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment of these costs by the Contractor.

7.6 Remedial Work

In addition to any previous examination, inspection, measurement or testing, or test certificate or Notice of No-objection by the Employer, at any time before the issue of the Taking-Over Certificate for the Works the Employer may instruct the Contractor to:

(a) repair or remedy (if necessary, off the Site), or remove from the Site and replace any Plant or Materials which are not in accordance with the Contract;

(b) repair or remedy, or remove and re-execute, any other work which is not in accordance with the Contract; and

(c) carry out any remedial work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

The Contractor shall comply with the instruction as soon as practicable and not later than the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c) above.

The Contractor shall bear the cost of all remedial work required under this Sub-Clause, except to the extent that any work under sub-paragraph (c) above is attributable to:

(i) 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 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost Plus Profit; or

(ii) an Exceptional Event, in which case Sub-Clause 18.4 [*Consequences of an Exceptional Event*] shall apply.

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If the Contractor fails to comply with the Employer's instruction, the Employer may (at the Employer's sole discretion) employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for work under this Sub-Clause, the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment by the Contractor of all costs 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

Each item of Plant and Materials shall, to the extent consistent with the mandatory requirements of the Laws of the Country, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

(a) when it is delivered to the Site;

(b) when the Contractor is paid the value of the Plant and Materials under Sub-Clause 8.11 [*Payment for Plant and Materials after Employer's Suspension*]; or

(c) 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

Unless otherwise stated in the Employer's Requirements, the Contractor shall pay all royalties, rents and other payments for:

(a) natural Materials obtained from outside the Site; and

(b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Employer's Requirements.

8 Commencement, Delays and Suspension

8.1 Commencement of Works

Unless the Commencement Date is stated in the Contract Agreement, the Employer shall give a Notice to the Contractor stating the Commencement Date not less than 14 days before the Commencement Date.

Unless otherwise stated in the Particular Conditions, the Commencement Date shall be within 42 days after the date on which the Contract comes into full force and effect under Sub-Clause 1.6 [*Contract Agreement*].

The Contractor shall commence the execution of the Works on, or as soon as is reasonably practicable after, the Commencement Date and shall then proceed with the Works with due expedition and without delay.

8.2 Time for Completion

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), including completion of all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking over under Sub-Clause 10.1 [*Taking Over the Works and Sections*].

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8.3 Programme

The Contractor shall submit an initial programme for the execution of the Works to the Employer within 28 days after receiving the Notice under Sub-Clause 8.1 [*Commencement of Works*]. This programme shall be prepared using programming software stated in the Employer's Requirements (if not stated, the programming software acceptable to the Employer).

Unless otherwise stated in the Particular Conditions, 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.

The initial programme and each revised programme shall be submitted to the Employer in one paper copy, one electronic copy and additional paper copies (if any) as stated in the Contract Data, and shall include:

(a) the Commencement Date and the Time for Completion, of the Works and of each Section (if any);

(b) the date right of access to and possession of (each part of) the Site is to be given to the Contractor in accordance with Sub-Clause 2.1 [*Right of Access to the Site*];

(c) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design, 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 Clause 4.5 [*Nominated Subcontractors*]), testing, commissioning and trial operation;

(d) the Review periods under Sub-Clause 5.2.2 [*Review by Employer*], and periods for Review for any other submissions specified in the Employer's Requirements or required under these Conditions;

(e) the sequence and timing of inspections and tests specified in, or required by, the Contract;

(f) for a revised programme: the sequence and timing of the remedial work (if any) to which the Employer has given a Notice of No-objection under Sub-Clause 7.5 [*Defects and Rejection*] and/or the remedial work (if any) instructed under Sub-Clause 7.6 [*Remedial Work*];

(g) all activities (to the level of detail specified in the Employer's Requirements), logically linked and showing the earliest and latest start and finish dates for each activity, the float (if any), and the critical path(s);

(h) the dates of all locally recognised days of rest and holiday periods (if any);

(i) all key delivery dates of Plant and Materials;

(j) 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

(k) a supporting report which includes:

  (i) a description of all the major stages of the execution of the Works;

  (ii) a general description of the methods which the Contractor intends to adopt in the execution of the Works;

  (iii) details showing the Contractor's reasonable estimate of the number of each 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;

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(iv) if a revised programme, identification of any significant change(s) to the previous programme submitted by the Contractor; and

(v) the Contractor's proposals to overcome the effects of any delay(s) on progress of the Works.

The Employer shall Review 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 Employer gives no such Notice:

- within 21 days after receiving the initial programme; or
- within 14 days after receiving a revised programme

the Employer 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.

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.

Nothing in any programme, the Programme or any supporting report shall be taken as, or relieve the Contractor from any obligation to give, a Notice under the Contract.

If, at any time, the Employer 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 14 days after receiving this Notice submit a revised programme to the Employer in accordance with this Sub-Clause.

8.4 Advance Warning

Each Party shall advise the other Party in advance of any known or probable future events or circumstances which may:

(a) adversely affect the work of the Contractor's Personnel;

(b) adversely affect the performance of the Works when completed;

(c) increase the Contract Price; and/or

(d) delay the execution of the Works or a Section (if any).

The Employer may request the Contractor to submit a proposal under Sub-Clause 13.3.2 [*Variation by Request for Proposal*] to avoid or minimise the effects of such event(s) or circumstance(s).

8.5 Extension of Time for Completion

The Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to Extension of Time if and to the extent that completion for the purposes of Sub-Clause 10.1 [*Taking Over the Works and Sections*] is or will be delayed by any of the following causes:

(a) a Variation (except that there shall be no requirement to comply with Sub-Clause 20.2 [*Claims For Payment and/or EOT*]);

(b) a cause of delay giving an entitlement to EOT under a Sub-Clause of these Conditions; or

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(c) 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 (or any Unforeseeable shortages in the availability of Employer-Supplied Materials, if any, caused by epidemic or governmental actions).

When determining each EOT under Sub-Clause 20.2 [*Claims For Payment and/or EOT*], the Employer's Representative shall review previous determinations under Sub-Clause 3.5 [*Agreement or Determination*] and may increase, but shall not decrease, the total EOT.

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 in accordance with the rules and procedures stated in the Special Provisions (if not stated, as appropriate taking due regard of all relevant circumstances).

8.6 Delays Caused by Authorities

If:

(a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities or private utility entities in the Country;

(b) these authorities or entities delay or disrupt the Contractor's work; and

(c) the delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.5 [*Extension of Time for Completion*].

8.7 Rate of Progress

If, at any time:

(a) actual progress is too slow to complete the Works or a Section (if any) within the relevant Time for Completion; and/or

(b) progress has fallen (or will fall) behind the Programme (or the initial programme if it has not yet become the Programme) under Sub-Clause 8.3 [*Programme*],

other than as a result of a cause listed in Sub-Clause 8.5 [*Extension of Time for Completion*], then the Employer may instruct the Contractor to submit, under Sub-Clause 8.3 [*Programme*], a revised programme describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete the Works or a Section (if any) within the relevant Time for Completion.

Unless the Employer gives a Notice to the Contractor stating 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 the Goods, at the Contractor's risk and cost. If these revised methods cause the Employer to incur additional costs, the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment of these costs by the Contractor, in addition to Delay Damages (if any).

Sub-Clause 13.3.1 [*Variation by Instruction*] shall apply to revised methods, including acceleration measures, instructed by the Employer to reduce delays resulting from causes listed under Sub-Clause 8.5 [*Extension of Time for Completion*].

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8.8

Delay Damages

If the Contractor fails to comply with Sub-Clause 8.2 [*Time for Completion*], the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment of Delay Damages by the Contractor for this default. Delay Damages shall be the amount stated in the Contract Data, which shall be paid for every day which shall elapse between the relevant Time for Completion and the relevant Date of Completion of the Works or Section. The total amount due under this Sub-Clause shall not exceed the maximum amount of Delay Damages (if any) stated in the Contract Data.

These Delay Damages shall be the only damages due from the Contractor for the Contractor's failure to comply with Sub-Clause 8.2 [*Time for Completion*], other than in the event of termination under Sub-Clause 15.2 [*Termination for Contractor's Default*] before completion of the Works. These Delay Damages shall not relieve the Contractor from the obligation to complete the Works, or from any other duties, obligations or responsibilities which the Contractor may have under or in connection with the Contract.

This Sub-Clause 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.

8.9

Employer's Suspension

The Employer may at any time instruct the Contractor to suspend progress of part or all of the Works, which instruction shall state the date and cause of the suspension.

During such suspension, the Contractor shall protect, store and secure such part or all of the Works (as the case may be) against any deterioration, loss or damage.

To the extent that the cause of such suspension is the responsibility of the Contractor, Sub-Clauses 8.10 [*Consequences of Employer's Suspension*], 8.11 [*Payment for Plant and Materials after Employer's Suspension*] and 8.12 [*Prolonged Suspension*] shall not apply.

8.10

Consequences of Employer's Suspension

If the Contractor suffers delay and/or incurs Cost from complying with an Employer's instruction under Sub-Clause 8.9 [*Employer's Suspension*] and/or from resuming the work under Sub-Clause 8.13 [*Resumption of Work*], the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost Plus Profit.

The Contractor shall not be entitled to EOT, or to payment of the Cost incurred, in making good:

(a) the consequences of the Contractor's faulty or defective design, workmanship, Plant or Materials; and/or

(b) any deterioration, loss or damage caused by the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.9 [*Employer's Suspension*].

8.11

Payment for Plant and Materials after Employer's Suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension instructed under Sub-Clause 8.9 [*Employer's Suspension*]) of Plant and/or Materials which have not been delivered to Site, if:

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(a) the work on Plant, or delivery of Plant and/or Materials, has been suspended for more than 28 days and

(i) the Plant and/or Materials were scheduled, in accordance with the Programme, to have been completed and ready for delivery to the Site during the suspension period; and

(ii) the Contractor provides the Employer with reasonable evidence that the Plant and/or Materials comply with the Contract; and

(b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Employer's instructions.

8.12

Prolonged Suspension

If the suspension under Sub-Clause 8.9 [*Employer's Suspension*] has continued for more than 84 days, the Contractor may give a Notice to the Employer requesting permission to proceed.

If the Employer does not give a Notice under Sub-Clause 8.13 [*Resumption of Work*] within 28 days after receiving the Contractor's Notice under this Sub-Clause, the Contractor may either:

(a) agree to a further suspension, in which case the Parties may agree the EOT and/or Cost Plus Profit (if the Contractor incurs Cost), and/or payment for suspended Plant and/or Materials, arising from the total period of suspension;

or (and if the Parties fail to reach agreement under this sub-paragraph (a))

(b) after giving a (second) Notice to the Employer, treat the suspension as an omission of the affected part of the Works (as if it had been instructed under Sub-Clause 13.3.1 [*Variation by Instruction*]) with immediate effect including release from any further obligation to protect, store and secure under Sub-Clause 8.9 [*Employer's Suspension*]. 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*].

8.13

Resumption of Work

The Contractor shall resume work as soon as practicable after receiving a Notice from the Employer to proceed with the suspended work.

At the time stated in this Notice (if not stated, immediately after the Contractor receives this Notice), the Contractor and the Employer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Employer shall record any deterioration, loss, damage or defect in the Works or Plant or Materials which has occurred during the suspension and shall provide this record to the Contractor. The Contractor shall promptly make good all such deterioration, loss, damage or defect so that the Works, when completed, shall comply with the Contract.

9 Tests on Completion

9.1

Contractor's Obligations

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [*Testing by the Contractor*], after submitting the documents under Sub-Clause 5.6 [*As-Built Records*] and Sub-Clause 5.7 [*Operation and Maintenance Manuals*].

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The Contractor shall submit to the Employer, not less than 42 days before the date the Contractor intends to commence the Tests on Completion, a detailed test programme showing the intended timing and resources required for these tests.

The Employer may Review the proposed test programme and may give a Notice to the Contractor stating the extent to which it does not comply with the Contract. Within 14 days after receiving this Notice, the Contractor shall revise the test programme to rectify such non-compliance. If the Employer gives no such Notice within 14 days after receiving the test programme (or revised test programme), the Employer shall be deemed to have given a Notice of No-objection. The Contractor shall not commence the Tests on Completion until a Notice of No-objection is given (or is deemed to have been given) by the Employer.

In addition to any date(s) shown in the test programme, the Contractor shall give a Notice to the Employer, of not less than 21 days, of the date after which the Contractor will be ready to carry out each of the Tests on Completion. The Contractor shall commence the Tests on Completion within 14 days after this date, or on such day or days as the Employer shall instruct, and shall proceed in accordance with the Contractor's test programme to which the Employer has given (or is deemed to have given) a Notice of No-objection.

Unless otherwise stated in the Employer's Requirements, the Tests on Completion shall be carried out in stages in the following sequence:

(a) pre-commissioning tests (on or off the Site, as appropriate), which shall include the appropriate inspections and ("dry" or "cold") functional tests to demonstrate that each item of the Works or Section can safely undertake the next stage under sub-paragraph (b) below;

(b) commissioning tests, which shall include the operational tests specified in the Employer's Requirements to demonstrate that the Works or Section can be operated safely and as specified in the Employer's Requirements, under all available operating conditions; and

(c) trial operation (to the extent possible under available operating conditions), which shall demonstrate that the Works or Section perform reliably and in accordance with the Contract.

The tests of each stage described in sub-paragraphs (b) and (c) above shall not be commenced until the Works or Section have passed the previous stage.

During trial operation, when the Works or Section (as the case may be) are operating under stable conditions, the Contractor shall give a Notice to the Employer that they are ready for any other Tests on Completion, including performance tests. Performance tests shall be carried out to demonstrate whether the Works or Section comply with the performance criteria specified in the Employer's Requirements and with the Schedule of Performance Guarantees.

Trial operation, including performance testing, shall not constitute a taking-over under Clause 10 [*Employer's Taking Over*].

Any product produced by, and any revenue or other benefit resulting from, trial operation under this Sub-Clause shall be the property of the Employer.

As soon as the Works or Section have, in the Contractor's opinion, passed each stage of the Tests on Completion described in sub-paragraphs (a) to

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(c) above, the Contractor shall submit a certified report of the results of these tests to the Employer. The Employer shall Review each such 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 Employer does not give such a Notice within 14 days after receiving the results of the tests, the Employer shall be deemed to have given a Notice of No-objection.

In considering the results of the Tests on Completion, the Employer shall make allowances for the effect of use of (any part of) the Works by the Employer on the performance or other characteristics of the Works.

9.2 Delayed Tests

If the Contractor has given a Notice under Sub-Clause 9.1 [*Contractor's Obligations*] that the Works or Section (as the case may be) are ready for Tests on Completion, and these tests are unduly delayed by the Employer's Personnel or by a cause for which the Employer is responsible, Sub-Clause 10.3 *[Interference with Tests on Completion*] shall apply.

If the Tests on Completion are unduly delayed by the Contractor, the Employer may by giving a Notice to the Contractor require the Contractor to carry out the tests within 21 days after receiving the Notice. The Contractor shall carry out the tests on such day or days within this period of 21 days as the Contractor may fix, for which the Contractor shall give a prior Notice to the Employer of not less than 7 days.

If the Contractor fails to carry out the Tests on Completion within this period of 21 days:

(a) after a second Notice is given by the Employer to the Contractor, the Employer's Personnel may proceed with the tests;

(b) the Contractor may attend and witness these tests;

(c) within 28 days of these tests being completed, the Employer shall send a copy of the test results to the Contractor; and

(d) if the Employer incurs additional costs as a result of such testing, the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment by the Contractor of the costs reasonably incurred.

Whether or not the Contractor attends, these Tests on Completion shall be deemed to have been carried out in the presence of the Contractor and the results of these tests shall be accepted as accurate.

9.3 Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [*Defects and Rejection*] shall apply. The Employer or the Contractor may require these failed tests, and the Tests on Completion on any related work, to be repeated under the same terms and conditions. Such repeated tests shall be treated as Tests on Completion for the purposes of this Clause.

9.4 Failure to Pass Tests on Completion

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [*Retesting*], the Employer shall be entitled to:

(a) order further repetition of Tests on Completion under Sub-Clause 9.3 [*Retesting*];

(b) reject the Works if the effect of the failure is to deprive the Employer of

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substantially the whole benefit of the Works in which event the Employer shall have the same remedies as are provided in sub-paragraph (d) of Sub-Clause 11.4 [*Failure to Remedy Defects*];

(c) reject the Section if the effect of the failure is that the Section cannot be used for its intended purpose(s) under the Contract, in which event the Employer shall have the same remedy as is provided in sub-paragraph (c) of Sub-Clause 11.4 [*Failure to Remedy Defects*]; or

(d) issue a Taking-Over Certificate, if the Employer so requests.

In the event of sub-paragraph (d) above, the Contractor shall then proceed in accordance with all other obligations under the Contract, and the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment by the Contractor or a reduction in the Contract Price as described under sub-paragraphs (b)(i) or (b)(ii) of Sub-Clause 11.4 [*Failure to Remedy Defects*], respectively. This entitlement shall be without prejudice to any other rights the Employer may have, under the Contract or otherwise.

10 Employer's Taking Over

10.1 Taking Over the Works and Sections

Except as stated in Sub-Clause 9.4 [*Failure to Pass Tests on Completion*] and Sub-Clause 10.2 [*Taking Over of Parts of the Works*], the Works shall be taken over by the Employer when:

(a) the Works have been completed in accordance with the Contract, including the passing of the Tests on Completion and except as allowed in sub-paragraph (i) below;

(b) if applicable, the Employer has given (or is deemed to have given) a Notice of No-objection to the as-built records submitted under sub-paragraph (a) of Sub-Clause 5.6 [*As-Built Records*];

(c) if applicable, the Employer has given (or is deemed to have given) a Notice of No-objection to the provisional O&M Manuals for the Works submitted under Sub-Clause 5.7 [*Operation and Maintenance Manuals*];

(d) if applicable, the Contractor has carried out the training as described under Sub-Clause 5.5 [*Training*]; and

(e) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply for a Taking-Over Certificate by giving a Notice to the Employer not more than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

If any part of the Works is taken over under Sub-Clause 10.2 [T*aking Over of Parts of the Works*], the remaining Works or Section shall not be taken over until the conditions described in sub-paragraphs (a) to (e) above have been fulfilled.

The Employer shall, within 28 days after receiving the Contractor's Notice, either:

(i) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects (as listed in the Taking-Over Certificate) which will not substantially affect the safe use of the Works or Section for their intended purpose (either until or

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whilst this work is completed and these defects are remedied); or

(ii) reject the application by giving a Notice to the Contractor, with reasons. This Notice shall specify the work required to be done, the defects required to be remedied and/or the documents required to be submitted by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work, remedy such defects and/or submit such documents before giving a further Notice under this Sub-Clause.

If the Employer does not issue the Taking-Over Certificate or reject the Contractor's application within this period of 28 days, and if the conditions described in sub-paragraphs (a) to (d) above have been fulfilled, the Works or Section shall be deemed to have been completed in accordance with the Contract on the fourteenth day after the Employer receives the Contractor's Notice of application and the Taking-Over Certificate shall be deemed to have been issued.

10.2 Taking Over of Parts of the Works

Parts of the Works (other than Sections) shall not be taken over or used by the Employer, except as may be stated in the Employer's Requirements or as may be agreed by both Parties.

10.3 Interference with Tests on Completion

If the Contractor is prevented, for more than 14 days (either a continuous period, or multiple periods which total more than 14 days), from carrying out the Tests on Completion by the Employer's Personnel or by a cause for which the Employer is responsible (including any performance test that is not possible due to available operating conditions during trial operation):

(a) the Contractor shall carry out the Tests on Completion as soon as practicable and, in any case, before the expiry date of the relevant DNP; and

(b) if the Contractor suffers delay and/or incurs Cost as a result of being so prevented, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost Plus Profit.

11 Defects after Taking Over

11.1 Completion of Outstanding Work and Remedying Defects

In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

(a) complete any work which is outstanding on the relevant Date of Completion, within the time(s) stated in the Taking-Over Certificate or such other reasonable time as is instructed by the Employer; and

(b) execute all work required to remedy defects or damage, of which a Notice is given to the Contractor 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).

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If a defect appears or damage occurs during the relevant DNP, a Notice shall be given to the Contractor accordingly, by (or on behalf of) the Employer. Promptly thereafter:

(i) the Contractor and the 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) the second, third and fourth paragraphs of Sub-Clause 7.5 [*Defects and Rejection*] shall apply.

11.2
Cost of Remedying Defects

All work under sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

(a) the design of the Works, other than a part of the design for which the Employer is responsible (if any);

(b) Plant, Materials or workmanship not being in accordance with the Contract;

(c) improper operation or maintenance which was attributable to matters for which the Contractor is responsible (under Sub-Clause 5.5 [*Training*], Sub-Clause 5.6 [As-Built Records] and/or Sub-Clause 5.7 [*Operation and Maintenance Manuals*] or otherwise); or

(d) failure by the Contractor to comply with any other obligation under the Contract.

If the Contractor considers that the work is attributable to any other cause, the Contractor shall promptly give a Notice to the Employer and the Employer's Representative shall proceed under Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine the cause (and, for the purpose of Sub-Clause 3.5.3 [*Time limits*], the date of this Notice shall be the date of commencement of the time limit for agreement under Sub-Clause 3.5.3). If it is agreed or determined that the work is attributable to a cause other than those listed above, Sub-Clause 13.3.1 [*Variation by Instruction*] shall apply as if such work had been instructed by the Employer.

11.3
Extension of Defects Notification Period

The Employer shall be entitled to an extension of the DNP for the Works or a Section (or a part of the Works, if Sub-Clause 10.2 [*Taking Over of Parts of the Works*] applies):

(a) if and to the extent that the Works, Section (or the part of the Works) or a major item of Plant (as the case may be, and after taking over) cannot be used for the intended purpose(s) by reason of a defect or damage which is attributable to any of the matters under sub-paragraphs (a) to (d) of Sub-Clause 11.2 [*Cost of Remedying Defects*]; and

(b) subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*].

However, a DNP shall not be extended by more than a period of two years after the expiry of the DNP stated in the Contract Data.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.9 [*Employer's Suspension*] (other than where the cause of such suspension is the responsibility of the Contractor) or Sub-Clause 16.1

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[*Suspension by Contractor*], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two 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

If the remedying of any defect or damage under Sub-Clause 11.1 [*Completion of Outstanding Works and Remedying Defects*] is unduly delayed by the Contractor, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. A Notice of this fixed date shall be given to the Contractor by (or on behalf of) the Employer, which Notice shall allow the Contractor reasonable time (taking due regard of all relevant circumstances) to remedy the defect or damage.

If the Contractor fails to remedy the defect or damage by the date stated in this Notice and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Employer may (at the Employer's sole discretion):

(a) carry out the work or have the work carried out by others (including any retesting), in the manner required under the Contract and at the Contractor's cost, but the Contractor shall have no responsibility for this work. The Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment by the Contractor of the costs reasonably incurred by the Employer in remedying the defect or damage;

(b) accept the damaged or defective work, in which case the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to:

  (i) payment of Performance Damages by the Contractor in full satisfaction of this failure; or

  (ii) if there is no Schedule of Performance Guarantees under the Contract, or no applicable Performance Damages, 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;

(c) 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 13.3.1 [*Variation by Instruction*]; or

(d) terminate the Contract as a whole with immediate effect (and Sub-Clause 15.2 [*Termination for Contractor's Default*] shall not apply) if the defect or damage deprives the Employer of substantially the whole benefit of the Works. The Employer shall then be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to recover from the Contractor all sums paid for the Works, plus financing charges and any costs incurred in dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

The exercise of discretion by the Employer under sub-paragraph (c) or (d) above shall be without prejudice to any other rights the Employer may have, under the Contract or otherwise.

11.5

Remedying of Defective Work off Site

If, during the DNP, the Contractor considers that any defect or damage in any Plant cannot be remedied expeditiously on the Site the Contractor shall

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give a Notice, with reasons, to the Employer requesting consent to remove the defective or damaged Plant off the Site for the purposes of repair. This Notice shall clearly identify each item of defective or damaged Plant, and shall give details of:

(a) the defect or damage to be repaired;
(b) the place to which defective or damaged Plant is to be taken for repair;
(c) the transportation to be used (and insurance cover for such transportation);
(d) the proposed inspections and testing off the Site;
(e) the planned duration required before the repaired Plant shall be returned to the Site; and
(f) the planned duration for reinstallation and retesting of the repaired Plant (under Sub-Clause 7.4 [*Testing by the Contractor*] and/or Clause 9 [*Tests on Completion*] if applicable).

The Contractor shall also provide any further details that the Employer may reasonably require.

When the Employer gives consent (which consent shall not relieve the Contractor from any obligation or responsibility under this Clause), the Contractor may remove from the Site such items of Plant as are defective or damaged. As a condition of this 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 Plant.

11.6 Further Tests after Remedying Defects

Within 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 and/or Plant and the proposed repeated tests (under Clause 9 [*Tests on Completion*] or Clause 12 [*Tests after Completion*], as applicable). If the Employer does not respond within 14 days after receiving this Notice, by giving a Notice to the Contractor objecting to such proposed repeated testing and/or instructing the repeated tests that are necessary to demonstrate that the remedied Works, Section and/or Plant comply with the Contract, the Employer shall be deemed to have agreed with the Contractor's proposed repeated testing.

If the Contractor fails to give such a Notice within the 7 days, the Employer may give a Notice to the Contractor, within 14 days after the defect or damage is remedied, instructing the repeated tests that are necessary to demonstrate that the remedied Works, Section and/or Plant comply with the Contract.

All repeated tests under this Sub-Clause 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 Remedying Defects*], for the cost of the remedial work.

11.7 Right of Access after Taking Over

Until the date 28 days after issue of the Performance Certificate, the Contractor shall have the right of access to all parts of the Works and to records of the operation, maintenance and performance of the Works, except as may be inconsistent with the Employer's reasonable security restrictions.

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Whenever the Contractor intends to access any part of the Works or such records during the relevant DNP:

(a) the Contractor shall request access by giving a Notice to the Employer, describing the parts of the Works and/or records to be accessed, the reasons for such access, and the Contractor's preferred date for access. This Notice shall be given in reasonable time in advance of the preferred date for access, taking due regard of all relevant circumstances including the Employer's security restrictions; and

(b) within 7 days after receiving the Contractor's Notice, the Employer shall give a Notice to the Contractor either:

(i) stating the Employer's consent to the Contractor's request; or

(ii) proposing reasonable alternative date(s), with reasons. If the Employer fails to give this Notice within the 7 days, the Employer shall be deemed to have given consent to the Contractor's access on the preferred date stated in the Contractor's Notice.

If the Contractor incurs additional Cost as a result of any unreasonable delay by the Employer in permitting access to the Works or such records by the Contractor, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment of any such Cost Plus Profit.

11.8 Contractor to Search

The Contractor shall, if instructed by the Employer, search for the cause of any defect, under the direction of the Employer. The Contractor shall carry out the search on the date(s) stated in the Employer's instruction or other date(s) agreed with the Employer.

Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment of the Cost Plus Profit of the search.

If the Contractor fails to carry out the search in accordance with this Sub-Clause, 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 may 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 Remedying Defects*], the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment by the Contractor of the costs of the search reasonably incurred by the Employer.

11.9 Performance Certificate

Performance of the Contractor's obligations under the Contract shall not be considered to have been completed until the Employer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor fulfilled the Contractor's obligations under the Contract.

The Employer shall issue the Performance Certificate to the Contractor (with a copy to the DAAB) within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has:

(a) supplied all the Contractor's Documents and, if applicable, the Employer has given (or is deemed to have given) a Notice of No-objection to the as-built records under sub-paragraph (b) of Sub-Clause 5.6 [*As-Built Records*]; and

(b) completed and tested all the Works (including remedying any defects) in accordance with the Contract.

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If the Employer fails to issue the Performance Certificate within this period of 28 days, the Performance Certificate shall be deemed to have been issued on the date 28 days after the date on which it should have been issued, as required by this Sub-Clause.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

11.10
Unfulfilled Obligations

After the issue of the Performance Certificate, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

However in relation to Plant, the Contractor shall not be liable for any defects or damage occurring more than two years after expiry of the DNP for the Plant except if prohibited by law or in any case of fraud, gross negligence, deliberate default or reckless misconduct.

11.11
Clearance of Site

Promptly after the issue of the Performance Certificate, the Contractor shall:

(a) remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site;

(b) reinstate all parts of the Site which were affected by the Contractor's activities during the execution of the Works and are not occupied by the Permanent Works; and

(c) leave the Site and the Works in the condition stated in the Employer's Requirements (if not stated, in a clean and safe condition).

If the Contractor fails to comply with sub-paragraphs (a), (b) and/or (c) above within 28 days after the issue of the Performance Certificate, the Employer may sell (to the extent permitted by applicable Laws) or otherwise dispose of any remaining items and/or may reinstate and clean the Site (as may be necessary) at the Contractor's cost.

The Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment by the Contractor of the costs reasonably incurred in connection with, or attributable to, such sale or disposal and reinstating and/or cleaning the Site, less an amount equal to the moneys from the sale (if any).

12 Tests after Completion

12.1
Procedure for Tests after Completion

If Tests after Completion are specified in the Employer's Requirements, this Clause shall apply.

The timing of the Tests after Completion shall be as soon as is reasonably practicable after the Works or Section (as the case may be) have been taken over by the Employer.

The Employer shall provide all electricity, water, sewage (if applicable), fuel, consumables, materials, and make the Employer's Personnel and Plant available for the Tests after Completion. The Contractor shall:

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(a) provide all other apparatus, assistance, documents and other information, equipment, instruments, labour, and suitably qualified, experienced and competent staff, as are necessary to carry out the Tests after Completion efficiently and properly;

(b) submit to the Employer, not later than 42 days before the date the Contractor intends to commence the Tests after Completion, a detailed test programme showing the intended timing and resources required for these tests. The Employer may Review the proposed test programme and may give a Notice to the Contractor stating the extent to which it does not comply with the Contract. Within 14 days after receiving this Notice, the Contractor shall revise the test programme to rectify such non-compliance. If the Employer gives no such Notice within 14 days after receiving the test programme (or revised test programme), the Employer shall be deemed to have given a Notice of No-objection;

(c) in addition to any date(s) shown in the test programme, give a Notice to the Employer of not less than 21 days, of the date after which the Contractor will be ready to carry out each of the Tests after Completion;

(d) not commence the Tests after Completion until a Notice of No-objection is given (or is deemed to have been given) by the Employer to the Contractor's test programme;

(e) commence the Tests after Completion within 14 days after the date stated in the Notice under sub-paragraph (c) above, or on such day or days as the Employer shall instruct;

(f) proceed to carry out the Tests after Completion in accordance with:

(i) the Contractor's test programme to which the Employer has given (or is deemed to have given) a Notice of No-objection;

(ii) the Employer's Requirements; and

(iii) if applicable, the O&M Manuals to which the Employer has given (or is deemed to have given) a Notice of No-objection, under Sub-Clause 5.7 [*Operation and Maintenance Manuals*]; and

in the presence of such Employer's Personnel and/or Contractor's Personnel as either Party may reasonably request.

The results of the Tests after Completion shall be compiled and evaluated by both Parties. Appropriate account shall be taken of the effect of the Employer's prior use of the Works.

12.2
Delayed Tests

If the Contractor has given a Notice under sub-paragraph (c) of Sub-Clause 12.1 [*Procedure for Tests after Completion*] that the Works or Section (as the case may be) are ready for Tests after Completion, and the Contractor is prevented from carrying out the Tests after Completion, or these tests are unduly delayed, by the Employer's Personnel or by a cause for which the Employer is responsible:

(a) the Contractor shall carry out the Tests after Completion as soon as practicable and, in any case, before the expiry date of the relevant DNP; and

(b) if the Contractor incurs Cost as a result of any such prevention and/or delay, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment of such Cost Plus Profit.

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If, for reasons not attributable to the Contractor, a Test after Completion on the Works or any Section cannot be completed during the DNP (or any other period agreed by both Parties), then the Works or Section shall be deemed to have passed this Test after Completion.

12.3
Retesting

Subject to Sub-Clause 12.4 [*Failure to Pass Tests after Completion*], if the Works, or a Section, fail to pass the Tests after Completion:

(a) sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] shall apply; and

(b) after remedying any defect or damage, Sub-Clause 11.6 [*Further Tests after Remedying Defects*] shall apply.

If and to the extent that this failure and retesting are attributable to any of the matters listed in sub-paragraphs (a) to (d) of Sub-Clause 11.2 [*Cost of Remedying Defects*] and cause the Employer to incur additional costs, the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment of these costs by the Contractor.

12.4
Failure to Pass Tests after Completion

If:

(a) the Works, or a Section, fail to pass any or all of the Tests after Completion; and

(b) applicable Performance Damages are set out in the Schedule of Performance Guarantees

the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment of these Performance Damages by the Contractor in full satisfaction of this failure. If the Contractor pays these Performance Damages to the Employer during the DNP, then the Works or Section shall be deemed to have passed these Tests after Completion.

If the Works, or a Section, fail to pass a Test after Completion and, by giving a Notice to the Employer, the Contractor proposes to make adjustments or modifications to the Works or such Section (including an item of Plant):

(i) the Contractor may be instructed by a Notice given by the Employer that right of access to the Works or Section cannot be given until a time that is convenient to the Employer, which time shall be reasonable;

(ii) the Contractor shall remain liable to carry out the adjustments or modifications and to satisfy this Test, within a reasonable period of receiving the Notice under sub-paragraph (i) above; and

(iii) if the Contractor does not receive a Notice under sub-paragraph (i) above during the relevant DNP, the Contractor shall be relieved of the obligation to make such adjustments or modifications and the Works or Section (as the case may be) shall be deemed to have passed this Test after Completion.

If the Contractor incurs additional Cost as a result of any unreasonable delay by the Employer in permitting access to the Works or Section by the Contractor, either to investigate the causes of a failure to pass a Test after Completion or to carry out any adjustments or modifications, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment of any such Cost Plus Profit.

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13 Variations and Adjustments

13.1 Right to Vary

Variations may be initiated by the Employer under Sub-Clause 13.3 [*Variation Procedure*] at any time before the issue of the Taking-Over Certificate for the Works.

Other than as stated under Sub-Clause 11.4 [*Failure to Remedy Defects*], a Variation shall not comprise the omission of any work which is to be carried out by the Employer or by others unless otherwise agreed by the Parties.

The Contractor shall be bound by each Variation instructed under Sub-Clause 13.3.1 [*Variation by Instruction*], and shall execute the Variation with due expedition and without delay, unless the Contractor promptly gives a Notice to the Employer stating (with detailed supporting particulars) that:

(a) the varied work was Unforeseeable having regard to the scope and nature of the Works described in the Employer's Requirements;

(b) the Contractor cannot readily obtain the Goods required for the Variation;

(c) it will adversely affect the Contractor's ability to comply with Sub-Clause 4.8 [*Health and Safety Obligations*] and/or Sub-Clause 4.18 [*Protection of the Environment*];

(d) it will have an adverse impact on the achievement of the Schedule of Performance Guarantees; or

(e) it may adversely affect the Contractor's obligation to complete the Works so that they shall be fit for the purpose(s) for which they are intended under Sub-Clause 4.1 [*Contractor's General Obligations*].

Promptly after receiving this Notice, the Employer shall respond by giving a Notice to the Contractor cancelling, confirming or varying the instruction. Any instruction so confirmed or varied shall be taken as an instruction under Sub-Clause 13.3.1 [*Variation by instruction*].

13.2 Value Engineering

The Contractor may, at any time, submit to the Employer a written proposal which (in the Contractor's opinion) will, if adopted:

(a) accelerate completion;

(b) reduce the cost to the Employer of executing, maintaining or operating the Works;

(c) improve the efficiency or value to the Employer of the completed Works; or

(d) otherwise be of benefit to the Employer.

The proposal shall be prepared at the cost of the Contractor and shall include the details as stated in sub-paragraphs (a) to (c) of Sub-Clause 13.3.1 [*Variation by Instruction*].

The Employer shall, as soon as practicable after receiving such proposal, respond by giving a Notice to the Contractor of the Employer's consent or otherwise. The Employer's consent or otherwise shall be at the sole discretion of the Employer. The Contractor shall not delay any work while awaiting a response.

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If the Employer gives his/her consent to the proposal, with or without comments, the Employer shall then instruct a Variation. Thereafter:

(i) the Contractor shall submit any further particulars that the Employer may reasonably require; and

(ii) then the third paragraph of Sub-Clause 13.3.1 [*Variation by Instruction*] shall apply which shall include consideration by the Employer of the sharing (if any) of the benefit, costs and/or delay between the Parties stated in the Particular Conditions.

13.3
Variation Procedure

Subject to Sub-Clause 13.1 [*Right to Vary*], Variations shall be initiated by the Employer in accordance with either of the following procedures:

13.3.1 Variation by Instruction

The Employer may instruct a Variation by giving a Notice (describing the required change and stating any requirements for the recording of Costs) to the Contractor in accordance with Sub-Clause 3.4 [*Instructions*].

The Contractor shall proceed with execution of the Variation and shall within 28 days (or other period proposed by the Contractor and agreed by the Employer) of receiving the Employer's instruction, submit to the Employer's Representative detailed particulars including:

(a) a description of the varied work performed or to be performed, including details of the resources and methods adopted or to be adopted by the Contractor;

(b) a programme for its execution and the Contractor's proposal for any necessary modifications (if any) to the Programme according to Sub-Clause 8.3 [*Programme*] and to the Time for Completion; and

(c) the Contractor's proposal for adjustment to the Contract Price, with supporting particulars. Whenever the omission of any work forms part (or all) of a Variation, and if:

- the Contractor has incurred or will incur cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Contract Price stated in the Contract Agreement; and
- the omission of the work has resulted or will result in this sum not forming part of the Contract Price

this cost may be included in the Contractor's proposal (and, if so, shall be clearly identified). 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 other losses and damages suffered (or to be suffered) by the Contractor as a result of the omission.

Thereafter, the Contractor shall submit any further particulars that the Employer's Representative may reasonably require.

The Employer's Representative shall then proceed under Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine:

(i) EOT, if any; and/or

(ii) the adjustments to the Contract Price and the Schedule of Payments, if any

(and, for the purpose of Sub-Clause 3.5.3 [*Time limits*], the date the Employer's Representative receives the Contractor's submission (including any requested

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further particulars) shall be the date of commencement of the time limit for agreement under Sub-Clause 3.5.3). The Contractor shall be entitled to such EOT and/or adjustments to the Contract Price, without any requirement to comply with Sub-Clause 20.2 [*Claims For Payment and/or EOT*].

If no Schedule of Rates and Prices is included in the Contract, the adjustments under sub-paragraph (ii) above shall be derived from the Cost Plus Profit of executing the work.

If a Schedule of Rates and Prices is included in the Contract, the following provisions of this Sub-Clause 13.3.1 shall apply to the adjustments under sub-paragraph (ii) above.

For each item of work forming part (or all) of a Variation, the appropriate rate or price for the item shall be the rate or price specified for such item in the Schedule of Rates and Prices or, if there is no such item, the rate or price specified for similar work. However, a new rate or price shall be appropriate for an item of work if no rate or price for this item is specified in the Schedule of Rates and Prices and no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Each new rate or price shall be derived from any relevant rates or prices in the Schedule of Rates and Prices, with reasonable adjustments taking account of all relevant circumstances. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the Cost Plus Profit of executing the work.

Until such time as the adjustments under sub-paragraph (ii) above are agreed or determined, the Employer shall assess a provisional rate or price for the purposes of interim payment under Sub-Clause 14.6 [*Interim Payment*].

13.3.2 Variation by Request for Proposal

The Employer may request a proposal, before instructing a Variation, by giving a Notice (describing the proposed change) to the Contractor.

The Contractor shall respond to this Notice as soon as practicable, by either:

(a) submitting a proposal, which shall include the matters as described in sub-paragraphs (a) to (c) of Sub-Clause 13.3.1 [*Variation by Instruction*]; or

(b) giving reasons why the Contractor cannot comply (if this is the case), by reference to the matters described in sub-paragraphs (a) to (e) of Sub-Clause 13.1 [*Right to Vary*].

If the Contractor submits a proposal, the Employer shall, as soon as practicable after receiving it, respond by giving a Notice to the Contractor stating the Employer's consent or otherwise. The Contractor shall not delay any work whilst awaiting a response.

If the Employer gives consent to the proposal, with or without comments, the Employer shall then instruct the Variation. Thereafter, the Contractor shall submit any further particulars that the Employer may reasonably require and the third paragraph of Sub-Clause 13.3.1 [*Variation by Instruction*] shall apply.

If the Employer does not give consent to the proposal, with or without comments, and if the Contractor has incurred Cost as a result of submitting it, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment of such Cost.

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13.4

Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Employer's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts for the work, supplies or services to which the Provisional Sum relates, as the Employer shall have instructed.

For each Provisional Sum, the Employer may instruct:

(a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor, and for which adjustments to the Contract Price and the Schedule of Payments (if any) shall be agreed or determined under Sub-Clause 13.3.1 [*Variation by Instruction*]; and/or

(b) Plant, Materials, works or services to be purchased by the Contractor from a nominated Subcontractor (as defined in Sub-Clause 4.5 [*Nominated Subcontractors*]) or otherwise, and for which there shall be included in the Contract Price:

(i) the actual amounts paid (or due to be paid) by the Contractor; and

(ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the applicable Schedule. If there is no such rate, the percentage rate stated in the Contract Data shall be applied.

If the Employer instructs the Contractor under sub-paragraph (a) and/or (b) above, this instruction may include a requirement for the Contractor to submit quotations from the Contractor's suppliers and/or subcontractors for all (or some) of the items of the work to be executed or Plant, Materials, works or services to be purchased. Thereafter, the Employer may respond by giving a Notice either instructing the Contractor to accept one of these quotations (but such instruction shall not be taken as an instruction under Sub-Clause 4.5 [*Nominated Subcontractors*]), or revoking the instruction. If the Employer does not so respond within 7 days of receiving the quotations, the Contractor shall be entitled to accept any of these quotations at the Contractor's discretion.

Each Statement that includes a Provisional Sum shall also include all applicable invoices, vouchers and accounts or receipts in substantiation of the Provisional Sum.

13.5

Daywork

If a Daywork Schedule is not included in the Contract, this Sub-Clause shall not apply.

For work of a minor or incidental nature, the Employer may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule, and the following procedure shall apply.

Before ordering Goods for such work (other than any Goods priced in the Daywork Schedule), the Contractor shall submit one or more quotations from the Contractor's suppliers and/or subcontractors to the Employer. Thereafter, the Employer may instruct the Contractor to accept one of these quotations (but such instruction shall not be taken as an instruction under Sub-Clause 4.5 [*Nominated Subcontractors*]). If the Employer does not so instruct the Contractor within 7 days of receiving the quotations, the Contractor shall be entitled to accept any of these quotations at the Contractor's discretion.

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Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Employer accurate statements in duplicate (and one electronic copy), which shall include records (as described under Sub-Clause 6.10 [*Contractor's Records*]) of the resources used in executing the previous day's work.

One copy of each statement shall, if correct and agreed, be signed by the Employer and promptly returned to the Contractor. If not correct or agreed, the Employer's Representative shall proceed under Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine the resources (and, for the purpose of Sub-Clause 3.5.3 [*Time limits*], the date the works which are the subject of the Variation under this Sub-Clause are completed by the Contractor shall be the date of commencement of the time limit for agreement under Sub-Clause 3.5.3).

In the next Statement, the Contractor shall then submit priced statements of the agreed or determined resources to the Employer, together with all applicable invoices, vouchers and accounts or receipts in substantiation of any Goods used in the daywork (other than Goods priced in the Daywork Schedule).

Unless otherwise stated in the Daywork Schedule, the rates and prices in the Daywork Schedule shall be deemed to include taxes, overheads and profit.

13.6 Adjustments for Changes in Laws

Subject to the following provisions of this Sub-Clause, the Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in:

(a) the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws);

(b) the judicial or official governmental interpretation or implementation of the Laws referred to in sub-paragraph (a) above;

(c) any permit, permission, license or approval obtained by the Employer or the Contractor under sub-paragraph (a) or (b), respectively, of Sub-Clause 1.12 [*Compliance with Laws*]; or

(d) the requirements for any permit, permission, licence and/or approval to be obtained by the Contractor under sub-paragraph (b) of Sub-Clause 1.12 [*Compliance with Laws*],

made and/or officially published after the Base Date, which affect the Contractor in the performance of obligations under the Contract. In this Sub-Clause "change in Laws" means any of the changes under sub-paragraphs (a), (b), (c) and/or (d) above.

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 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost.

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 [*Claims For Payment and/or EOT*] to a reduction in the Contract Price.

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 Employer, or

(ii) the Employer shall promptly give a Notice to the Contractor (with detailed supporting particulars).

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Thereafter, the Employer shall either instruct a Variation under Sub-Clause 13.3.1 [*Variation by Instruction*] or request a proposal under Sub-Clause 13.3.2 [*Variation by Request for Proposal*].

13.7 Adjustments for Changes in Cost

If there are no schedule(s) of cost indexation in the Particular Conditions, this Sub-Clause shall not apply.

The amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, by the addition or deduction of the amounts calculated in accordance with the schedule(s) of cost indexation in the Particular Conditions.

To the extent that full compensation for any rise or fall in Costs is not covered by this Sub-Clause or other Clauses of these Conditions, the Contract Price stated in the Contract Agreement shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

The adjustment to be applied to the amount otherwise payable to the Contractor under Clause 14 [*Contract Price and Payment*] shall be calculated for each of the currencies in which the Contract Price is payable. No adjustment shall be applied to work valued on the basis of Cost or current prices.

Until such time as each current cost index is available, the Employer shall use a provisional index for the purpose of interim payments under Sub-Clause 14.6 [*Interim Payment*]. When a current cost index is available, the adjustment shall be recalculated accordingly.

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either:

(a) each index or price applicable on the date 49 days before the expiry of the Time for Completion of the Works; or

(b) the current index or price

whichever is more favourable to the Employer.

14 Contract Price and Payment

14.1 The Contract Price

Unless otherwise stated in the Particular Conditions:

(a) payment for the Works shall be made on the basis of the lump sum Contract Price stated in the Contract Agreement, 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;

(b) the Contractor shall pay all taxes, duties and fees required to be paid by the Contractor under the Contract, 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

(c) if any quantities are set out in a Schedule, they shall not be taken as the actual and correct quantities of the Works which the Contractor is required to execute, and they shall be used only for the purpose(s) stated in the Schedule and for no other purpose(s).

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14.2 Advance Payment

If no amount of advance payment is stated in the Contract Data, this Sub-Clause shall not apply.

Subject to the following provisions of this Sub-Clause, the Employer shall make an advance payment, as an interest-free loan for mobilisation and design. The amount of the advance payment and the currencies in which it is to be paid shall be as stated in the Contract Data.

14.2.1 Advance Payment Guarantee

The Contractor shall obtain (at the Contractor's cost) an Advance Payment Guarantee in amounts and currencies equal to the advance payment, and shall submit it to the Employer. This guarantee shall be issued by an entity and from within a country (or other jurisdiction) to which the Employer gives consent, and shall be based on the sample form included in the tender documents or on another form agreed by the Employer (but such consent and/or agreement shall not relieve the Contractor from any obligation under this Sub-Clause).

The Contractor shall ensure that the Advance Payment Guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor.

If the terms of the Advance Payment Guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days before the expiry date:

(a) the Contractor shall extend the validity of this guarantee until the advance payment has been repaid;
(b) the Contractor shall immediately submit evidence of this extension to the Employer; and
(c) if the Employer does not receive this evidence 7 days before the expiry date of this guarantee, the Employer shall be entitled to claim under the guarantee the amount of advance payment which has not been repaid.

When submitting the Advance Payment Guarantee, the Contractor shall include an application (in the form of a Statement) for the advance payment.

14.2.2 Advance Payment

The Employer shall make the advance payment within 14 days after:

(a) the Employer has received both the Performance Security and the Advance Payment Guarantee, in the form and issued by an entity in accordance with Sub-Clause 4.2.1 [*Contractor's Obligations*] and Sub-Clause 14.2.1 [*Advance Payment Guarantee*] respectively; and
(b) the Employer has received the Contractor's application for the advance payment under Sub-Clause 14.2.1 [*Advance Payment Guarantee*].

14.2.3 Repayment of Advance Payment

The advance payment shall be repaid through percentage deductions in interim payments under Sub-Clause 14.6 [*Interim Payment*]. Unless other percentages are stated in the Contract Data:

(a) deductions shall commence with the interim payment in which the total of all interim payments in the same currency as the advance

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payment (excluding the advance payment and deductions and release of retention moneys) exceeds ten percent (10%) of the portion of the Contract Price stated in the Contract Agreement payable in that currency less Provisional Sums; and

(b) deductions shall be made at the amortisation rate of one quarter (25%) of the amount of each interim payment (excluding the advance payment and deductions and release of retention moneys) in the currencies and proportions of the advance payment, until such time as the advance payment has been repaid.

If the advance payment has not been repaid before the issue of the Taking-Over Certificate for the Works, or before termination under Clause 15 [*Termination by Employer*], Clause 16 [*Suspension and Termination by Contractor*] or Clause 18 [*Exceptional Events*] (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 Application for Interim Payment

The Contractor shall submit a Statement to the Employer after the end of the period of payment stated in the Contract Data (if not stated, after the end of each month). Each Statement shall:

(a) be in a form acceptable to the Employer;

(b) be submitted in one paper-original, one electronic copy and additional paper copies (if any) as stated in the Contract Data; and

(c) show in detail the amounts to which the Contractor considers that the Contractor is entitled, with supporting documents which shall include sufficient detail for the Employer to investigate these amounts together with the relevant report on progress in accordance with Sub-Clause 4.20 [*Progress Reports*].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

(i) the estimated contract value of the Works executed, and the Contractor's Documents produced, up to the end of the period of payment (including Variations but excluding items described in sub-paragraphs (ii) to (x) below);

(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 amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data to the total of the amounts under sub-paragraphs (i), (ii) and (vi) of this Sub-Clause, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract Data;

(iv) any amounts to be added and/or deducted for the advance payment and repayments under Sub-Clause 14.2 [*Advance Payment*];

(v) any amounts to be added and/or deducted for Plant and Materials under Sub-Clause 14.5 [*Plant and Materials intended for the Works*];

(vi) any other additions and/or deductions which have become due under the Contract or otherwise, including those under Sub-Clause 3.5 [*Agreement or Determination*];

(vii) any amounts to be added for Provisional Sums under Sub-Clause 13.4 [*Provisional Sums*];

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(viii) any amount to be added for release of Retention Money under Sub-Clause 14.9 [*Release of Retention Money*];

(ix) any amount to be deducted for the Contractor's use of utilities provided by the Employer under Sub-Clause 4.19 [*Temporary Utilities*]; and

(x) the deduction of amounts previously paid by the Employer under Sub-Clause 14.7 [*Payment*].

14.4 Schedule of Payments

If the Contract includes a Schedule of Payments specifying the instalments in which the Contract Price will be paid then, unless otherwise stated in this Schedule:

(a) the instalments quoted in the Schedule of Payments shall be treated as the estimated contract values for the purposes of sub-paragraph (i) of Sub-Clause 14.3 [*Application for Interim Payment*], subject to Sub-Clause 14.5 [*Plant and Materials intended for the Works*]; and

(b) if:

(i) these instalments are not defined by reference to the actual progress achieved in execution of the Works; and

(ii) actual progress is found by the Employer to differ from that on which the Schedule of Payments was based,

then the Employer's Representative may proceed under Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine revised instalments (and, for the purpose of Sub-Clause 3.5.3 [*Time limits*], the date when the difference under sub-paragraph (ii) above was found by the Employer shall be the date of commencement of the time limit for agreement under Sub-Clause 3.5.3). Such revised instalments shall take account of the extent to which progress differs from that on which the Schedule of Payments was based.

If the Contract does not include a Schedule of Payments, the Contractor shall submit non-binding estimates of the payments which the Contractor expects to become due during each period of 3 months. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at intervals of 3 months, until the issue of the Taking-Over Certificate for the Works.

14.5 Plant and Materials intended for the Works

If no Plant and/or Materials are listed in the Contract Data for payment when shipped and/or payment when delivered, this Sub-Clause shall not apply.

The Contractor shall include, under sub-paragraph (v) of Sub-Clause 14.3 [*Application for Interim Payment*]:

- an amount to be added for Plant and Materials which have been shipped or delivered (as the case may be) to the Site for incorporation in the Permanent Works; and
- an amount to be deducted when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (i) of Sub-Clause 14.3 [*Application for Interim Payment*].

The Employer's Representative 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 (and, for the purpose of Sub-Clause 3.5.3 [*Time limits*], the date these conditions are fulfilled shall be the date of commencement of the time limit for agreement under Sub-Clause 3.5.3):

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(a) the Contractor has:

(i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection by the Employer;

(ii) submitted evidence demonstrating that the Plant and Materials comply with the Contract (which may include test certificates under Sub-Clause 7.4 [*Testing by the Contractor*] and/or compliance verification documentation under Sub-Clause 4.9.2 [*Compliance Verification System*]) to the Employer; and

(iii) submitted a statement of the Cost of acquiring and shipping or delivering (as the case may be) the Plant and Materials to the Site, supported by satisfactory evidence;

and either:

(b) the relevant Plant and Materials:

(i) are those listed in the Contract Data for payment when shipped;

(ii) have been shipped to the Country, en route to the Site, in accordance with the Contract; and

(iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Employer together with:

- evidence of payment of freight and insurance;
- any other documents reasonably required by the Employer; and
- a written undertaking by the Contractor that the Contractor will deliver to the Employer (prior to submitting the next Statement) a bank guarantee in a form and issued by an entity to which the Employer gives consent (but such consent shall not relieve the Contractor from any obligation in the following provisions of this sub-paragraph), in amounts and currencies equal to the amount due under this Sub-Clause. This guarantee shall be in a similar form to the form described in Sub-Clause 14.2.1 [*Advance Payment Guarantee*] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;

or

(c) the relevant Plant and Materials:

(i) are those listed in the Contract Data for payment when delivered to the Site, and

(ii) 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.

The amount so agreed or determined shall take account of the evidence and documents required under this Sub-Clause and of the contract value of the Plant and Materials. If sub-paragraph (b) above applies, the Employer shall have no obligation to make any payment under this Sub-Clause until the Employer has received the bank guarantee in accordance with sub-paragraph (b)(iii) above. The sum to be paid by the Employer in an interim payment shall be the equivalent of eighty percent (80%) of this agreed or determined amount. The currencies for this sum shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (i) of Sub-Clause 14.3 [*Application for Interim Payment*]. At that time, the interim payment shall include the applicable amount to be deducted which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

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14.6
Interim Payments

No amount will be paid to the Contractor until:

(a) the Employer has received the Performance Security in the form, and issued by an entity, in accordance with Sub-Clause 4.2.1[*Contractor's obligations*]; and

(b) the Contractor has appointed the Contractor's Representative in accordance with Sub-Clause 4.3 [*Contractor's Representative*].

14.6.1 Notice of interim payment

The Employer shall, within 28 days after receiving a Statement and supporting documents, give a Notice to the Contractor:

(a) stating the amount which the Employer fairly considers to be due for the interim payment; and

(b) including any additions and/or deductions which have become due under Sub-Clause 3.5 [*Agreement or Determination*] or under the Contract or otherwise,

with detailed supporting particulars (which shall identify any difference between a notified amount and the corresponding amount in the Statement and give the reasons for such difference).

14.6.2 Withholding (amounts in) an interim payment

The Employer may withhold an interim payment which would (after retention and other deductions) be less than the minimum amount of interim payment (if any) stated in the Contract Data. In this event, the Employer shall promptly give a Notice to the Contractor accordingly.

An interim payment shall not be withheld for any other reason, although:

(a) if any thing supplied or work done by the Contractor is not in accordance with the Contract, the estimated cost of rectification or replacement may be withheld until rectification or replacement has been completed;

(b) if the Contractor was or is failing to perform any work, service or obligation in accordance with the Contract, the value of this work or obligation may be withheld until the work or obligation has been performed. In this event, the Employer shall promptly give a Notice to the Contractor describing the failure and with detailed supporting particulars of the value withheld; and/or

(c) if the Employer finds any significant error or discrepancy in the Statement or supporting documents, the amount of the interim payment may take account of the extent to which this error or discrepancy has prevented or prejudiced proper investigation of the amounts in the Statement until such error or discrepancy is corrected in a subsequent Statement.

For each amount so withheld, in the supporting particulars for the interim payment the Employer shall detail his/her calculation of the amount and state the reasons for it being withheld.

14.6.3 Correction or modification

The Employer may, in any interim payment, make any correction or modification that should properly be made to any previous interim payment. An interim payment shall not be deemed to indicate the Employer's

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acceptance, approval, consent or Notice of No-objection to any Contractor's Document or to (any part of) the Works.

If the Contractor considers that an interim payment does not include any amounts to which the Contractor is entitled, these amounts shall be identified in the next Statement (the "identified amounts" in this paragraph). The Employer shall then make any correction or modification that should properly be made in the next interim payment. Thereafter, to the extent that:

(a) the Contractor is not satisfied that this next interim payment includes the identified amounts; and

(b) the identified amounts do not concern a matter for which the Employer's Representative is already carrying out his/her duties under Sub-Clause 3.5 [*Agreement or Determination*]

the Contractor may, by giving a Notice, refer this matter to the Employer's Representative and Sub-Clause 3.5 [*Agreement or Determination*] shall apply (and, for the purpose of Sub-Clause 3.5.3 [*Time limits*], the date the Employer's Representative receives this Notice shall be the date of commencement of the time limit for agreement under Sub-Clause 3.5.3).

14.7
Payment

The Employer shall pay to the Contractor:

(a) the advance payment within the period stated in Sub-Clause 14.2.2 [*Advance Payment*];

(b) the interim payment due under:
  (i) Sub-Clause 14.6 [*Interim Payment*], within the period stated in the Contract Data (if not stated, 56 days) after the Employer receives the Statement and supporting documents; or
  (ii) Sub-Clause 14.13 [*Final Payment*], within the period stated in the Contract Data (if not stated, 42 days) after the Employer receives the Partially Agreed Final Statement (or, if sub-paragraph (ii) of Sub-Clause 14.13 applies, within 84 days after the Employer receives the draft final Statement that is deemed to be a Partially Agreed Final Statement); and

(c) the Final Payment under Sub-Clause 14.13 [*Final Payment*] within the period stated in the Contract Data (if not stated, 56 days) after the Employer:
  (i) receives the Final Statement (or if the second paragraph of Sub-Clause 14.13 applies, after the expiry of 14 days after the Employer issues the Notice stating the Final Payment); and
  (ii) receives (or the Contractor is deemed to have issued) the discharge under Sub-Clause 14.12 [*Discharge*].

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

14.8
Delayed Payment

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.

Unless otherwise stated in the Contract Data, these financing charges shall be calculated at the annual rate of three percent (3%) above:

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(a) the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or

(b) where no such rate exists at that place, the same rate in the country of the currency of payment, or

(c) in the absence of such a rate at either place, the appropriate rate fixed by the law of the country of the currency of payment.

The Contractor shall by request, be entitled to payment of these financing charges by the Employer, without:

(i) the need for the Contractor to submit a Statement or any formal Notice (including any requirement to comply with Sub-Clause 20.2 [*Claims For Payment and/or EOT*]); and

(ii) prejudice to any other right or remedy.

14.9 Release of Retention Money

After the issue of the Taking-Over Certificate for:

(a) the Works, the Contractor shall include the first half of the Retention Money in a Statement; or

(b) for a Section, the Contractor shall include the relevant percentage of the first half of the Retention Money in a Statement.

After the latest of the expiry dates of the Defects Notification Periods, the Contractor shall include the second half of the Retention Money in a Statement promptly after such latest date. If a Taking-Over Certificate was (or was deemed to have been) issued for a Section, the Contractor shall include the relevant percentage of the second half of the Retention Money in a Statement promptly after the expiry date of the DNP for the Section.

In the next interim payment after the Employer receives any such Statement, the Employer shall release the corresponding amount of Retention Money. However, when considering the amount to be due for release of Retention Money under Sub-Clause 14.6 [*Interim Payment*], if any work remains to be executed under Clause 11 [*Defects after Taking Over*] or Clause 12 [*Tests after Completion*], the Employer shall be entitled to withhold the estimated cost of this work until it has been executed.

The relevant percentage for each Section shall be the percentage value of the Section as stated in the Contract Data. If the percentage value of a Section is not stated in the Contract Data, no percentage of either half of the Retention Money shall be released under this Sub-Clause in respect of such Section.

14.10 Statement at Completion

Within 84 days after the Date of Completion of the Works, the Contractor shall submit to the Employer a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [*Application for Interim Payment*], showing:

(a) the value of all work done in accordance with the Contract up to the Date of Completion of the Works

(b) any further sums which the Contractor considers to be due at the Date of Completion of the Works; and

(c) an estimate of any other amounts which the Contractor considers have or will become due after the Date of Completion of the Works

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under the Contract or otherwise. These estimated amounts shall be shown separately (to those of sub-paragraphs (a) and (b) above) and shall include estimated amounts for:

(i) Claims for which the Contractor has submitted a Notice under Sub-Clause 20.2 [*Claims For Payment and/or EOT*];

(ii) any matter referred to the DAAB under Sub-Clause 21.4 [*Obtaining DAAB's Decision*]; and

(iii) any matter for which a NOD has been given under Sub-Clause 21.4 [*Obtaining DAAB's Decision*].

The Employer shall then proceed in accordance with Sub-Clause 14.6 [*Interim Payment*].

14.11

Final Statement

Submission by the Contractor of any Statement under the following provisions of this Sub-Clause shall not be delayed by reason of any referral under Sub-Clause 21.4 [*Obtaining DAAB's Decision*] or any arbitration under Sub-Clause 21.6 [*Arbitration*].

14.11.1 Draft Final Statement

Within 56 days after the issue of the Performance Certificate, the Contractor shall submit to the Employer, a draft final Statement.

This Statement shall:

(a) be in the same form as Statements previously submitted under Sub-Clause 14.3 [*Application for Interim Payment*];

(b) be submitted in one paper-original, one electronic copy and additional paper copies (if any) as stated in the Contract Data; and

(c) show in detail, with supporting documents:

(i) the value of all work done in accordance with the Contract;

(ii) any further sums which the Contractor considers to be due at the date of the issue of the Performance Certificate, under the Contract or otherwise; and

(iii) an estimate of any other amounts which the Contractor considers have or will become due after the issue of the Performance Certificate, under the Contract or otherwise, including estimated amounts, by reference to the matters described in sub-paragraphs (c) (i) to (iii) of Sub-Clause 14.10 [*Statement at Completion*]. These estimated amounts shall be shown separately (to those of sub-paragraphs (i) and (ii) above).

Except for any amount under sub-paragraph (iii) above, if the Employer disagrees with or cannot verify any part of the draft final Statement, the Employer shall promptly give a Notice to the Contractor. The Contractor shall then submit such further information as the Employer may reasonably require within the time stated in this Notice, and shall make such changes in the draft as may be agreed between them.

14.11.2 Agreed Final Statement

If there are no amounts under sub-paragraph (iii) of Sub-Clause 14.11.1 [*Draft Final Statement*], the Contractor shall then prepare and submit to the Employer the final Statement as agreed (the "Final Statement" in these Conditions).

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However if:

(a) there are amounts under sub-paragraph (iii) of Sub-Clause 14.11.1 [*Draft Final Statement*]; and/or

(b) following discussions between the Employer and the Contractor, it becomes evident that they cannot agree any amount(s) in the draft final Statement,

the Contractor shall then prepare and submit to the Employer a Statement, identifying separately: the agreed amounts, the estimated amounts and the disagreed amount(s) (the "Partially Agreed Final Statement" in these Conditions).

14.12
Discharge

When submitting the Final Statement or the Partially Agreed Final Statement (as the case may be), the Contractor shall submit a 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. This discharge may state that the total of the Statement is subject to any payment that may become due in respect of any Dispute for which a DAAB proceeding or arbitration is in progress under Sub-Clause 21.6 [*Arbitration*] and/or that it becomes effective after the Contractor has received:

(a) full payment of the total amount stated in the Final Statement; and

(b) the Performance Security.

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-paragraphs (a) and (b) have been fulfilled. If no Final Statement has been submitted by the Contractor and the second paragraph of Sub-Clause 14.13 [*Final Payment*] applies, the discharge shall be deemed to have been issued by the Contractor after the Contractor has received the Final Payment under the second paragraph of Sub-Clause 14.13 and the Performance Security.

A discharge under this Sub-Clause shall not affect either Party's liability or entitlement in respect of any Dispute for which a DAAB proceeding or arbitration is in progress under Clause 21 [*Disputes and Arbitration*].

14.13
Final Payment

Within 28 days after receiving the Final Statement or the Partially Agreed Final Statement (as the case may be), and the discharge under Sub-Clause 14.12 [*Discharge*], the Employer shall give a Notice to the Contractor stating:

(a) the amount which the Employer 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 or otherwise; and

(b) 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 (the "Final Payment" in these conditions),

with detailed supporting particulars.

If the Contractor has not submitted a draft final Statement within the time specified under Sub-Clause 14.11.1 [*Draft Final Statement*], the Employer

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shall request the Contractor to do so. Thereafter, if the Contractor fails to submit a draft final Statement within a period of 28 days, within a further 28 days after this time limit has expired the Employer shall give a Notice to the Contractor stating the Final Payment, with detailed supporting particulars.

If:

(i) the Contractor has submitted a Partially Agreed Final Statement under Sub-Clause 14.11.2 [*Agreed Final Statement*]; or

(ii) no Partially Agreed Final Statement has been submitted by the Contractor but, to the extent that a draft final Statement submitted by the Contractor is deemed by the Employer to be a Partially Agreed Final Statement

the Employer shall proceed in accordance with Sub-Clause 14.6 [*Interim Payment*] and Sub-Clause 14.7 [*Payment*] to make an interim payment to the Contractor.

14.14 Cessation of Employer's Liability

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 in:

(a) the Final Statement or Partially Agreed Final Statement; and

(b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) the Statement under Sub-Clause 14.10 [*Statement at Completion*].

Unless the Contractor makes or has made a Claim under Sub-Clause 20.2 [*Claims For Payment and/or EOT*] in respect of an amount or amounts included in the Final Payment within 56 days of receiving the Final Payment the Contractor shall be deemed to have accepted the Final Payment as correct. The Employer shall then have no further liability to the Contractor, other than to return the Performance Security to the Contractor.

However, this Sub-Clause shall not limit the Employer's liability under the Employer's indemnification obligations, or the Employer's liability in any case of fraud, gross negligence, deliberate default or reckless misconduct by the Employer.

14.15 Currencies of Payment

The Contract Price shall be paid in the currency or currencies named in the Contract Data. If more than one currency is so named, payments shall be made as follows:

(a) if the Contract Price stated in the Contract Agreement was expressed in Local Currency only or in Foreign Currency only:

  (i) 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 the Contract Data, except as otherwise agreed by both Parties;

  (ii) 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

  (iii) other payments and deductions under sub-paragraphs (i) to (iv) of Sub-Clause 14.3 [*Application for Interim Payment*] shall be made in the currencies and proportions specified in sub-paragraph (a) (i) above;

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(b) 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-paragraph (a)(i) above;

(c) payment of Delay Damages shall be made in the currencies and proportions specified in the Contract Data;

(d) payment of Performance Damages shall be made in the currencies and proportions specified in the Schedule of Performance Guarantees;

(e) 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 both Parties;

(f) 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 may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and

(g) if no rates of exchange are stated in the Contract Data, they shall be those prevailing on the Base Date and published by the central bank of the Country.

15 Termination by Employer

15.1
Notice to Correct

If the Contractor fails to carry out any obligation under the Contract the Employer may, by giving a Notice to the Contractor, require the Contractor to make good the failure and to remedy it within a specified time ("Notice to Correct" in these Conditions).

The Notice to Correct shall:

(a) describe the Contractor's failure;

(b) state the Sub-Clause and/or provisions of the Contract under which the Contractor has the obligation; and

(c) 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.

After receiving a Notice to Correct the Contractor shall immediately respond by giving a Notice to the Employer 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.

The time specified in the Notice to Correct shall not imply any extension of the Time for Completion.

15.2
Termination for Contractor's Default

Termination of the Contract under this Clause shall not prejudice any other rights of the Employer under the Contract or otherwise.

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15.2.1 Notice

The Employer shall be entitled to give a Notice (which shall state that it is given under this Sub-Clause 15.2.1) to the Contractor of the Employer's intention to terminate the Contract or, in the case of sub-paragraph (f), (g) or (h) below a Notice of termination, if the Contractor:

(a) fails to comply with:
  (i) a Notice to Correct;
  (ii) a binding agreement, or final and binding determination, under Sub-Clause 3.5 [*Agreement or Determination*]; or
  (iii) a decision of the DAAB under 21.4 [*Obtaining DAAB's Decision*] (whether binding or final and binding)

and such failure constitutes a material breach of the Contractor's obligations under the Contract;

(b) abandons the Works or otherwise plainly demonstrates an intention not to continue performance of the Contractor's obligations under the Contract;

(c) without reasonable excuse fails to proceed with the Works in accordance with Clause 8 [*Commencement, Delays and Suspension*] or, if there is a maximum amount of Delay Damages stated in the Contract Data, the Contractor's failure to comply with Sub-Clause 8.2 [*Time for Completion*] is such that the Employer would be entitled to Delay Damages that exceed this maximum amount;

(d) without reasonable excuse fails to comply with a Notice of rejection given by the Employer under Sub-Clause 7.5 [*Defects and Rejection*] or an Employer's instruction under Sub-Clause 7.6 [*Remedial Work*], within 28 days after receiving it;

(e) fails to comply with Sub-Clause 4.2 [*Performance Security*];

(f) subcontracts the whole, or any part of, the Works in breach of Sub-Clause 4.4 [*Subcontractors*], or assigns the Contract without the required agreement under Sub-Clause 1.7 [*Assignment*];

(g) becomes bankrupt or insolvent; goes into liquidation, administration, reorganisation, winding-up or dissolution; becomes subject to the appointment of a liquidator, receiver, administrator, manager or trustee; enters into a composition or arrangement with the Contractor's creditors; or any act is done or any event occurs which is analogous to or has a similar effect to any of these acts or events under applicable Laws;

or if the Contractor is a JV:

  (i) any of these matters apply to a member of the JV, and
  (ii) the other member(s) do not promptly confirm to the Employer that, in accordance with Sub-Clause 1.13(a) [*Joint and Several Liability*], such member's obligations under the Contract shall be fulfilled in accordance with the Contract; or

(h) is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice at any time in relation to the Works or to the Contract.

15.2.2 Termination

Unless the Contractor remedies the matter described in a Notice given under Sub-Clause 15.2.1 [*Notice*] within 14 days of receiving the Notice, the Employer may by giving a second Notice to the Contractor immediately

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terminate the Contract. The date of termination shall be the date the Contractor receives this second Notice.

However, in the case of sub-paragraph (f), (g) or (h) of Sub-Clause 15.2.1 [*Notice*], the Employer may by giving a Notice under Sub-Clause 15.2.1 immediately terminate the Contract and the date of termination shall be the date the Contractor receives this Notice.

15.2.3 After termination

After termination of the Contract under Sub-Clause 15.2.2 [*Termination*], the Contractor shall:

(a) comply immediately with any reasonable instructions included in a Notice given by the Employer under this Sub-Clause:
  (i) for the assignment of any subcontract; and
  (ii) for the protection of life or property or for the safety of the Works;
(b) deliver to the Employer:
  (i) any Goods required by the Employer,
  (ii) all Contractor's Documents, and
  (iii) all other design documents made by or for the Contractor; and
(c) leave the Site and, if the Contractor does not do so, the Employer shall have the right to expel the Contractor from the Site.

15.2.4 Completion of the Works

After termination under this Sub-Clause, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and/or these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor to complete the Works.

After such completion of the Works, the Employer shall give another Notice to the Contractor that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall then promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold (to the extent permitted by applicable Laws) by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

15.3 Valuation after Termination for Contractor's Default

After termination of the Contract under Sub-Clause 15.2 [*Termination for Contractor's Default*], the Employer's Representative shall proceed under Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine the value of the Permanent Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract (and, for the purpose of Sub-Clause 3.5.3 [*Time limits*], the date of termination shall be the date of commencement of the time limit for agreement under Sub-Clause 3.5.3).

This valuation shall include any additions and/or deductions, and the balance due (if any), by reference to the matters described in sub-paragraphs (a) and (b) of Sub-Clause 14.13 [*Final Payment*].

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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 for Contractor's Default

The Employer may withhold payment to the Contractor of the amounts agreed or determined under Sub-Clause 15.3 [*Valuation after Termination for Contractor's Default*] until all the costs, losses and damages (if any) described in the following provisions of this Sub-Clause have been established.

After termination of the Contract under Sub-Clause 15.2 [*Termination for Contractor's Default*], the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment by the Contractor of:

(a) the additional costs of execution of the Works, and all other costs reasonably incurred by the Employer (including costs incurred in clearing, cleaning and reinstating the Site as described under Sub-Clause 11.11 [*Clearance of Site*]), after allowing for any sum due to the Contractor under Sub-Clause 15.3 [*Valuation after Termination for Contractor's Default*];

(b) any losses and damages suffered by the Employer in completing the Works; and

(c) Delay Damages, if the Works or a Section have not been taken over under Sub-Clause 10.1 [*Taking Over the Works and Sections*] and if the date of termination under Sub-Clause 15.2 [*Termination for Contractor's Default*] 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 dates.

15.5
Termination for Employer's Convenience

The Employer shall be entitled to terminate the Contract at any time for the Employer's convenience, by giving a Notice of such termination to the Contractor (which Notice shall state that it is given under this Sub-Clause 15.5).

After giving a Notice to terminate under this Sub-Clause, the Employer shall immediately:

(a) have no right to further use any of the Contractor's Documents, which shall be returned to the Contractor, except those for which the Contractor has received payment or for which payment is due;

(b) if Sub-Clause 4.6 [*Co-operation*] applies, have no right to allow the continued use (if any) of any Contractor's Equipment, Temporary Works, access arrangements and/or other of the Contractor's facilities or services; and

(c) make arrangements to return the Performance Security to the Contractor.

Termination under this Sub-Clause shall take effect 28 days after the later of the dates on which the Contractor receives this Notice or the Employer returns the Performance Security. Unless and until the Contractor has received payment of the amount due under Sub-Clause 15.6 [*Valuation after Termination for Employer's Convenience*], 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.

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After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Contractor's Obligations After Termination*].

15.6 Valuation after Termination for Employer's Convenience

After termination under Sub-Clause 15.5 [*Termination for Employer's Convenience*] the Contractor shall, as soon as practicable, submit detailed supporting particulars (as reasonably required by the Employer) of:

(a) the value of work done, which shall include:
  (i) the matters described in sub-paragraphs (a) to (e) of Sub-Clause 18.5 [*Optional Termination*], and
  (ii) any additions and/or deductions, and the balance due (if any), by reference to the matters described in sub-paragraphs (a) and (b) of Sub-Clause 14.13 [*Final Payment*]; and

(b) the amount of any loss of profit or other losses and damages suffered by the Contractor as a result of this termination.

The Employer's Representative shall then proceed under Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine the matters described in sub-paragraphs (a) and (b) above (and, for the purpose of Sub-Clause 3.5.3 [*Time limits*], the date the Employer's Representative receives the Contractor's particulars under this Sub-Clause shall be the date of commencement of the time limit for agreement under Sub-Clause 3.5.3).

The Employer shall pay the amount so agreed or determined to the Contractor, without the need for the Contractor to submit a Statement.

15.7 Payment after Termination for Employer's Convenience

The Employer shall pay the Contractor the amount agreed or determined under Sub-Clause 15.6 [*Valuation after Termination for Employer's Convenience*] within 112 days after the Employer receives the Contractor's submission under that Sub-Clause.

16 Suspension and Termination by Contractor

16.1 Suspension by Contractor

If:

(a) the Employer fails to provide reasonable evidence in accordance with Sub-Clause 2.4 [*Employer's Financial Arrangements*];
(b) the Employer fails to comply with Sub-Clause 14.7 [*Payment*]; or
(c) the Employer fails to comply with:
  (i) a binding agreement, or final and binding determination under Sub-Clause 3.5 [*Agreement or Determination*]; or
  (ii) a decision of the DAAB under 21.4 [*Obtaining DAAB's Decision*] (whether binding or final and binding)

and such failure constitutes a material breach of the Employer's obligations under the Contract,

the Contractor may, not less than 21 days after giving a Notice to the Employer (which Notice shall state that it is given under this Sub-Clause

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16.1), suspend work (or reduce the rate of work) unless and until the Employer has remedied such default.

This action shall not prejudice the Contractor's entitlements to financing charges under Sub-Clause 14.8 [*Delayed Payment*] and to termination under Sub-Clause 16.2 [*Termination by Contractor*].

If the Employer subsequently remedies the default as described in the above Notice before the Contractor gives a Notice of termination under Sub-Clause 16.2 [*Termination by Contractor*], the Contractor shall resume normal working as soon as is reasonably practicable.

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, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost Plus Profit.

16.2 Termination by Contractor

Termination of the Contract under this Clause shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

16.2.1 Notice

The Contractor shall be entitled to give a Notice (which shall state that it is given under this Sub-Clause 16.2.1) to the Employer of the Contractor's intention to terminate the Contract or, in the case of sub-paragraph (f) (ii), (g), (h) or (i) below a Notice of termination, if:

(a) the Contractor does not receive the reasonable evidence within 42 days after giving a Notice under Sub-Clause 16.1 [*Suspension by Contractor*] in respect of a failure to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*];

(b) the Contractor does not receive a payment under Sub-Clause 14.7 [*Payment*] within 42 days after the expiry of the relevant period for payment stated in Sub-Clause 14.7;

(c) the Employer fails to comply with:

(i) a binding agreement, or final and binding determination under Sub-Clause 3.5 [*Agreement or Determination*]; or

(ii) a decision of the DAAB under 21.4 [*Obtaining DAAB's Decision*] (whether binding or final and binding)

and such failure constitutes a material breach of the Employer's obligations under the Contract;

(d) the Employer substantially fails to perform, and such failure constitutes a material breach of, the Employer's obligations under the Contract;

(e) the Contractor does not receive a Notice of the Commencement Date under Sub-Clause 8.1 [*Commencement of Works*] within 84 days after both Parties have signed the Contract Agreement;

(f) the Employer:

(i) fails to comply with Sub-Clause 1.6 [*Contract Agreement*], or

(ii) assigns the Contract without the required agreement under Sub-Clause 1.7 [*Assignment*];

(g) a prolonged suspension affects the whole of the Works as described in sub-paragraph (b) of Sub-Clause 8.12 [*Prolonged Suspension*];

(h) the Employer becomes bankrupt or insolvent; goes into liquidation, administration, reorganisation, winding-up or dissolution; becomes

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subject to the appointment of a liquidator, receiver, administrator, manager or trustee; enters into a composition or arrangement with the Employer's creditors; or any act is done or any event occurs which is analogous to or has a similar effect to any of these acts or events under applicable Laws; or

(i) the Employer is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice at any time in relation to the Works or to the Contract.

16.2.2 Termination

Unless the Employer remedies the matter described in a Notice given under Sub-Clause 16.2.1 [*Notice*] within 14 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.

However, in the case of sub-paragraph (f)(ii), (g), (h) or (i) of Sub-Clause 16.2.1 [*Notice*], by giving a Notice under Sub-Clause 16.2.1 the Contractor may terminate the Contract immediately and the date of termination shall be the date the Employer receives this Notice.

If the Contractor suffers delay and/or incurs Cost during the above period of 14 days, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost Plus Profit.

16.3 Contractor's Obligations After Termination

After termination of the Contract under Sub-Clause 15.5 [*Termination for Employer's Convenience*], Sub-Clause 16.2 [*Termination by Contractor*] or Sub-Clause 18.5 [*Optional Termination*], the Contractor shall promptly:

(a) cease all further work, except for such work as may have been instructed by the Employer for the protection of life or property or for the safety of the Works. If the Contractor incurs Cost as a result of carrying out such instructed work the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to be paid such Cost Plus Profit;

(b) deliver to the Employer all Contractor's Documents, Plant, Materials and other work for which the Contractor has received payment; and

(c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.4 Payment after Termination by Contractor

After termination under Sub-Clause 16.2 [*Termination by Contractor*], the Employer shall promptly:

(a) pay the Contractor in accordance with Sub-Clause 18.5 [*Optional Termination*]; and

(b) subject to the Contractor's compliance with Sub-Clause 20.2 [*Claims For Payment and/or EOT*], 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.

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17 Care of the Works and Indemnities

17.1 Responsibility for Care of the Works

Unless the Contract is terminated in accordance with these Conditions or otherwise, subject to Sub-Clause 17.2 [*Liability for Care of the Works*] the Contractor shall take full responsibility for the care of the Works, Goods and Contractor's Documents from the Commencement Date until the Date of Completion of the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is deemed to be issued) for any Section or Part, responsibility for the care of the Section or Part shall then pass to the Employer.

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.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the Date of Completion, until this outstanding work has been completed.

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 [*Liability for Care of the Works*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods or Contractor's Documents (as the case may be) comply with the Contract.

17.2 Liability for Care of the Works

The Contractor shall be liable for any loss or damage caused by the Contractor to the Works, Goods or Contractor's Documents after the issue of a Taking-Over Certificate. The Contractor shall also be liable for any loss or damage, which occurs after the issue of a Taking-Over Certificate and which arose from an event which occurred before the issue of this Taking-Over Certificate, for which the Contractor was liable.

The Contractor shall have no liability whatsoever, whether by way of indemnity or otherwise, for loss or damage to the Works, Goods or Contractor's Documents caused by any of the following events (except to the extent that such Works, Goods or Contractor's Documents have been rejected by the Employer under Sub-Clause 7.5 [*Defects and Rejection*] before the occurrence of any of the following events):

(a) 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 is the unavoidable result of the execution of the Works in accordance with the Contract;

(b) use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract;

(c) fault, error, defect or omission in any element of the design of the Works by the Employer, other than design carried out by the Contractor in accordance with the Contractor's obligations under the Contract;

(d) any operation of the forces of nature (other than those allocated to the Contractor in the Contract Data) which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions;

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(e) any of the events or circumstances listed under sub-paragraphs (a) to (f) of Sub-Clause 18.1 [*Exceptional Events*]; and/or

(f) any act or default of Employer's Personnel or Employer's other contractors.

Subject to Sub-Clause 18.4 [*Consequences of an Exceptional Event*], if any of the events described in sub-paragraphs (a) to (f) above occurs and results in damage to the Works, Goods or Contractor's Documents the Contractor shall promptly give a Notice to the Employer. Thereafter, the Contractor shall rectify any such loss and/or damage that may arise to the extent instructed by the Employer. Such instruction shall be deemed to have been given under Sub-Clause 13.3.1 [*Variation by Instruction*].

If the loss or damage to the Works or Goods or Contractor's Documents results from a combination of:

(i) any of the events described in sub-paragraphs (a) to (f) above, and

(ii) a cause for which the Contractor is liable,

and the Contractor suffers a delay and/or incurs Cost from rectifying the loss and/or damage, the Contractor shall subject to Sub-Clause 20.2 [*Claims for Payment and/or EOT*] be entitled to a proportion of EOT and/or Cost Plus Profit to the extent that any of the above events have contributed to such delays and/or Cost.

17.3 Intellectual and Industrial Property Rights

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a third party claim (or proceedings pursuing a third party claim) alleging an infringement.

Whenever a Party receives a claim but fails to give notice to the other Party of the claim within 28 days of receiving it, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Employer shall indemnify and hold the Contractor harmless against and from any claim (including legal fees and expenses) alleging an infringement which is or was:

(a) an unavoidable result of the Contractor's compliance with the Employer's Requirements and/or any Variation; or

(b) a result of any Works being used by the Employer:

  (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or

  (ii) in conjunction with any thing not supplied by the Contractor, unless such use was disclosed to the Contractor before the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim (including legal fees and expenses) alleging an infringement which arises out of or in relation to:

(i) the Contractor's execution of the Works; or

(ii) the use of Contractor's Equipment.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at the indemnifying Party's cost) assume overall responsibility for

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negotiating the settlement of the claim, and/or any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and the Contractor's Personnel or the Employer's Personnel, as the case may be) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to promptly assume overall responsibility for the conduct of any negotiations, litigation or arbitration after being requested to do so by the other Party.

17.4

Indemnities by Contractor

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

(a) bodily injury, sickness, disease or death of any person whatsoever arising out of or in the course of or by reason of the Contractor's execution of the Works, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents; and

(b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:

(i) arises out of or in the course of or by reason of the Contractor's execution of the Works, and

(ii) is attributable to any negligence, wilful act or breach of the Contract by the Contractor, the Contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Contractor shall also indemnify and hold harmless the Employer against all acts, errors or omissions by the Contractor in carrying out the Contractor's design obligations that result in the Works (or Section or Part or major item of Plant, if any), when completed, not being fit for the purpose(s) for which they are intended under Sub-Clause 4.1 [*Contractor's General Obligations*].

17.5

Indemnities by Employer

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

(a) bodily injury, sickness, disease or death, or loss of or damage to any property other than the Works, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents; and

(b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of any event described under sub-paragraphs (a) to (f) of Sub-Clause 17.2 [*Liability for Care of the Works*].

17.6

Shared Indemnities

The Contractor's liability to indemnify the Employer, under Sub-Clause 17.4 [*Indemnities by Contractor*] and/or under Sub-Clause 17.3 [*Intellectual and Industrial Property Rights*], shall be reduced proportionately to the extent that any event described under sub-paragraphs (a) to (f) of Sub-Clause 17.2 [*Liability for Care of the Works*] may have contributed to the said damage, loss or injury.

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Similarly, the Employer's liability to indemnify the Contractor, under Sub-Clause 17.5 [*Indemnities by Employer*] and/or under Sub-Clause 17.3 [*Intellectual and Industrial Property Rights*], shall be reduced proportionately to the extent that any event for which the Contractor is responsible under Sub-Clause 17.1 [*Responsibility for Care of the Works*] may have contributed to the said damage, loss or injury.

18 Exceptional Events

18.1
Exceptional Events

"**Exceptional Event**" means an event or circumstance which:

(i) is beyond a Party's control;
(ii) the Party could not reasonably have provided against before entering into the Contract;
(iii) having arisen, such Party could not reasonably have avoided or overcome; and
(iv) is not substantially attributable to the other Party.

An Exceptional Event may comprise but is not limited to any of the following events or circumstances provided that conditions (i) to (iv) above are satisfied:

(a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
(b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
(c) riot, commotion or disorder by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors;
(d) strike or lockout not solely involving the Contractor's Personnel and other employees of the Contractor and Subcontractors;
(e) encountering munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; or
(f) natural catastrophes such as earthquake, tsunami, volcanic activity, hurricane or typhoon.

18.2
Notice of an Exceptional Event

If a Party is or will be prevented from performing any obligations under the Contract due to an Exceptional Event (the "affected Party" in this Clause), then the affected Party shall give a Notice to the other Party of such an Exceptional Event, and shall specify the obligations, the performance of which is or will be prevented (the "prevented obligations" in this Clause).

This Notice shall be given within 14 days after the affected Party became aware, or should have become aware, of the Exceptional Event, and the affected Party shall then be excused performance of the prevented obligations from the date such performance is prevented by the Exceptional Event. If this Notice is received by the other Party after this period of 14 days, the affected Party shall be excused performance of the prevented obligations only from the date on which this Notice is received by the other Party.

Thereafter, the affected Party shall be excused performance of the prevented obligations for so long as such Exceptional Event prevents the affected Party

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from performing them. Other than performance of the prevented obligations, the affected Party shall not be excused performance of all other obligations under the Contract.

However, the obligations of either Party to make payments due to the other Party under the Contract shall not be excused by an Exceptional Event.

18.3
Duty to Minimise Delay

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of an Exceptional Event.

If the Exceptional Event has a continuing effect, the affected Party shall give further Notices describing the effect every 28 days after giving the first Notice under Sub-Clause 18.2 [*Notice of an Exceptional Event*].

The affected Party shall immediately give a Notice to the other Party when the affected Party ceases to be affected by the Exceptional Event. If the affected Party fails to do so, the other Party may give a Notice to the affected Party stating that the other Party considers that the affected Party's performance is no longer prevented by the Exceptional Event, with reasons.

18.4
Consequences of an Exceptional Event

If the Contractor is the affected Party and suffers delay and/or incurs Cost by reason of the Exceptional Event of which he/she gave a Notice under Sub-Clause 18.2 [*Notice of an Exceptional Event*], the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to:

(a) EOT; and/or

(b) if the Exceptional Event is of the kind described in sub-paragraphs (a) to (e) of Sub-Clause 18.1 [*Exceptional Events*] and, in the case of sub-paragraphs (b) to (e) of that Sub-Clause, occurs in the Country, payment of such Cost.

18.5
Optional Termination

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of an Exceptional Event of which Notice has been given under Sub-Clause 18.2 [*Notice of an Exceptional Event*], or for multiple periods which total more than 140 days due to the same Exceptional Event, then either Party may give to the other Party a Notice of termination of the Contract.

In this event, the date of termination shall be the date 7 days after the Notice is received by the other Party, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Contractor's Obligations After Termination*].

After the date of termination the Contractor shall, as soon as practicable, submit detailed supporting particulars (as reasonably required by the Employer's Representative) of the value of the work done, which shall include:

(a) the amounts payable for any work carried out for which a price is stated in the Contract;

(b) the Cost of 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;

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

(d) the Cost of 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 the Contractor's country (or to any other destination(s) at no greater cost); and

(e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

The Employer's Representative shall then proceed under Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine the value of work done (and, for the purpose of Sub-Clause 3.5.3 [*Time limits*], the date the Employer's Representative receives the Contractor's particulars under this Sub-Clause shall be the date of commencement of the time limit for agreement under Sub-Clause 3.5.3).

The Employer shall issue a Notice, under Sub-Clause 14.6.1 [*Notice of interim payment*], for the amount so agreed or determined, without the need for the Contractor to submit a Statement.

18.6 Release from Performance under the Law

In addition to any other provision of this Clause, if any event arises outside the control of the Parties (including, but not limited to, an Exceptional Event) which:

(a) makes it impossible or unlawful for either Party or both Parties to fulfil their contractual obligations; or

(b) under the law governing the Contract, entitles the Parties to be released from further performance of the Contract,

and if the Parties are unable to agree on an amendment to the Contract that would permit the continued performance of the Contract, then after either Party gives a Notice to the other Party of such event:

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

(ii) the amount payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 18.5 [*Optional Termination*], and such amount shall be paid by the Employer, as if the Contract had been terminated under that Sub-Clause.

19 Insurance

19.1 General Requirements

Without limiting either Party's obligations or responsibilities under the Contract, the Contractor shall effect and maintain all insurances for which the Contractor is responsible with insurers and in terms, both of which shall be subject to consent by the Employer. These terms shall be consistent with terms (if any) agreed by both Parties before the date that both Parties signed the Contract Agreement.

The insurances required to be provided under this Clause 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.

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Whenever required by the Employer, the Contractor shall produce the insurance policies which the Contractor is required to effect under the Contract. As each premium is paid, the Contractor shall promptly submit either a copy of each receipt of payment to the Employer, or confirmation from the insurers that the premium has been paid.

If the Contractor fails to effect and keep in force any of the insurances required under Sub-Clause 19.2 [*Insurances to be provided by the Contractor*] then, and in any such case, the Employer may effect and keep in force such insurances and pay any premium as may be necessary and recover the same from the Contractor from time to time by deducting the amount(s) so paid from any moneys due to the Contractor or otherwise recover the same as a debt from the Contractor. The provisions of Clause 20 [*Employer's and Contractor's Claims*] shall not apply to this Sub-Clause.

If either the Contractor or the Employer fails to comply with any condition of the insurances effected under the Contract, the Party so failing to comply shall indemnify the other Party against all direct losses and claims (including legal fees and expenses) arising from such failure.

The Contractor shall also be responsible for the following:

(a) notifying the insurers of any changes in the nature, extent or programme for the execution of the Works; and

(b) the adequacy and validity of the insurances in accordance with the Contract at all times during the performance of the Contract.

The permitted deductible limits allowed in any policy shall not exceed the amounts stated in the Contract Data (if not stated, the amounts agreed with the Employer).

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 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.

19.2 Insurance to be provided by the Contractor

The Contractor shall provide the following insurances:

19.2.1 <u>The Works</u>

The Contractor shall insure and keep insured in the joint names of the Contractor and the Employer from the Commencement Date until the date of the issue of the Taking-Over Certificate for the Works:

(a) the Works and Contractor's Documents, together with Materials and Plant for incorporation in the Works, for their full replacement value. The insurance cover shall extend to include loss and damage of any part of the Works as a consequence of failure of elements defectively designed or constructed with defective material or workmanship; and

(b) an additional amount of fifteen percent (15%) of such replacement value (or such other amount as may be specified in the Contract Data) to cover any additional costs incidental to the rectification of loss or damage, including professional fees and the cost of demolition and removal of debris.

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The insurance cover shall cover the Employer and the Contractor against all loss or damage from whatever cause arising until the issue of the Taking-Over Certificate for the Works. Thereafter, the insurance shall continue until the date of the issue of the Performance Certificate in respect of any incomplete work for loss or damage arising from any cause occurring before the date of the issue of the Taking-Over Certificate for the Works, and for any loss or damage occasioned by the Contractor in the course of any operation carried out by the Contractor for the purpose of complying with the Contractor's obligations under Clause 11 [*Defects after Taking Over*] and Clause 12 [*Tests after Completion*].

However, the insurance cover provided by the Contractor for the Works may exclude any of the following:

(i) the cost of making good any part of the Works which is defective (including defective material and workmanship) or otherwise does not comply with the Contract, provided that it does not exclude the cost of making good any loss or damage to any other part of the Works attributable to such defect or non-compliance;

(ii) indirect or consequential loss or damage including any reductions in the Contract Price for delay;

(iii) wear and tear, shortages and pilferages; and

(iv) unless otherwise stated in the Contract Data, the risks arising from Exceptional Events.

19.2.2 Goods

The Contractor shall insure, in the joint names of the Contractor and the Employer, the Goods and other things brought to Site by the Contractor to the extent specified and/or amount stated in the Contract Data (if not specified or stated, for their full replacement value including delivery to Site).

The Contractor shall maintain this insurance from the time the Goods are delivered to the Site until they are no longer required for the Works.

19.2.3 Liability for breach of professional duty

To the extent, if any, that the Contractor is responsible for the design of part of the Permanent Works under Sub-Clause 4.1 [*Contractor's General Obligations*], and/or any other design under the Contract, and consistent with the indemnities specified in Clause 17 [*Care of the Works and Indemnities*]:

(a) the Contractor shall effect and maintain professional indemnity insurance against liability arising out of any act, error or omission by the Contractor in carrying out the Contractor's design obligations in an amount not less than that stated in the Contract Data (if not stated, the amount agreed with the Employer); and

(b) if stated in the Contract Data, such professional indemnity insurance shall also indemnify the Contractor against liability arising out of any act, error or omission by the Contractor in carrying out the Contractor's design obligations under the Contract that results in the Works (or Section or Part or major item of Plant, if any), when completed, not being fit for the purpose(s) for which they are intended under Sub-Clause 4.1 [*Contractor's General Obligations*].

The Contractor shall maintain this insurance for the period specified in the Contract Data.

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19.2.4 Injury to persons and damage to property

The Contractor shall insure, in the joint names of the Contractor and the Employer, against liabilities for death or injury to any person, or loss of or damage to any property (other than the Works) arising out of the performance of the Contract and occurring before the issue of the Performance Certificate, other than loss or damage caused by an Exceptional Event.

The insurance policy shall include a cross liability clause such that the insurance shall apply to the Contractor and the Employer as separate insureds.

Such insurance shall be effected before the Contractor begins any work on the Site and shall remain in force until the issue of the Performance Certificate and shall be for not less than the amount stated in the Contract Data (if not stated, the amount agreed with the Employer).

19.2.5 Injury to employees

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising out of the execution of the Works in respect of injury, sickness, disease or death of any person employed by the Contractor or any of the Contractor's other personnel.

The Employer shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that the Contractor's Personnel are assisting in the execution of the Works. For any person employed by a Subcontractor, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for the Subcontractor's compliance with this Sub-Clause.

19.2.6 Other insurances required by Laws and by local practice

The Contractor shall provide all other insurances required by the Laws of the countries where (any part of) the Works are being carried out, at the Contractor's own cost.

Other insurances required by local practice (if any) shall be detailed in the Contract Data and the Contractor shall provide such insurances in compliance with the details given, at the Contractor's own cost.

20 Employer's and Contractor's Claims

20.1 Claims

A Claim may arise:

(a) if the Employer considers that the Employer is entitled to any additional payment from the Contractor (or reduction in the Contract Price) and/or to an extension of the DNP;

(b) if the Contractor considers that the Contractor is entitled to any additional payment from the Employer and/or to EOT; or

(c) if either Party considers that he/she is entitled to another entitlement or relief against the other Party. Such other entitlement or relief

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may be of any kind whatsoever (including in connection with any certificate, determination, instruction, Notice, opinion or valuation of the Employer) except to the extent that it involves any entitlement referred to in sub-paragraphs (a) and/or (b) above.

In the case of a Claim under sub-paragraph (a) or (b) above, Sub-Clause 20.2 [*Claims For Payment and/or EOT*] shall apply.

In the case of a Claim under sub-paragraph (c) above, where the other Party 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 Employer's Representative 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 shall include details of the claiming Party's case and the other Party's disagreement (or deemed disagreement).

20.2 Claims For Payment and/or EOT

If either Party considers that he/she is entitled to any additional payment by the other Party (or, in the case of the Employer, a reduction in the Contract Price) and/or to EOT (in the case of the Contractor) or an extension of the DNP (in the case of the Employer) under any Clause of these Conditions or otherwise in connection with the Contract, the following Claim procedure shall apply:

20.2.1 Notice of Claim

The claiming Party shall give a Notice to the other Party, describing the event or circumstance giving rise to the cost, loss, delay or extension of DNP for which the Claim is made as soon as practicable, and no later than 28 days after the claiming Party became aware, or should have become aware, of the event or circumstance (the "Notice of Claim" in these Conditions).

If the claiming Party fails to give a Notice of Claim within this period of 28 days, the claiming Party shall not be entitled to any additional payment, the Contract Price shall not be reduced (in the case of the Employer as the claiming Party), the Time for Completion (in the case of the Contractor as the claiming Party) or the DNP (in the case of the Employer as the claiming Party) shall not be extended, and the other Party shall be discharged from any liability in connection with the event or circumstance giving rise to the Claim.

20.2.2 Initial response

If the other Party considers that the claiming Party has failed to give the Notice of Claim within the period of 28 days under Sub-Clause 20.2.1 [*Notice of Claim*] the other Party shall, within 14 days after receiving the Notice of Claim, give a Notice to the claiming Party accordingly (with reasons).

If the other Party does not give such a Notice within this period of 14 days, the Notice of Claim shall be deemed to be a valid Notice.

If the claiming Party receives a Notice from the other Party under this Sub-Clause and disagrees with the other Party or considers there are circumstances which justify late submission of the Notice of Claim, the

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claiming Party shall include in its fully detailed Claim under Sub-Clause 20.2.4 [*Fully detailed claim*] details of such disagreement or why such late submission is justified (as the case may be).

20.2.3 Contemporary records

In this Sub-Clause 20.2, "contemporary records" means records that are prepared or generated at the same time, or immediately after, the event or circumstance giving rise to the Claim.

The claiming Party shall keep such contemporary records as may be necessary to substantiate the Claim.

Without admitting the Employer's liability, the Employer may monitor the Contractor's contemporary records and/or instruct the Contractor to keep additional contemporary records. The Contractor shall permit the Employer to inspect all these records during normal working hours (or at other times agreed by the Contractor), and shall if instructed submit copies to the Employer. Such monitoring, inspection or instruction (if any) by the Employer shall not imply acceptance of the accuracy or completeness of the Contractor's contemporary records.

20.2.4 Fully detailed Claim

In this Sub-Clause 20.2, "fully detailed Claim" means a submission which includes:

(a) a detailed description of the event or circumstance giving rise to the Claim;
(b) a statement of the contractual and/or other legal basis of the Claim;
(c) all contemporary records on which the claiming Party relies; and
(d) detailed supporting particulars of the amount of additional payment claimed (or amount of reduction of the Contract Price in the case of the Employer as the claiming Party), and/or EOT claimed (in the case of the Contractor) or extension of the DNP claimed (in the case of the Employer).

Within either:

(i) 84 days after the claiming Party became aware, or should have become aware, of the event or circumstance giving rise to the Claim, or
(ii) such other period (if any) as may be proposed by the claiming Party and agreed by the other Party

the claiming Party shall submit to the Employer's Representative a fully detailed Claim.

If within this time limit the claiming Party fails to submit the statement under sub-paragraph (b) above, the Notice of Claim shall be deemed to have lapsed, it shall no longer be considered as a valid Notice, and the Employer's Representative shall, within 14 days after this time limit has expired, give a Notice to the claiming Party accordingly.

If the Employer's Representative does not give such a Notice within this period of 14 days, the Notice of Claim shall be deemed to be a valid Notice. If the other Party disagrees with such deemed valid Notice of Claim the other Party shall give a Notice to the Employer's Representative which shall include details of the disagreement. Thereafter, the agreement or determination of the Claim under Sub-Clause 20.2.5 [*Agreement or determination of the Claim*] shall include a review by the Employer's Representative of such disagreement.

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If the claiming Party receives a Notice from the other Party under this Sub-Clause 20.2.4 and if the claiming Party disagrees with such Notice or considers there are circumstances which justify late submission of the statement under sub-paragraph (b) above, the fully detailed claim shall include details of the claiming Party's disagreement or why such late submission is justified (as the case may be).

If the event or circumstance giving rise to the Claim has a continuing effect, Sub-Clause 20.2.6 [*Claims of continuing effect*] shall apply.

20.2.5 Agreement or determination of the Claim

After receiving a fully detailed Claim under Sub-Clause 20.2.4 [*Fully detailed Claim*], or an interim or final fully detailed Claim (as the case may be) under Sub-Clause 20.2.6 [*Claims of continuing effect*], the Employer's Representative shall proceed under Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine:

(a) the additional payment (if any) to which the claiming Party is entitled (or the reduction of the Contract Price (in the case of the Employer as the claiming Party); and/or

(b) the extension (if any) of the Time for Completion (before or after its expiry) under Sub-Clause 8.5 [*Extension of Time for Completion*] (in the case of the Contractor as the claiming Party), or the extension (if any) of the DNP (before its expiry) under Sub-Clause 11.3 [*Extension of Defects Notification Period*] (in the case of the Employer as the claiming Party),

to which the claiming Party is entitled under the Contract.

If a Notice is given under Sub-Clause 20.2.2 [*Initial response*] and/or under Sub-Clause 20.2.4 [*Fully detailed Claim*], the Claim shall nevertheless be agreed or determined in accordance with this Sub-Clause 20.2.5. The agreement or determination of the Claim shall include whether or not the Notice of Claim shall be treated as a valid Notice taking account of the details (if any) included in the fully detailed claim of the claiming Party's disagreement with such Notice(s) or why late submission is justified (as the case may be). The circumstances which may be taken into account (but shall not be binding) may include:

- whether or to what extent the other Party would be prejudiced by acceptance of the late submission;
- in the case of the time limit under Sub-Clause 20.2.1 [*Notice of Claim*], any evidence of the other Party's prior knowledge of the event or circumstance giving rise to the Claim, which the claiming Party may include in its supporting particulars; and/or
- in the case of the time limit under Sub-Clause 20.2.4 [*Fully detailed Claim*], any evidence of the other Party's prior knowledge of the contractual and/or other legal basis of the Claim, which the claiming Party may include in its supporting particulars.

If, having received the fully detailed Claim under Sub-Clause 20.2.4 [*Fully detailed Claim*], or in the case of a Claim under Sub-Clause 20.2.6 [*Claims of continuing effect*] an interim or final fully detailed Claim (as the case may be), the Employer's Representative requires necessary additional particulars:

(i) he/she shall promptly give a Notice to the Contractor, describing the additional particulars and the reasons for requiring them;

(ii) he/she shall nevertheless give his/her response on the contractual or other basis of the Claim, by giving a Notice to the Contractor, within

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the time limit for agreement under Sub-Clause 3.5.3 [*Time limits*];

(iii) as soon as practicable after receiving the Notice under sub-paragraph (i) above, the Contractor shall submit the additional particulars; and

(iv) the Employer's Representative shall then proceed under Sub-Clause 3.5 [*Agreement or Determination*] to agree or determine the matters under sub-paragraphs (a) and/or (b) above (and, for the purpose of Sub-Clause 3.5.3 [*Time limits*], the date the Employer's Representative receives the additional particulars from the Contractor shall be the date of commencement of the time limit for agreement under Sub-Clause 3.5.3).

20.2.6 Claims of continuing effect

If the event or circumstance giving rise to a Claim under this Sub-Clause 20.2 has a continuing effect:

(a) the fully detailed Claim submitted under Sub-Clause 20.2.4 [*Fully detailed Claim*] shall be considered as interim;

(b) in respect of this first interim fully detailed Claim, the Employer's Representative shall give his/her response on the contractual or other legal basis of the Claim, by giving a Notice to the claiming Party, within the time limit for agreement under Sub-Clause 3.5.3 [*Time limits*];

(c) after submitting the first interim fully detailed Claim the claiming Party shall submit further interim fully detailed Claims at monthly intervals, giving the accumulated amount of additional payment claimed (or the reduction of the Contract Price, in the case of the Employer as the claiming Party), and/or extension of time claimed (in the case of the Contractor as the claiming Party) or extension of the DNP (in the case of the Employer as the claiming Party); and

(d) the claiming Party shall submit a final fully detailed Claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the claiming Party and agreed by the other Party. This final fully detailed Claim shall give the total amount of additional payment claimed (or the reduction of the Contract Price, in the case of the Employer as the claiming Party), and/or extension of time claimed (in the case of the Contractor as the claiming Party) or extension of the DNP (in the case of the Employer as the claiming Party).

20.2.7 General requirements

After receiving the Notice of Claim, and until the Claim is agreed or determined under Sub-Clause 20.2.5 [*Agreement or determination of the Claim*], in each payment under Sub-Clause 14.7 [*Payment*] the Employer shall include such amounts for any Claim as have been reasonably substantiated as due to the claiming Party under the relevant provision of the Contract.

The Employer shall only be entitled to claim any payment from the Contractor and/or to extend the DNP, or set off against or make any deduction from any amount due to the Contractor, by complying with this Sub-Clause 20.2.

The requirements of this Sub-Clause 20.2 are in addition to those of any other Sub-Clause which may apply to the Claim. If the claiming Party fails to comply with this or any other Sub-Clause in relation to the Claim, any additional payment and/or any EOT (in the case of the Contractor as the claiming Party) or extension of the DNP (in the case of the Employer as the claiming Party), shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the Claim by the Employer's Representative.

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21 Disputes and Arbitration

21.1 Constitution of the DAAB

Disputes shall be decided by a DAAB in accordance with Sub-Clause 21.4 [*Obtaining DAAB's Decision*]. The Parties shall jointly appoint the member(s) of the DAAB within the time stated in the Contract Data (if not stated, 28 days) after the date that both Parties have signed the Contract Agreement.

The DAAB shall comprise, as stated in the Contract Data, either one suitably qualified member (the "sole member") or three suitably qualified members (the "members"). If the number is not so stated, and the Parties do not agree otherwise, the DAAB shall comprise three members.

The sole member or three members (as the case may be) shall be selected from those named in the list in the Contract Data, other than anyone who is unable or unwilling to accept appointment to the DAAB.

If the DAAB is to comprise three members, each Party shall select one member for the agreement of the other Party. The Parties shall consult both these members and shall agree the third member, who shall be appointed to act as chairperson.

The DAAB shall be deemed to be constituted on the date that the Parties and the sole member or the three members (as the case may be) of the DAAB have all signed a DAAB Agreement.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DAAB consults, shall be mutually agreed by the Parties when agreeing the terms of the DAAB Agreement. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace any one or more members of the DAAB. Unless the Parties agree otherwise, a replacement DAAB member shall be appointed if a member declines to act or is unable to act as a result of death, illness, disability, resignation or termination of appointment. The replacement member shall be appointed in the same manner as the replaced member was required to have been selected or agreed, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone.

Unless otherwise agreed by both Parties, the term of the DAAB (including the appointment of each member) shall expire either:

(a) on the date the discharge shall have become, or deemed to have become, effective under Sub-Clause 14.12 [*Discharge*]; or

(b) 28 days after the DAAB has given its decision on all Disputes, referred to it under Sub-Clause 21.4 [*Obtaining DAAB's Decision*] before such discharge has become effective,

whichever is later.

However, if the Contract is terminated under any Sub-Clause of these Conditions or otherwise, the term of the DAAB (including the appointment of each member) shall expire 28 days after:

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(i) the DAAB has given its decision on all Disputes, which were referred to it (under Sub-Clause 21.4 [*Obtaining DAAB's Decision*]) within 224 days after the date of termination; or

(ii) the date that the Parties reach a final agreement on all matters (including payment) in connection with the termination

whichever is earlier.

21.2 Failure to Appoint DAAB Member(s)

If any of the following conditions apply, namely:

(a) if the DAAB is to comprise a sole member, the Parties fail to agree the appointment of this member by the date stated in the first paragraph of Sub-Clause 21.1 [*Constitution of the DAAB*]; or

(b) if the DAAB is to comprise three persons, and if by the date stated in the first paragraph of Sub-Clause 21.1 [*Constitution of the DAAB*]:

  (i) either Party fails to select a member (for agreement by the other Party);

  (ii) either Party fails to agree a member selected by the other Party; and/or

  (iii) the Parties fail to agree the appointment of the third member (to act as chairperson) of the DAAB;

(c) the Parties fail to agree the appointment of a replacement within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, illness, disability, resignation, or termination of appointment; or

(d) if, after the Parties have agreed the appointment of the member(s) or replacement, such appointment cannot be effected because one Party refuses or fails to sign a DAAB Agreement with any such member or replacement (as the case may be) within 14 days of the other Party's request to do so,

then the appointing entity or official named in the Contract Data shall, at the request of either or both Parties and after due consultation with both Parties, appoint the member(s) of the DAAB (who, in the case of sub-paragraph (d) above, shall be the agreed member(s) or replacement). This appointment shall be final and conclusive.

Thereafter, the Parties and the member(s) so appointed shall be deemed to have signed and be bound by a DAAB Agreement under which:

(i) the monthly services fee and daily fee shall be as stated in the terms of the appointment; and

(ii) the law governing the DAAB Agreement shall be the governing law of the Contract defined in Sub-Clause 1.4 [*Law and Language*].

Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official. If the Contractor pays the remuneration in full, the Contractor shall include one-half of the amount of such remuneration in a Statement and the Employer shall then pay the Contractor in accordance with the Contract. If the Employer pays the remuneration in full, the Employer shall include one-half of the amount of such remuneration as a deduction under sub-paragraph (b) of Sub-Clause 14.6.1 [*Notice of Interim Payment*].

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21.3

Avoidance of Disputes

If the Parties so agree, they may jointly request (in writing) the DAAB to provide assistance and/or informally discuss and attempt to resolve any issue or disagreement that may have arisen between them during the performance of the Contract. If the DAAB becomes aware of an issue or disagreement, it may invite the Parties to make such a joint request.

Such joint request may be made at any time, except during the period that the Employer's Representative is carrying out his/her duties under Sub-Clause 3.5 [*Agreement or Determination*] on the matter at issue or in disagreement unless the Parties agree otherwise.

Such informal assistance may take place during any meeting, Site visit or otherwise. However, unless the Parties agree otherwise, both Parties shall be present at such discussions. The Parties are not bound to act on any advice given during such informal meetings, and the DAAB shall not be bound in any future Dispute resolution process or decision by any views or advice given during the informal assistance process, whether provided orally or in writing.

21.4

Obtaining DAAB's Decision

If a Dispute arises between the Parties then either Party may refer the Dispute to the DAAB for its decision (whether or not any informal discussions have been held under Sub-Clause 21.3 [*Avoidance of Disputes*]) and the following provisions shall apply.

21.4.1 Reference of a Dispute to the DAAB

The reference of a Dispute to the DAAB (the "reference" in this Sub-Clause 21.4) shall:

(a) if Sub-Clause 3.5 [*Agreement or Determination*] applied to the subject matter of the Dispute, be made within 42 days of the date of the relevant NOD under Sub-Clause 3.5.5 [*Dissatisfaction with Employer's Representative's determination*]. If the Dispute is not referred to the DAAB within this period of 42 days, such NOD shall be deemed to have lapsed and no longer be valid;

(b) state that it is given under this Sub-Clause;

(c) set out the referring Party's case relating to the Dispute;

(d) be in writing, with a copy to the other Party; and

(e) for a DAAB of three persons, be deemed to have been received by the DAAB on the date it is received by the chairperson of the DAAB.

The reference of a Dispute to the DAAB under this Sub-Clause shall, unless prohibited by law, be deemed to interrupt the running of any applicable statute of limitation or prescription period.

21.4.2 The Parties' obligations after the reference

Both Parties shall promptly make available to the DAAB all information, access to the Site, and appropriate facilities, as the DAAB may require for the purposes of making a decision on the Dispute.

Unless the Contract has already been abandoned or terminated, the Parties shall continue to perform their obligations in accordance with the Contract.

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21.4.3 The DAAB's decision

The DAAB shall complete and give its decision within:

(a) 84 days after receiving the reference; or

(b) such period as may be proposed by the DAAB and agreed by both Parties.

However, if at the end of this period, the due date(s) for payment of any DAAB member's invoice(s) has passed but such invoice(s) remains/remain unpaid, the DAAB shall not be obliged to give its decision until such outstanding invoice(s) has/have been paid in full, in which case the DAAB shall give its decision as soon as practicable after payment has been received.

The decision shall be given in writing to both Parties, shall be reasoned, and shall state that it is given under this Sub-Clause.

The decision shall be binding on both Parties, who shall promptly comply with it whether or not a Party gives a NOD with respect to such decision under this Sub-Clause.

If the decision of the DAAB requires a payment of an amount by one Party to the other Party

(i) subject to sub-paragraph (ii) below, this amount shall be immediately due and payable without any Statement or Notice; and

(ii) the DAAB may (as part of the decision), at the request of a Party but only if there are reasonable grounds for the DAAB to believe that the payee will be unable to repay such amount in the event that the decision is reversed under Sub-Clause 21.6 [*Arbitration*], require the payee to provide an appropriate security (at the DAAB's sole discretion) in respect of such amount.

The DAAB proceeding shall not be deemed to be an arbitration and the DAAB shall not act as arbitrator(s).

21.4.4 Dissatisfaction with DAAB's decision

If either Party is dissatisfied with the DAAB's decision:

(a) such Party may give a NOD to the other Party, with a copy to the DAAB;

(b) this NOD shall state that it is a "Notice of Dissatisfaction with the DAAB's Decision" and shall set out the matter in Dispute and the reason(s) for dissatisfaction; and

(c) this NOD shall be given within 28 days after receiving the DAAB's decision.

If the DAAB fails to give its decision within the period stated in Sub-Clause 21.4.3 [*The DAAB's decision*], then either Party may, within 28 days after this period has expired, give a NOD to the other Party in accordance with sub-paragraphs (a) and (b) above.

Except as stated in the last paragraph of Sub-Clause 3.5.5 [*Dissatisfaction with Employer's Representative's determination*], in Sub-Clause 21.7 [*Failure to Comply with DAAB's Decision*] and in Sub-Clause 21.8 [*No DAAB In Place*], neither Party shall be entitled to commence arbitration of a Dispute unless a NOD in respect of that Dispute has been given in accordance with this Sub-Clause 21.4.4.

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If the DAAB has given its decision as to a matter in Dispute to both Parties, and no NOD under this Sub-Clause 21.4.4 has been given by either Party within 28 days after receiving the DAAB's decision, then the decision shall become final and binding on both Parties.

If the dissatisfied Party is dissatisfied with only part(s) of the DAAB's decision:

(i) this part(s) shall be clearly identified in the NOD;

(ii) this part(s), and any other parts of the decision 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 decision; and

(iii) the remainder of the decision shall become final and binding on both Parties as if the NOD had not been given.

21.5

Amicable Settlement

Where a NOD has been given under Sub-Clause 21.4 [*Obtaining DAAB's Decision*], both Parties shall attempt to settle the Dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the twenty-eighth (28th) day after the day on which this NOD was given, even if no attempt at amicable settlement has been made.

21.6

Arbitration

Unless settled amicably, and subject to Sub-Clause 3.5.5 [*Dissatisfaction with Employer's Representative's determination*], Sub-Clause 21.4.4 [*Dissatisfaction with DAAB's decision*], Sub-Clause 21.7 [*Failure to Comply with DAAB's Decision*] and Sub-Clause 21.8 [*No DAAB In Place*], any Dispute in respect of which the DAAB's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:

(a) the Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce;

(b) the Dispute shall be settled by one or three arbitrators appointed in accordance with these Rules; and

(c) the arbitration shall be conducted in the ruling language defined in Sub-Clause 1.4 [*Law and Language*].

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination (other than a final and binding determination), instruction, opinion or valuation of the Employer and/or of the Employer's Representative, and any decision of the DAAB (other than a final and binding decision) relevant to the Dispute. Nothing shall disqualify the natural person(s) who has/have acted on behalf of the Employer under the Contract from being called as witness(es) and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the Dispute.

In any award dealing with costs of the arbitration, the arbitrator(s) may take account of the extent (if any) to which a Party failed to cooperate with the other Party in constituting a DAAB under Sub-Clause 21.1 [*Constitution of the DAAB*] and/or Sub-Clause 21.2 [*Failure to Appoint DAAB Member(s)*].

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAAB to obtain its decision, or to the reasons for dissatisfaction given in the Party's NOD under Sub-Clause 21.4 [*Obtaining DAAB's Decision*]. Any decision of the DAAB shall be admissible in evidence in the arbitration.

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Arbitration may be commenced before or after completion of the Works. The obligations of the Parties and the DAAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

If an award requires a payment of an amount by one Party to the other Party, this amount shall be immediately due and payable without any Statement or Notice.

21.7
Failure to Comply with DAAB's Decision

In the event that a Party fails to comply with any decision of the DAAB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under Sub-Clause 21.6 [*Arbitration*] in which case Sub-Clause 21.4 [*Obtaining DAAB's Decision*] and Sub-Clause 21.5 [*Amicable Settlement*] shall not apply to this reference. The arbitral tribunal (constituted under Sub-Clause 21.6 [*Arbitration*]) shall have the power, by way of summary or other expedited procedure, to order, whether by an interim or provisional measure or an award (as may be appropriate under applicable law or otherwise), the enforcement of that decision.

In the case of a binding but not final decision of the DAAB, such interim or provisional measure or award shall be subject to the express reservation that the rights of the Parties as to the merits of the Dispute are reserved until they are resolved by an award.

Any interim or provisional measure or award enforcing a decision of the DAAB which has not been complied with, whether such decision is binding or final and binding, may also include an order or award of damages or other relief.

21.8
No DAAB In Place

If a Dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DAAB in place (or no DAAB is being constituted), whether by reason of the expiry of the DAAB's appointment or otherwise:

(a) Sub-Clause 21.4 [*Obtaining DAAB's Decision*] and Sub-Clause 21.5 [*Amicable Settlement*] shall not apply; and

(b) the Dispute may be referred by either Party directly to arbitration under Sub-Clause 21.6 [*Arbitration*] without prejudice to any other rights the Party may have.

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APPENDIX

General Conditions of Dispute Avoidance/Adjudication Agreement

1
Definitions

1.1 "**General Conditions of Dispute Avoidance/Adjudication Agreement**" or "**GCs**" means this document entitled "General Conditions of Dispute Avoidance/Adjudication Agreement", as published by FIDIC.

1.2 In the DAA Agreement (as defined below) and in the GCs, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract (as defined in the DAA Agreement).

1.3 "**Dispute Avoidance/Adjudication Agreement**" or "**DAA Agreement**" means a tripartite agreement by and between:

(a) the Employer;
(b) the Contractor; and
(c) the DAAB Member who is defined in the DAA Agreement as being either:
  (i) the sole member of the DAAB, or
  (ii) one of the three members (or the chairman) of the DAAB.

1.3 "**DAAB's Activities**" means the activities carried out by the DAAB in accordance with the Contract and the GCs, including all Informal Assistance, meetings (including meetings and/or discussions between the DAAB members in the case of a three-member DAAB), Site visits, hearings and decisions.

1.4 "**DAAB Rules**" means the document entitled "**DAAB Procedural Rules**" published by FIDIC which are annexed to, and form part of, the GCs.

1.5 "**Informal Assistance**" means the informal assistance given by the DAAB to the Parties when requested jointly by the Parties under Sub-Clause 21.3 [*Avoidance of Disputes*] of the Conditions of Contract.

1.6 "**Term of the DAAB**" means the period starting on the Effective Date (as defined in Sub-Clause 2.1 below) and finishing on the date that the term of the DAAB expires in accordance with Sub-Clause 21.1 [*Constitution of the DAAB*] of the Conditions of Contract.

1.7 "**Notification**" means a notice in writing given under the GCs, which shall be:

(a) (i) a paper-original signed by the DAAB Member or the authorised representative of the Contractor or of the Employer (as the case may be); or
  (ii) an electronic original generated from the system of electronic transmission agreed between the Parties and the DAAB, which electronic original is transmitted by the electronic address uniquely assigned to the DAAB Member or each such authorised representative (as the case may be);
(b) delivered by hand (against receipt), or sent by mail or courier (against receipt), or transmitted using the system of electronic transmission under sub-paragraph (a)(ii) above; and

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(c) delivered, sent or transmitted to the address for the recipient's communications as stated in the DAA Agreement. However, if the recipient gives a Notification of another address, all Notifications shall be delivered accordingly after the sender receives such Notification.

2 General Provisions

2.1 The DAA Agreement shall take effect:

(a) in the case of a sole-member DAAB, on the date when the Employer, the Contractor and the DAAB Member have each signed (or, under the Contract, are deemed to have signed) the DAA Agreement; or

(b) in the case of a three-member DAAB, on the date when the Employer, the Contractor, the DAAB Member and the Other Members have each signed (or under the Contract are deemed to have signed) a DAA Agreement.

(the "**Effective Date**" in the GCs).

2.2 Immediately after the Effective Date, either or both Parties shall give a Notification to the DAAB Member that the DAA Agreement has come into effect. If the DAAB Member does not receive such a notice within 182 days after entering into the DAA Agreement, it shall be void and ineffective.

2.3 The employment of the DAAB Member is a personal appointment. No assignment of, or subcontracting or delegation of the DAAB Member's rights and/or obligations under the DAA Agreement is permitted.

3 Warranties

3.1 The DAAB Member warrants and agrees that he/she is, and will remain at all times during the Term of the DAAB, impartial and independent of the Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel (including in accordance with Sub-Clause 4.1 below).

3.2 If, after signing the DAA Agreement (or after he/she is deemed to have signed the DAA Agreement under the Contract), the DAAB Member becomes aware of any fact or circumstance which might:

(a) call into question his/her independence or impartiality; and/or

(b) be, or appear to be, inconsistent with his/her warranty and agreement under Sub-Clause 3.1 above

the DAAB Member warrants and agrees that he/she shall immediately disclose this in writing to the Parties and the Other Members (if any).

3.3 When appointing the DAAB Member, each Party relies on the DAAB Member's representations that he/she is:

(a) experienced and/or knowledgeable in the type of work which the Contractor is to carry out under the Contract;

(b) experienced in the interpretation of construction and/or engineering contract documentation; and

(c) fluent in the language for communications stated in the Contract Data (or the language as agreed between the Parties and the DAAB).

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4

Independence and Impartiality

4.1 Further to Sub-Clauses 3.1 and 3.2 above, the DAAB Member shall:

(a) have no financial interest in the Contract, or in the project of which the Works are part, except for payment under the DAA Agreement;

(b) have no interest whatsoever (financial or otherwise) in the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel;

(c) in the ten years before signing the DAA Agreement, not have been employed as a consultant or otherwise by the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel;

(d) not previously have acted, and shall not act, in any judicial or arbitral capacity in relation to the Contract;

(e) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before signing the DAA Agreement (or before he/she is deemed to have signed the DAA Agreement under the Contract) and to his/her best knowledge and recollection, any:

(i) existing and/or past professional or personal relationships with any director, officer or employee of the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel (including as a dispute resolution practitioner on another project),

(ii) facts or circumstances which might call into question his/her independence or impartiality, and

(iii) previous involvement in the project of which the Contract forms part;

(f) not, while a DAAB Member and for the Term of the DAAB:

(i) be employed as a consultant or otherwise by, and/or

(ii) enter into discussions or make any agreement regarding future employment with

the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel, except as may be agreed by the Employer, the Contractor and the Other Members (if any); and/or

(g) not solicit, accept or receive (directly or indirectly) any gift, gratuity, commission or other thing of value from the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel, except for payment under the DAA Agreement.

5

General Obligations of the DAAB Member

5.1 The DAAB Member shall:

(a) comply with the GCs, the DAAB Rules and the Conditions of Contract that are relevant to the DAAB's Activities;

(b) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, except as required to carry out the DAAB's Activities;

(c) ensure his/her availability during the Term of the DAAB (except in exceptional circumstances, in which case the DAAB Member shall give a Notification without delay to the Parties and the Other Members (if any) detailing the exceptional circumstances) for all meetings, Site visits, hearings and as is necessary to comply with sub-paragraph (a) above;

(d) become, and shall remain for the duration of the Term of the DAAB, knowledgeable about the Contract and informed about:

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(i) the Parties' performance of the Contract;

(ii) the Site and its surroundings; and

(iii) the progress of the Works (and of any other parts of the project of which the Contract forms part)

including by visiting the Site, meeting with the Parties and by studying all documents received from either Party under Rule 4.3 of the DAAB Rules (which shall be maintained in a current working file, in hard-copy or electronic format at the DAAB Member's discretion); and

(e) be available to give Informal Assistance when requested jointly by the Parties.

6 General Obligations of the Parties

6.1 Each Party shall comply with the GCs, the DAAB Rules and the Conditions of Contract that are relevant to the DAAB's Activities. The Employer and the Contractor shall be responsible for compliance with this provision by the Employer's Personnel and the Contractor's Personnel, respectively.

6.2 Each Party shall cooperate with the other Party in constituting the DAAB, under Sub-Clause 21.1 [*Constitution of the DAAB*] and/or Sub-Clause 21.2 [*Failure to Appoint DAAB Member(s)*] of the Conditions of Contract, without delay.

6.3 In connection with the DAAB's Activities, each Party shall:

(a) cooperate in good faith with the DAAB; and

(b) fulfil its duties, and exercise any right or entitlement, under the Contract, the GCs and the DAAB Rules and/or otherwise

in the manner necessary to achieve the objectives under Rule 1 of the DAAB Rules.

6.4 The Parties, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the DAAB Member regarding the Contract, except as required for the DAAB Member to carry out the DAAB's Activities.

6.5 At all times when interacting with the DAAB, each Party shall not compromise the DAAB's warranty of independence and impartiality under Sub-Clause 3.1 above.

6.6 In addition to providing documents under Rule 4.3 of the DAAB Rules, each Party shall ensure that the DAAB Member remains informed as is necessary to enable him/her to comply with sub-paragraph (d) of Sub-Clause 5.1 above.

7 Confidentiality

7.1 Subject to Sub-Clause 7.4 below, the DAAB Member shall treat the details of the Contract, all the DAAB's Activities and the documents provided under Rule 4.3 of the DAAB Rules as private and confidential, and shall not publish or disclose them without the prior written consent of the Parties and the Other Members (if any).

7.2 Subject to Sub-Clause 7.4 below, the Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall treat the details of all the DAAB's Activities as private and confidential.

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7.3 Each person's obligation of confidentiality under Sub-Clause 7.1 or Sub-Clause 7.2 above (as the case may be) shall not apply where the information:

(a) was already in that person's possession without an obligation of confidentiality before receipt under the DAA Agreement;

(b) becomes generally available to the public through no breach of the GCs; or

(c) is lawfully obtained by the person from a third party which is not bound by an obligation of confidentiality.

7.4 If a DAAB Member is replaced under the Contract, the Parties and/or the Other Members (if any) shall disclose details of the Contract, the documents provided under Rule 4.3 of the DAAB Rules and previous DAAB's Activities (including decisions, if any) to the replacement DAAB Member as is necessary in order to:

(a) enable the replacement DAAB Member to comply with sub-paragraph (d) of Sub-Clause 5.1 above; and

(b) ensure consistency in the manner in which the DAAB's Activities are conducted following such replacement.

8 The Parties' undertaking and indemnity

8.1 The Employer and the Contractor undertake to each other and to the DAAB Member that the DAAB Member shall not:

(a) be appointed as an arbitrator in any arbitration under the Contract;

(b) be called as a witness to give evidence concerning any Dispute in any arbitration under the Contract; or

(c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the DAAB Member's functions, except in any case of fraud, gross negligence, deliberate default or reckless misconduct by him/her.

8.2 The Employer and the Contractor hereby jointly and severally indemnify and hold the DAAB Member harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any claim from which he/she is relieved from liability under Sub-Clause 8.1 above.

9 Fees and Expenses

9.1 The DAAB Member shall be paid as follows, in the currency named in the DAA Agreement:

(a) a monthly fee, which shall be a fixed fee as payment in full for:

(i) being available on 28-days' notice for all meetings, Site visits and hearings under the DAAB Rules (and, in the event of a request under Rule 3.6 of the DAAB Rules, being available for an urgent meeting or Site visit);

(ii) becoming and remaining knowledgeable about the Contract, informed about the progress of the Works and maintaining a current working file of documents, in accordance with sub-paragraph (d) of Clause 5.1 above;

(iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his/her duties; and

(iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

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This fee shall be paid monthly with effect from the last day of the month in which the Effective Date occurs until the end of the month in which the Term of the DAAB expires, or the DAAB Member declines to act or is unable to act as a result of death, illness, disability, resignation or termination of his/her DAA Agreement.

If no monthly fee is stated in the DAA Agreement, the matters described in sub-paragraphs (i) to (iv) above shall be deemed to be covered by the daily fee under sub-paragraph (b) below;

(b) a daily fee, which shall be considered as payment in full for each day:
  (i) or part of a day, up to a maximum of two days' travel time in each direction, for the journey between the DAAB Member's home and the Site, or another location of a meeting with the Parties and/or the Other Members (if any);
  (ii) spent on attending meetings and making Site visits in accordance with Rule 3 of the DAAB Rules, and writing reports in accordance with Rule 3.10 of the DAAB Rules;
  (iii) spent on giving Informal Assistance;
  (iv) spent on attending hearings (and, in the case of a three-member DAAB, attending meeting(s) between the DAAB Members in accordance with sub-paragraph (a) of Rule 8.2 of the DAAB Rules, and communicating with the Other Members), and preparing decisions; and
  (v) spent in preparation for a hearing, and studying written documentation and arguments from the Parties submitted in accordance with sub-paragraph (c) of Rule 7.1 of the DAAB Rules;

(c) all reasonable expenses, including necessary travel expenses (air fare in business class or equivalent, hotel and subsistence and other direct travel expenses, including visa charges) incurred in connection with the DAAB Member's duties, as well as the cost of telephone calls (and video conference calls, if any, and internet access), courier charges and faxes. The DAAB Member shall provide the Parties with a receipt for each item of expenses;

(d) any taxes properly levied in the Country on payments made to the DAAB Member (unless a national or permanent resident of the Country) under this Sub-Clause 9.1.

9.2 Subject to Sub-Clause 9.3 below, the amounts of the DAAB Member's monthly fee and daily fee, under Sub-Clause 9.1 above, shall be as specified in the DAA Agreement signed (or, under the Contract, deemed to have been signed) by the Parties and the DAAB Member.

9.3 If the Parties and the DAAB Member have agreed all other terms of the DAA Agreement but fail to jointly agree the amount of the monthly fee or the daily fee in the DAA Agreement (the "non-agreed fee" in this Sub-Clause):

(a) the DAA Agreement shall nevertheless be deemed to have been signed by the Parties and the DAAB Member, except that the fee proposed by the DAAB Member shall only temporarily apply;

(b) either Party or the DAAB Member may apply to the appointing entity or official named in the Contract Data to set the amount of the non-agreed fee;

(c) the appointing entity or official shall, as soon as practicable and in any case within 28 days after receiving any such application, set the amount of the non-agreed fee, which amount shall be reasonable taking due regard of the complexity of the Works, the experience

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and qualifications of the DAAB Member, and all other relevant circumstances;

(d) once the appointing entity or official has set the amount of the non-agreed fee, this amount shall be final and conclusive, shall replace the fee under sub-paragraph (a) above, and shall be deemed to have applied from the Effective Date; and

(e) thereafter, after giving credit to the Parties for all amounts previously paid in respect of the non-agreed fee, the balance (if any) due from the DAAB Member to the Parties or from the Parties to the DAAB Member, as the case may be, shall be paid.

9.4 The DAAB Member shall submit invoices for payment of the monthly fee and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a meeting, Site visit or hearing; and following the giving of a decision or an informal written note (under Rule 2.1 of the DAAB Rules). All invoices shall be accompanied by a brief description of the DAAB's Activities performed during the relevant period and shall be addressed to the Contractor.

9.5 The Contractor shall pay each of the DAAB Member's invoices in full within 28 days after receiving each invoice. Thereafter, the Contractor shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

9.6 If the Contractor fails to pay to the DAAB Member the amount to which he/she is entitled under the DAA Agreement within the period of 28 days stated in Sub-Clause 9.5 above, the DAAB Member shall inform the Employer who shall promptly pay the amount due to the DAAB Member and any other amount which may be required to maintain the function of the DAAB. Thereafter the Employer shall, by written request, be entitled to payment from the Contractor of:

(a) all sums paid in excess of one-half of these amounts;

(b) the reasonable costs of recovering these amounts from the Contractor; and

(b) financing charges calculated at the rate specified in Sub-Clause 14.9 [*Delayed Payment*] of the Conditions of Contract.

The Employer shall be entitled to such payment from the Contractor without any requirement to comply with Sub-Clause 20.2 [*Claims For Payment and/or EOT*] of the Conditions of Contract, and without prejudice to any other right or remedy.

9.7 If the DAAB Member does not receive payment of the amount due within 56 days after submitting a valid invoice, the DAAB Member may:

(a) not less than 7 days after giving a Notification to the Parties and the Other Members (if any), suspend his/her services until the payment is received; and/or

(b) resign his/her appointment by giving a Notification under Sub-Clause 10.1 below.

10 Resignation and Termination

10.1 The DAAB Member may resign at any time for any reason, by giving a Notification of not less than 28 days (or other period as may be agreed by the Parties) to the Parties and to the Other Members (if any). During this period the

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Parties shall take the necessary steps to appoint, without delay, a replacement DAAB Member in accordance with Sub-Clause 21.1 [*Constitution of the DAAB*] of the Conditions of Contract (and, if applicable, Sub-Clause 21.2 [*Failure to Appoint DAAB Member(s)*] of the Conditions of Contract).

10.2 On expiry of the period stated in Sub-Clause 10.1 above, the resigning DAAB Member's DAA Agreement shall terminate with immediate effect. However (except if the DAAB Member is unable to act as a result of illness or disability) if, on the date of the DAAB Member's notice under Sub-Clause 10.1 above, the DAAB is dealing with any Dispute under Sub-Clause 21.4 [*Obtaining DAAB's Decision*] of the Conditions of Contract, the DAAB Member's resignation shall not take effect and his/her DAA Agreement shall not terminate until after the DAAB has given all the corresponding decisions in accordance with the Contract.

10.3 At any time the Parties may jointly terminate the DAA Agreement by giving a Notification of not less than 42 days to the DAAB Member.

10.4 If the DAAB Member fails, without justifiable excuse, to comply with Sub-Clause 5.1 above, the Parties may, without prejudice to their other rights or remedies, jointly terminate his/her DAA Agreement by giving a Notification (by recorded delivery) to the DAAB Member. This notice shall take effect when it is received by the DAAB Member.

10.5 If either Party fails, without justifiable excuse, to comply with Clause 6 above, the DAAB Member may, without prejudice to his/her other rights or remedies, terminate the DAA Agreement by giving a Notification to the Parties. This notice shall take effect when received by both Parties.

10.6 Any resignation or termination under this Clause shall be final and binding on the Parties and the DAAB Member. However, a notice given under Sub-Clause 10.3 or 10.4 above by either the Employer or the Contractor, but not by both, shall be of no effect.

10.7 Subject to sub-paragraph (b) of Sub-Clause 11.5 below, in the event of resignation or termination under this Clause the DAAB Member shall nevertheless be entitled to payment of any fees and/or expenses under his/her DAA Agreement that remain outstanding as of the date of termination of his/her DAA Agreement.

10.8 After resignation by the DAAB Member or termination of his/her DAA Agreement under this Clause, the DAAB Member shall:

(a) remain bound by his/her obligation of confidentiality under Sub-Clause 7.1 above; and

(b) return the original of any document in his/her possession to the Party who submitted such document in connection with the DAAB's Activities, at that Party's written request and cost.

10.9 Subject to any mandatory requirements under the governing law of the DAA Agreement, termination of the DAA Agreement under this Clause shall require no action of whatsoever kind by the Parties or the DAAB Member (as the case may be) other than as stated in this Clause.

11 Challenge

11.1 The Parties shall not object against the DAAB Member, except that either Party, or in the case of a three-member DAAB the Other Members jointly, shall be entitled to do so for an alleged lack of independence or impartiality or otherwise in which case Rule 10 Objection Procedure and Rule 11 Challenge Procedure of the DAAB Rules shall apply.

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11.2 The decision issued under Rule 11 of the DAAB Rules (the "Decision on the Challenge" in the GCs) shall be final and conclusive.

11.3 At any time before the Decision on the Challenge is issued, the challenged DAAB Member may resign under Sub-Clause 10.1 above and, in such case, the challenging Party shall inform the International Chamber of Commerce (ICC). However, Sub-Clause 10.2 shall not apply to such resignation and the resigning DAAB Member's DAA Agreement shall terminate with immediate effect.

11.4 Unless the challenged DAAB Member has resigned, or his/her DAA Agreement has been terminated under Sub-Clause 10.3 above, the DAAB Member and the Other Members (if any) shall continue with the DAAB's Activities until the Decision on the Challenge is issued.

11.5. If the Decision on the Challenge is that the challenge is successful:

(a) the challenged DAAB Member's appointment, and his/her DAA Agreement, shall be deemed to have been terminated with immediate effect on the date of the notification of the Decision on the Challenge by ICC;

(b) the challenged DAAB Member shall not be entitled to any fees or expenses under his/her DAA Agreement from the date of the notification of the Decision on the Challenge by ICC;

(c) any decision under Sub-Clause 21.4.3 [*The DAAB's decision*] of the Conditions of Contract, given by the DAAB:

(i) after the challenge was referred under Rule 11 of the DAAB Rules; and

(ii) before the resignation (if any) of the challenged DAAB Member under Sub-Clause 11.3 above, or his/her DAAB Agreement is terminated under sub-paragraph (a) above or under Sub-Clause 10.3 above

shall become void and ineffective. In the case of a sole-member DAAB, all other DAAB's Activities during this period shall also become void and ineffective. In the case of a three-member DAAB, all other DAAB's Activities during this period shall remain unaffected by the Decision on the Challenge except if there has been a challenge to all three members of the DAAB and such challenge is successful;

(d) the successfully challenged DAAB Member shall be removed from the DAAB; and

(e) the Parties shall, without delay, appoint a replacement DAAB Member in accordance with Sub-Clause 21.1 [*Constitution of the DAAB*] of the Conditions of Contract.

12 Disputes under the DAA Agreement

Any dispute arising out of or in connection with the DAA Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce 2017 by one arbitrator appointed in accordance with these Rules of Arbitration, and Article 30 and the Expedited Procedure Rules at Appendix VI of these Rules of Arbitration shall apply.

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Annex DAAB PROCEDURAL RULES

Rule 1
Objectives

1.1 The objectives of these Rules are:

(a) to facilitate the avoidance of Disputes that might otherwise arise between the Parties; and

(b) to achieve the expeditious, efficient and cost effective resolution of any Dispute that arises between the Parties.

1.2 These Rules shall be interpreted, the DAAB's Activities shall be conducted and the DAAB shall use its powers under the Contract and these Rules, in the manner necessary to achieve the above objectives.

Rule 2
Avoidance of Disputes

2.1 Where Sub-Clause 21.3 [*Avoidance of Disputes*] of the Conditions of Contract applies, the DAAB (in the case of a three-member DAAB, all three DAAB Members acting together) may give Informal Assistance during discussions at any meeting with the Parties (whether face-to-face or by telephone or by video conference) or at any Site visit or by an informal written note to the Parties.

Rule 3
Meetings and Site Visits

3.1 The purpose of meetings with the Parties and Site visits by the DAAB is to enable the DAAB to:

(a) become and remain informed about the matters described in sub-paragraphs (d)(i) to (d)(iii) of Sub-Clause 5.1 of the GCs;

(b) become aware of, and remain informed about, any actual or potential issue or disagreement between the Parties; and

(c) give Informal Assistance if and when jointly requested by the Parties.

3.2 As soon as practicable after the DAAB is appointed, the DAAB shall convene a face-to-face meeting with the Parties. At this meeting, the DAAB shall establish a schedule of planned meetings and Site visits in consultation with the Parties, which schedule shall reflect the requirements of Rule 3.3 below and shall be subject to adjustment by the DAAB in consultation with the Parties.

3.3 The DAAB shall hold face-to-face meetings with the Parties, and/or visit the Site, at regular intervals and/or at the written request of either Party. The frequency of such meetings and/or Site visits shall be:

(a) sufficient to achieve the purpose under Rule 3.1 above;

(b) at intervals of not more than 140 days unless otherwise agreed jointly by the Parties and the DAAB; and

(c) at intervals of not less than 70 days, subject to Rules 3.5 and 3.6 below and except as required to conduct a hearing as described under Rule 7 below, unless otherwise agreed jointly by the Parties and the DAAB.

3.4 In addition to the face-to-face meetings referred to in Rules 3.2 and 3.3 above, the DAAB may also hold meetings with the Parties by telephone or video conference as agreed with the Parties (in which case each Party bears the risk of interrupted or faulty telephone or video conference transmission and reception).

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3.5 At times of critical construction events (which may include suspension of the Works or termination of the Contract), the DAAB shall visit the Site at the written request of either Party. This request shall describe the critical construction event. If the DAAB becomes aware of an upcoming critical construction event, it may invite the Parties to make such a request.

3.6 Either Party may request an urgent meeting or Site visit by the DAAB. This shall be a written request and shall give reasons for the urgency of the meeting or Site visit. If the DAAB agrees that such a meeting or Site visit is urgent, the DAAB Members shall use all reasonable endeavours to:

(a) hold a meeting with the Parties by telephone or video conference (as agreed with the Parties under Rule 3.4 above) within 3 days after receiving the request; and

(b) if requested and (having given the other Party opportunity at this meeting to respond to or oppose this request) the DAAB agrees that a Site visit is necessary, visit the Site within 14 days after the date of this meeting.

3.7 The time of, and agenda for, each meeting and Site visit shall be set by the DAAB in consultation with the Parties.

3.8 Each meeting and Site visit shall be attended by the Employer and the Contractor.

3.9 Each meeting and Site visit shall be co-ordinated by the Contractor in co-operation with the Employer. The Contractor shall ensure the provision of appropriate:

(a) personal safety equipment, security controls (if necessary) and site transport for each Site visit;

(b) meeting room/conference facilities and secretarial and copying services for each face-to-face meeting; and

(c) telephone conference or video conference facilities for each meeting by telephone or video conference.

3.10 At the conclusion of each meeting and Site visit and, if possible before leaving the venue of the face-to-face meeting or the Site (as the case may be) but in any event within 7 days, the DAAB shall prepare a report on its activities during the meeting or Site visit and shall send copies of this report to the Parties.

Rule 4 Communications and Documentation

4.1 The language to be used:

(a) in all communications to and from the DAAB and the Parties (and, in the case of a three-member DAAB, between the DAAB Members);

(b) in all reports and decisions issued by the DAAB; and

(c) during all Site visits, meetings and hearings relating to the DAAB's Activities

shall be the language for communications defined in Sub-Clause 1.4 [Law and Language] of the Conditions of Contract, unless otherwise agreed jointly by the Parties and the DAAB.

4.2 All communications and/or documents sent between the DAAB and a Party shall simultaneously be copied to the other Party. In the case of a three-member DAAB, the sending Party shall send all communications and/

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or documents to the chairman of the DAAB and simultaneously send copies of these communications and/or documents to the Other Members.

4.3 The Parties shall provide the DAAB with a copy of all documents which the DAAB may request, including:

(a) the documents forming the Contract;
(b) progress reports under Sub-Clause 4.20 [*Progress Reports*] of the Conditions of Contract;
(c) the initial programme and each revised programme under Sub-Clause 8.3 [*Programme*] of the Conditions of Contract;
(d) relevant instructions given by the Emloyer, and Variations under Clause 13.3 [*Variation Procedure*] of the Conditions of Contract;
(e) Statements submitted by the Contractor, and all certificates issued by the Employer under the Contract;
(f) relevant Notices;
(g) relevant communications between the Parties

and any other document relevant to the performance of the Contract and/or necessary to enable the DAAB to become and remain informed about the matters described in sub-paragraphs (d)(i) to (d)(iii) of Sub-Clause 5.1 of the GCs.

Rule 5

Powers of the DAAB

5.1 In addition to the powers granted to the DAAB under the Conditions of Contract, the General Conditions of the DAA Agreement and elsewhere in these Rules, the Parties empower the DAAB to:

(a) establish the procedure to be applied in making Site visits and/or giving Informal Assistance;
(b) establish the procedure to be applied in giving decisions under the Conditions of Contract;
(c) decide on the DAAB's own jurisdiction, and the scope of any Dispute referred to the DAAB;
(d) appoint one or more experts (including legal and technical expert(s)), with the agreement of the Parties;
(e) decide whether or not there shall be a hearing (or more than one hearing, if necessary) in respect of any Dispute referred to the DAAB;
(f) conduct any meeting with the Parties and/or any hearing as the DAAB thinks fit, not being bound by any rules or procedures for the hearing other than those contained in the Contract and in these Rules;
(g) take the initiative in ascertaining the facts and matters required for a DAAB decision;
(h) make use of a DAAB Member's own specialist knowledge, if any;
    (i) decide on the payment of financing charges in accordance with the Contract;
    (j) decide on any provisional relief such as interim or conservatory measures;
(k) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of (or acceptance, agreement, approval, consent, disapproval, No-objection, permission, or similar act by) the Employer that is relevant to the Dispute; and
(l) proceed with the DAAB's Activities in the absence of a Party who, after receiving a Notification from the DAAB, fails to comply with Sub-Clause 6.3 of the GCs.

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5.2 The DAAB shall have discretion to decide whether and to what extent any powers granted to the DAAB, under the Conditions of Contract, the GCs and these Rules, may be exercised.

Rule 6
Disputes

6.1 If any Dispute is referred to the DAAB in accordance with Sub-Clause 21.4.1 [*Reference of a Dispute to the DAAB*] of the Conditions of Contract, the DAAB shall proceed in accordance with Sub-Clause 21.4 [O*btaining DAAB's Decision*] of the Conditions of Contract and these DAAB Rules, or as otherwise agreed by the Parties in writing.

6.2 The DAAB shall act fairly and impartially between the Parties and, taking due regard of the period under Sub-Clause 21.4.3 [*The DAAB's decision*] of the Conditions of Contract and other relevant circumstances, the DAAB shall:

(a) give each Party a reasonable opportunity (consistent with the expedited nature of the DAAB proceeding) of putting forward its case and responding to the other Party's case; and

(b) adopt a procedure in coming to its decision that is suitable to the Dispute, avoiding unnecessary delay and/or expense.

Rule 7
Hearings

7.1 In addition to the powers under Rule 5.1 above, and except as otherwise agreed in writing by the Parties, the DAAB shall have power to:

(a) decide on the date and place for any hearing, in consultation with the Parties;

(b) decide on the duration of any hearing;

(c) request that written documentation and arguments from the Parties be submitted to it prior to the hearing;

(d) adopt an inquisitorial procedure during any hearing:

(e) request the production of documents, and/or oral submissions by the Parties, at any hearing that the DAAB considers may assist in exercising the DAAB's power under sub-paragraph (g) of Rule 5.1 above;

(f) request the attendance of persons at any hearing that the DAAB considers may assist in exercising the DAAB's power under sub-paragraph (g) of Rule 5.1 above;

(g) refuse admission to any hearing, or audience at any hearing, to any persons other than representatives of the Employer and the Contractor;

(h) proceed in the absence of any party who the DAAB is satisfied received timely notice of the hearing;

(i) adjourn any hearing as and when the DAAB considers further investigation by one Party or both Parties would benefit resolution of the Dispute, for such time as the investigation is carried out, and resume the hearing promptly thereafter.

7.2 The DAAB shall not express any opinions during any hearing concerning the merits of any arguments advanced by either Party in respect of the Dispute.

7.3 The DAAB shall not give any Informal Assistance during a hearing, but if the Parties request Informal Assistance during any hearing:

(a) the hearing shall be adjourned for such time as the DAAB is giving Informal Assistance;

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(b) if the hearing is so adjourned for longer than 2 days, the period under Sub-Clause 21.4.3 [*The DAAB's decision*] of the Conditions of Contract shall be temporarily suspended until the date that the hearing is resumed; and

(c) the hearing shall be resumed promptly after the DAAB has given such Informal Assistance.

Rule 8

The DAAB's Decision

8.1 The DAAB shall make and give its decision within the time allowed under Sub-Clause 21.4 [*Obtaining DAAB's Decision*] of the Conditions of Contract, or other time as may be proposed by the DAAB and agreed by the Parties in writing.

8.2 In the case of a three-member DAAB:

(a) it shall meet in private (after the hearing, if any) in order to have discussions and to start preparation of its decision;

(b) the DAAB Members shall use all reasonable endeavours to reach a unanimous decision;

(c) if it is not possible for the DAAB Members to reach a unanimous decision, the applicable decision shall be made by a majority of the DAAB Members, who may require the minority DAAB Member to prepare a separate written report (with reasons and supporting particulars) which shall be issued to the Parties; and

(d) if a DAAB Member fails to:

(i) attend a hearing (if any) or a DAAB Members' meeting; or

(ii) fulfil any required function (other than agreeing to a unanimous decision)

the Other Members shall nevertheless proceed to make a decision, unless:

- such failure has been caused by exceptional circumstances, of which the Other Members and the Parties have received a Notification from the DAAB Member;
- the DAAB Member has suspended his services under sub-paragraph (a) of Sub-Clause 9.7 of the GCs; or
- otherwise agreed by the Parties in writing.

8.3 If, after giving a decision, the DAAB finds (and, in the case of a three-member DAAB, they agree unanimously or by majority) that the decision contained any error:

(a) of a typographical or clerical nature; or

(b) of an arithmetical nature

the chairman of the DAAB or the sole DAAB Member (as the case may be) shall, within 14 days after giving this decision, advise the Parties of the error and issue an addendum to its original decision in writing to the Parties.

8.4 If, within 14 days of receiving a decision from the DAAB, either Party finds a typographical, clerical or arithmetical error in the decision, that Party may request the DAAB to correct such error. This shall be a written request and shall clearly identify the error.

8.5 If, within 14 days of receiving a decision from the DAAB, either Party believes that such decision contains an ambiguity, that Party may request clarification from the DAAB. This shall be a written request and shall clearly identify the ambiguity.

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8.6 The DAAB shall respond to a request under Rule 8.4 or Rule 8.5 above within 14 days of receiving the request. The DAAB may decline (at its sole discretion and with no requirement to give reasons) any request for clarification under Rule 8.5. If the DAAB agrees (in the case of a three-member DAAB they agree unanimously or by majority) that the decision did contain the error or ambiguity as described in the request, it may correct its decision by issuing an addendum to its original decision in writing to the Parties, in which case this addendum shall be issued together with the DAAB's response under this Rule.

8.7 If the DAAB issues an addendum to its original decision under Rule 8.3 or 8.6 above, such an addendum shall form part of the decision and the period stated in sub-paragraph (c) of Sub-Clause 21.4.4 [*Dissatisfaction with DAAB's decision*] of the Conditions of Contract shall be calculated from the date the Parties receive this addendum.

Rule 9
In the event of Termination of DAA Agreement

9.1 If, on the date of termination of a DAAB Member's DAA Agreement arising from resignation or termination under Clause 10 of the GCs, the DAAB is dealing with any Dispute under Sub-Clause 21.4 [*Obtaining DAAB's Decision*] of the Conditions of Contract:

(a) the period under Sub-Clause 21.4.3 [*The DAAB's decision*] of the Conditions of Contract shall be temporarily suspended; and

(b) when a replacement DAAB Member is appointed in accordance with Sub-Clause 21.1 [*Constitution of the DAAB*] of the Conditions of Contract, the full period under Sub-Clause 21.4.3 [*The DAAB's decision*] of the Conditions of Contract shall apply from the date of this replacement DAAB Member's appointment.

9.2 In the case of a three-member DAAB and if one DAAB Member's DAA Agreement is terminated as a result of resignation or termination under Clause 10 of the GCs, the Other Members shall continue as members of the DAAB except that they shall not conduct any hearing or make any decision prior to the replacement of the DAAB Member unless otherwise agreed jointly by the Parties and the Other Members.

Rule 10
Challenge Procedure

10.1 The following procedure shall apply to any objection against a DAAB Member:

(a) the objecting Party shall, within 7 days of becoming aware of the facts and/or events giving rise to the objection, give a Notification to the DAAB Member of its objection. This Notification shall:
  (i) state that it is given under this Rule;
  (ii) state the reason(s) for the objection;
  (iii) substantiate the objection by setting out the facts, and describing the events, on which the objection is based, with supporting particulars; and
  (iv) be simultaneously copied to the other Party and the Other Members;

(b) within 7 days after receiving a notice under sub-paragraph (a) above, the objected DAAB Member shall respond to the objecting Party. This response shall be simultaneously copied to the other Party and the Other Members. If no response is given by the DAAB Member

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within this period of 7 days, the DAAB Member shall be deemed to have given a response denying the matters on which the objection is based;

(c) within 7 days after receiving the objected DAAB Member's response under sub-paragraph (b) above (or, if there is no such response, after expiry of the period of 7 days stated in sub-paragraph (b) above) the objecting Party may formally challenge a DAAB member in accordance with Rule 11 below;

(d) if the challenge is not referred within the period of 7 days stated in sub-paragraph (c) above, the objecting Party shall be deemed to have agreed to the DAAB Member remaining on the DAAB and shall not be entitled to object and/or challenge him/her thereafter on the basis of any of the facts and/or evidence stated in the notice given under sub-paragraph (a) above;

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GENERAL CONDITIONS

GUIDANCE FOR THE PREPARATION OF PARTICULAR CONDITIONS AND ANNEXES: FORMS OF SECURITIES

FORMS OF LETTER OF TENDER, LETTER OF ACCEPTANCE, CONTRACT AGREEMENT AND DISPUTE ADJUDICATION/ AVOIDANCE AGREEMENT

FIDIC® Conditions of Contract for
EPC/TURNKEY PROJECTS

Guidance for The Preparation of Particular Conditions

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES

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Guidance
for the Preparation of Particular Conditions

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Particular Conditions Part A – Contract Data

INTRODUCTORY GUIDANCE NOTES

These Introductory Guidance Notes are for use in completing the Contract Data and shall not form part of the Contract Data.

Certain Sub-Clauses in the General Conditions require that specific information is provided in the Contract Data.

The Employer should amend as appropriate and complete all data and should insert "Not Applicable" in the space next to any Sub-Clause which the Employer does not wish to use.

The Employer should insert "Tenderer to Complete" in the space next to any Sub-Clause which the Employer wishes Contract Data to be completed by the tenderers. Except where indicated "Tenderer to Complete" tenderers shall not amend the Contract Data as provided by the Employer.

All italicised text and any enclosing square brackets are for use in preparing the Contract Data and should be deleted from the final version of the Contract Data.

Failure by the Employer to provide the information and details required in the Contract Data could mean either that the documents forming the Contract are incomplete with vital information missing, or that the fall-back provisions to be found in some of the Sub-Clauses in the General Conditions will automatically take effect.

In the case of EPC / Turnkey contracts the Parties usually negotiate many elements of the Contract Documents including the Contract Data, and then execute (sign) the Contract Agreement. Thus, the users of the FIDIC EPC / Turnkey form of contract shall make sure that each entry (or absence of an entry) in the Contract Data is agreed by both Parties.

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CONTRACT DATA

Sub-Clause	Data to be given	Data
1.1.17.....	where the Contract allows for Cost Plus Profit, percentage profit to be added to the Cost:	_____ %
1.1.24.....	Defects Notification Period (DNP):	_____ days
1.1.30.....	The Employer's Representative:	_____ _____ _____
1.1.77.....	Time for Completion:	_____ days
1.3 (a)(ii).....	agreed methods of electronic transmission:	_____ _____ _____
1.3(d).....	address of Employer for communications:	_____ _____ _____
1.3(d).....	address of Employer's Representative for communications:	_____ _____ _____
1.3(d).....	address of Contractor for communications:	_____ _____ _____
1.4.....	Contract shall be governed by the law of:	_____
1.4.....	ruling language:	_____
1.4.....	language for communications:	_____
1.8.....	number of additional paper copies of Contractor's Documents.....	_____
1.14.....	total liability of the Contractor to the Employer under or in connection with the Contract.....	_____ (sum)
2.1.....	After the Contract comes into full force and effect, the Contractor shall be given right of access to all or part of the Site within.....	_____ days

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Sub-Clause	Data to be given	Data
2.4.....		_____
	Employer's financial arrangements.....	_____
		_____
4.2.....		
	Performance Security (as percentages of the Contract Price in Currencies):	_____ %
	percent.....	_____
	currency.....	_____ %
	percent.....	_____
	currency.....	
4.4(a).....		
	maximum allowable accumulated value of work subcontracted (as a percentage of the Contract Price): .	_____ %
4.4(b).....	parts of the Works for which subcontracting is not permitted.....	_____
		_____
		_____
4.4.....		
	(i) Subcontractors for which the Contractor shall give	_____
	Notice before appointment …….. ..	_____
	(ii) Subcontractors for which the Contractor shall give ...	_____
	Notice before commencement of work ……. ..	_____
	(iii) Subcontractors for which the Contractor shall give ..	_____
	Notice before commencement of work on Site ...	_____
4.19.....	period of payment for temporary utilities.....	_____ days
4.20.....	number of additional paper copies of progress reports ..	_____
6.5.....	normal working hours on the Site	_____
8.3.....	number of additional paper copies of programmes.....	_____
8.8.....	Delay Damages payable for each day of delay.....	_____
8.8.....	maximum amount of Delay Damages	_____
13.4(b)(ii).....	percentage rate to be applied to Provisional Sums for overhead charges and profit.....	_____ %
14.2.....	total amount of Advance Payment (as a percentage of the final Contract Price)	_____ %

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Sub-Clause	Data to be given	Data
14.2.....	currency or currencies of Advance Payment	_____
		_____
14.2.3.....	percentage deductions for the repayment of the Advance Payment	_____
14.3.....	period of payment	_____ days
14.3(b).....	number of additional paper copies of Statements	_____
14.3(iii).....	percentage of retention.....	_____ %
14.3(iii).....	limit of Retention Money (as a percentage of Contract Price)	_____ %
14.5(b)(i)	Plant and Materials for payment when shipped.....	_____
14.5(c)(i).....	Plant and Materials for payment when delivered to the Site	_____
14.6.2.....	minimum amount of interim payment.....	_____
14.7(b)(i)	period for the Employer to make interim payments to the Contractor under Sub-Clause 14.6 [*Interim Payment*]....	_____ days
14.7(b)(ii).....	period for the Employer to make interim payments to the Contractor under Sub-Clause 14.13 [*Final Payment*]	_____ days
14.7(c).....	period for the Employer to make final payment to the Contractor.....	_____ days
14.8.....	financing charges for delayed payment (percentage points above the average bank short–term lending rate as referred to under sub-paragraph (a)).....	_____ %
14.11.1(b)....	number of additional paper copies of draft Final Statement.....	_____
14.15.....	currencies for payment of Contract Price.....	_____
		_____
		_____
14.15(a)(i).....	proportions or amounts of Local and Foreign Currencies are:	
	Local	_____
	Foreign.....	_____

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Sub-Clause	Data to be given	Data
14.15(c).....	Currencies and proportions for payment of Delay Damages.....	_____
		_____
14.15(g).....	rates of exchange.....	_____
17.2(g).....	forces of nature, the risks of which are allocated to the Contractor.....	_____
19.1.....	permitted deductible limits:	
	insurance required for the Works.....	_____
	insurance required for Goods	_____
	insurance required for liability for breach of professional duty.....	_____
	insurance required against liability for fitness for purpose (if any is required).....	_____
	insurance required for injury to persons and damage to property.....	_____
	insurance required for injury to employees.....	_____
	other insurances required by Laws and by local practice:	
	_____	_____
	_____	_____
	_____	_____
19.2(1)(b).....	additional amount to be insured (as a percentage of the replacement value, if less or more than 15%).....	_____ %
19.2(1)(iv).....	list of Exceptional Risks which shall not be excluded from the insurance cover for the Works	_____
		_____
		_____
19.2.2.....	extent of insurance required for Goods.....	_____
	amount of insurance required for Goods.....	_____
19.2.3(a).....	amount of insurance required for liability for breach of professional duty	_____
19.2.3(b).....	insurance required against liability for fitness for purpose	yes / no (*delete as appropriate*)
19.2.3.....	period of insurance required for liability for breach of professional duty	_____
19.2.4.....	amount of insurance required for injury to persons and damage to property.....	_____

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Sub-Clause	Data to be given	Data
19.2.6.....	other insurances required by Laws and by local practice (give details).....	_____
21.1.....	time for appointment of DAAB	_____ days
21.1.....	the DAAB shall comprise	_____ members
21.1.....	list of proposed members of DAAB - proposed by Employer	1. _____ 2. _____ 3. _____
	- proposed by Contractor	1. _____ 2. _____ 3. _____
21.2.....	Appointing entity (official) for DAAB members	_____

(*Unless otherwise stated here, it shall be the President of FIDIC or a person appointed by the President*)

Definition of Sections (if any):

Description of parts of the Works that shall be designated a Section for the purposes of the Contract (Sub-Clause 1.1.66)	Value: Percentage* of Contract Price (Sub-Clause 14.9)	Time for Completion (Sub-Clause 1.1.76)	Delay Damages (Sub-Clause 8.8)

* These percentages shall also be applied to each half of the Retention Money under Sub-Clause 14.9.

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Particular Conditions Part B – Special Provisions

INTRODUCTION

The terms of the Conditions of Contract for EPC/Turnkey Projects have been prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) and are recommended where one entity takes total responsibility for an engineering project, including design, manufacture, delivery and installation of Plant, and for the design and execution of building or engineering works, and where tenders are invited on an international basis.

Modifications to the General Conditions may well be required to account for local legal requirements, particularly if they are to be used on domestic contracts.

Turnkey projects generally require some negotiation between the parties during the tender stage of the project. Having studied the variety of options offered by tenderers, the Employer may consider it essential to meet and discuss with them the technical and commercial options which the Employer considers preferable. Under the usual arrangements for this type of contract, the Contractor carries out the Engineering, Procurement and Construction, and provides a fully-equipped facility, ready for operation (at the "turn of the key").

These Conditions allow for the possibility that the Employer may include (in the Employer's Requirements) an outline design for the Works, but they are not intended for use where the Contractor is to construct the Works in accordance with a detailed design by the Employer. In this latter case, it is recommended that the Employer consider using FIDIC's Conditions of Contract for Construction, Second Edition 2017.

The guidance hereafter is intended to assist drafters of the Special Provisions (Particular Conditions – Part B) by giving options for various sub-clauses where appropriate. In some cases example wording is included between lines, while in other instances only an aide-memoire is given.

FIDIC strongly recommends that the Employer, the Contractor and all drafters of the Special Provisions take all due regard of the five FIDIC Golden Principles:

GP1: The duties, rights, obligations, roles and responsibilities of all the Contract Participants must be generally as implied in the General Conditions, and appropriate to the requirements of the project.

GP2: The Particular Conditions must be drafted clearly and unambiguously.

GP3: The Particular Conditions must not change the balance of risk/reward allocation provided for in the General Conditions.

GP4: All time periods specified in the Contract for Contract Participants to perform their obligations must be of reasonable duration.

GP5: All formal disputes must be referred to a Dispute Avoidance/Adjudication Board (or a Dispute Adjudication Board, if applicable) for a provisionally binding decision as a condition precedent to arbitration.

These FIDIC golden principles are described and explained in the publication FIDIC's Golden Principles (http://http://fidic.org/bookshop †), and are necessary to ensure that modifications to the General Conditions:

- **are limited to those necessary for the particular features of the Site and the project, and necessary to comply with the applicable law; and**
- **the Contract remains recognisable as a FIDIC contract.**

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Before incorporating any new or changed sub-clauses, the wording must be carefully checked to ensure that it is wholly suitable for the particular circumstances. Unless it is considered suitable, example wording should be amended before use.

Where any amendments or additions are made to the General Conditions, great care must be taken to ensure that the wording does not unintentionally alter the meaning of other clauses in the Conditions of Contract, does not inadvertently change the obligations assigned to the Parties or the balance of risks shared between them and/or does not create any ambiguity or misunderstanding in the rest of the Contract documents.

Each time period stated in the General Conditions is what FIDIC believes is reasonable, realistic and achievable in the context of the obligation to which it refers, and reflects the appropriate balance between the interests of the Party required to perform the obligation, and the interests of the other Party whose rights are dependent on the performance of that obligation. If consideration is given to changing any such stated time period in the Special Provisions (Particular Conditions – Part B), care should be taken to ensure that the amended time period remains reasonable, realistic and achievable in the particular circumstances.

There are a number of Sub-Clauses in the General Conditions which require data to be provided by the Employer and/or the Contractor and inserted into the Contract Data (Particular Conditions – Part A). However, there are no Sub-Clauses in the General Conditions which require data or information to be included in the Special Provisions (Particular Conditions – Part B).

Provisions found in the Contract documents under Special Provisions (Particular Conditions – Part B) indicate that the General Conditions have been amended or supplemented.

In describing the Conditions of Contract in the tender documents, the following text can be used:

> "The Conditions of Contract comprise the "General Conditions", which form part of the "Conditions of Contract for EPC/Turnkey Projects " Second Edition 2017 published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), the Contract Data (Particular Conditions – Part A) and the following "Special Provisions" (Particular Conditions – Part B), which include amendments and additions to such General Conditions."

The provisions of the Special Provisions (Particular Conditions – Part B) will always over-rule and supersede the equivalent provisions in the General Conditions, and it is important that the changes are easily identifiable by using the same clause numbers and titles as appear in the General Conditions. Furthermore, it is necessary to add a statement in the tender documents for a contract that:

> "The provisions to be found in the Special Provisions (Particular Conditions – Part B) take precedence over the equivalent provisions found under the same Sub-Clause number(s) in the General Conditions, and the provisions of the Contract Data (Particular Conditions – Part A) take precedence over the Special Provisions (Particular Conditions – Part B)."

† Please Note: all web links referred to in these guidance notes are up-to-date as of the date of this publication but it is recommended that users of these guidance notes check online, at the time that they wish to reference the relevant document, for the most up-to-date version of the document.

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NOTES ON THE PREPARATION OF TENDER DOCUMENTS

When preparing the tender documents and planning the tender process, Employers should read the publication FIDIC Procurement Procedures Guide 1st edition 2011 (http://fidic.org/books/fidic-procurement-procedures-guide-1st-ed-2011) which presents a systematic approach to the procurement of engineering and building works for projects of all sizes and complexity, and gives invaluable help and advice on the contents of the tender documents, and the procedures for receiving and evaluating tenders. This publication provides internationally acceptable, comprehensive, best practice procedures designed to increase the probability of receiving responsive, clear and competitive tenders using FIDIC forms of contract. FIDIC intends to update the FIDIC Procurement Procedures Guide (planned for publication at a later date) to make specific reference to these Conditions of Contract for EPC/Turnkey Projects, Second Edition 2017.

The tender documents should be prepared by suitably qualified engineers who are familiar with the technical aspects of the required works and the particular requirements and contractual provisions of a design-build project. Furthermore, a review by suitably-qualified lawyers is advisable.

The tender documents issued to tenderers should normally include the following:

- Letter of invitation to tender
- Instructions to Tenderers (including advice on any matters which the Employer wishes tenderers to include in their Tenders but which do not form part of the Employer's Requirements)
- Form of Letter of Tender and required appendices (if any)
- Conditions of Contract: General and Particular
- General information and data
- Technical information and data (including the data referred to in Sub-Clause 2.5 [*Site Data and Items of Reference*] of the General Conditions)
- the Employer's Requirements
- Schedules (and perhaps drawings of outline design) from the Employer
- details of schedules and drawings and other information required from tenderers
- required forms of agreement, securities and guarantees.

The publication FIDIC Procurement Procedures Guide referred to above provides useful guidance as to the content and format of each of the above.

For this type of contract where the Works are normally valued on a lump sum basis, the Schedules may include a Schedule of Payments (as referred to under Sub-Clause 14.4 [*Schedule of Payments*] in the General Conditions). A Daywork Schedule may also be necessary to cover minor works to be executed at cost. In addition, each of the tenderers should receive the data referred to in Sub-Clause 2.5 [*Site Data and Items of Reference*], and the Instructions to Tenderers should advise them of any special matters which the Employer wishes them to take into account when pricing the Works but which are not to form part of the Contract.

When the Contract Agreement is signed by the Employer and the Contractor, the Contract (which then comes into full force and effect) includes the completed Schedules.

The Employer's Requirements should specify the particular requirements for the completed Works, including functional requirements, quality and scope. If the Contractor is required to supply certain items, such as consumables, these should be listed in a Schedule. Drafters of the Employer's Requirements must remember that if any matters are not referred to or covered, the Contractor may well be relieved of any responsibility in respect of such matters.

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The following Sub-Clauses make express reference to matters to be included in the Employer's Requirements. However, it may also be necessary under other Sub-Clauses for the Employer to give specific information in the Employer's Requirements (for example, under Sub-Clause 7.2 [*Samples*]).

1.8	Care and Supply of Documents
1.12	Compliance with Laws
2.1	Right of Access to the Site
2.5	Site Data and Items of Reference
2.6	Employer-Supplied Materials and Employer's Equipment
4.1	Contractor's General Obligations
4.5	Nominated Subcontractors
4.6	Co-operation
4.8	Health and Safety Obligations
4.9	Quality Management and Compliance Verification Systems
4.16	Transport of Goods
4.18	Protection of the Environment
4.19	Temporary Utilities
4.20	Progress Reports
5.1	General Design Obligations
5.2	Contractor's Documents
5.4	Technical Standards and Regulations
5.5	Training
5.6	As-Built Records
5.7	Operation and Maintenance Manuals
6.1	Engagement of Staff and Labour
6.6	Facilities for Staff and Labour
6.7	Health and Safety of Personnel
6.12	Key Personnel
7.3	Inspection
7.4	Testing by the Contractor
7.8	Royalties
8.3	Programme
9.1	Contractor's Obligations
10.2	Taking Over of Parts of the Works
11.11	Clearance of Site
12.1	Procedure for Tests after Completion

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Many Sub-Clauses in the General Conditions make reference to data being contained in the Contract Data (Particular Conditions – Part A). This data must be provided in the tender documents, and these Conditions of Contract assume that all such data will be provided by the Employer, except as expressly noted in the example form of Contract Data included in this publication. If the Employer requires tenderers to provide any of the other information required in the Contract Data, the tender documents must make this clear.

If the Employer requires tenderers to provide additional data or information, a convenient way of doing this is to provide a suitably worded questionnaire with the tender documents.

The Instructions to Tenderers may need to specify any constraints on the completion of the Contract Data and/or Schedules, and/or specify the extent of other information which each tenderer is to include with his/her Tender. If each tenderer is to produce a tender security and/or a parent company guarantee, these requirements should be included in the Instructions to Tenderers: example forms are included at the end of this publication.

The Instructions to Tenderers may require the tenderer to provide information on the matters referred to in some or all of the following Sub-Clauses:

4.3 Contractor's Representative

6.12 Key Personnel

19 Insurance

It is important for the Parties to understand which of the documents included in the tender dossier, and which of the documents submitted by tenderers, will form part of the Contract and therefore have continuing effect. For example, the Instructions to Tenderers are not, by definition, a part of the Contract. They are simply instructions and information on the preparation and submission of the tender, and they should not contain anything of a binding or contractual nature.

In many EPC/Turnkey Projects the contract includes fixtures, fittings and equipment and other similar items. In this case, full consideration should be given to including in the Employer's Requirements the detailed requirements for these items, such as the extent to which the Works are to be fully equipped, ready for operation, with spare parts and consumables provided for operation (for a specified period), typically by the Employer. If the Contractor is required to operate the Works, either for a few months' trial operation under sub-paragraph (c) of Sub-Clause 9.1 [*Contractor's Obligations*] or for some years' operation, this must also be specified and detailed in the Employer's Requirements.

If tenderers are required to carry out any preliminary design or study for their proposals, the Employer should bear in mind that tenderers are understandably often reluctant to incur great expense in the preparation of tender designs. Therefore, when preparing the Instructions to Tenderers, thought should be given as to the extent of detail which tenderers can realistically be expected to prepare and include in their proposals. The extent of detail required should be clearly described in the Instructions to Tenderers (it should be noted that there can be no description in the documents which will later constitute the Contract, which only comes into full force and effect when the Contract Agreement has been signed by the Contractor and the Employer). Employers should also consider remunerating tenderers if, in order to provide a responsive Tender, they have to undertake studies or carry out preliminary design work.

Finally, when planning the overall programme for the project, Employers must remember to allow a realistic time for:

- tenderers to inspect the Site, to carry out any survey and sub-surface investigations, to obtain all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works (as stated under Sub-Clause 4.12 [*Unforeseeable Difficulties*]), and to scrutinise the Employer's Requirements (as stated under Sub-Clause 5.1 [*General Design Obligations*]);

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- tenderers to prepare and submit a responsive Tender (avoiding time that is either too short which can reduce competition and result in inadequate submittals, or too long which can be wasteful to all parties involved); and

- the review and evaluation of tenders and the award of the Contract to the successful tenderer. This will be the minimum time which tenderers should be asked to hold their tenders valid and open to acceptance.

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NOTES ON THE PREPARATION OF SPECIAL PROVISIONS

It is very important that Employers (and all drafters of the Special Provisions) work with their professional advisers to review specific terminology in the General Conditions for compliance and consistency with accepted practice in the legal jurisdiction they are operating in.

For example:

- under a number of legal systems (notably in some common law jurisdictions) the term "gross negligence" has no clear definition and, as such, is often avoided in legal documents; and
- under English law, the term "indemnity" or "indemnify" has a specific meaning, entitling the indemnified party to recover certain losses that may not otherwise be recoverable at law. For example, a Contractor's indemnity may be construed to permit the Employer to recover losses or damages that might otherwise be considered indirect or consequential, whereas for some events which may arise both Parties' losses or damages are intended to be limited by Sub-Clause 1.14 [*Limitation of Liability*] to direct damages only.

The following references and examples show some of the Sub-Clauses in the General Conditions which may need amending to suit the needs of the project or the requirements of the Employer. The selected Sub-Clauses and the example wording are included as examples only. They also include, as an aide-memoire, references to other documents such as the Employer's Requirements and the Contract Data, where particular issues may need to be addressed.

The selected Sub-Clauses do not necessarily require changing and the example wording may not suit the needs of a particular project or Employer. It is the responsibility of the drafter of the Special Provisions to ensure that the selection of the Sub-Clauses and the choice of wording is appropriate to the project concerned.

Furthermore, there may be other Sub-Clauses, not mentioned below, which need to be amended. Great care must be taken when amending the wording of Sub-Clauses from the General Conditions, or adding new provisions, to ensure that the balance of obligations and rights of the Parties are not unintentionally compromised.

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Clause 1 General Provisions

Sub-Clause 1.1 Definitions

The opening words of Sub-Clause 1.1 mean that the definitions apply, not only to the Conditions of Contract, but to **all** the documents of the Contract. Therefore, the Employer should take care (particularly when drafting the Employer's Requirements) and the Contractor should take care (particularly when drafting the documents to be submitted with the Tender) to use terms in accordance with those as defined in the definitions.

The defined term "Site", under Sub-Clause 1.1.67, is used for a number of different purposes in the General Conditions (for example: insurances and security) and so, if it is anticipated that any item(s) of equipment, Plant, Materials and Temporary Works are to be located or stored in places other than where the Permanent Works are to be executed, it is recommended that consideration be given to specifying such places in the Contract (by the Employer in the Employer's Requirements and/or by the Contractor in documents to be submitted with the Tender).

In general, changes should not be made to the definitions as this could have serious consequences on the interpretation of the documents of the Contract, particularly the Conditions of Contract.

However, there are limited circumstances where it may be desirable to amend some of the definitions. For example:

1.1.2 the Base Date could be defined as a particular calendar date
1.1.37 one particular Foreign Currency may be required
1.1.44 a different currency may be required to be the contract Local Currency

Also, some of the defined terms in the General Conditions may not be appropriate and may need changing or developing.

For example, if the extent of the Site crosses the border between two countries, it is recommended that consideration be given to the following changes:

EXAMPLE	1.1.18 " "Country" means either xxxxx or yyyyy depending on the location to which the reference will apply."
EXAMPLE	1.1.44 " "Local Currency" means the currency of (*insert name of Country*) or (*insert name of Country*)."

If it is necessary to introduce new terminology into the text of the Special Provisions, each term should be carefully and properly defined, using a clear Sub-Clause numbering system for the new/additional defined terms. It is recommended that the numbering of new definitions does not interfere with the numbering as originally included in the General Conditions. For example:

EXAMPLE	New definition B 1.1.x " "Safety Regulations" means the Employer's safety regulations existing on the Site which the Contractor is required to follow."

In some jurisdictions, it may be advisable to add additional definitions to clarify certain terms/expressions which appear in the General Conditons but are not defined. A typical example might be:

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EXAMPLE	New definition B 1.1.'n'
	" "Gross Negligence" means any act or omission of a party which is contrary to the most elementary rules of diligence which a conscientious employer or contractor would have observed in similar circumstances, and/or which show serious reckless disregard for the consequences of such act or omission. It involves materially more want of care than mere inadvertence or simple negligence."

Sub-Clause 1.2 Interpretation

In relation to the meaning of "consent" under sub-paragraph (g), it should be noted that this does not mean "approve" or "approval" which, under some legal jurisdictions, may be interpreted as accepting or acceptance that the requested matter is wholly satisfactory - following which the requesting party may no longer have any responsibility or liability for it.

Sub-Clause 1.3 Notices and Other Communications

If Notices are only to be given in paper format by post, then consideration may be given to increasing the particular timescales for Notices in the Conditions of Contract to allow extra days for the Notice to be delivered to the recipient.

Sub-Clause 1.5 Priority of Documents

An order of precedence is usually necessary, in case a conflict is subsequently found between the documents of the Contract.

If the Employer's Requirements are to comprise a number of documents, it may be useful to amend sub-paragraph (e) of this Sub-Clause 1.5 by adding an order of precedence between the documents of the Employer's Requirements.

If no order of precedence of any of the documents of the Contract is to be prescribed, this Sub-Clause may be varied:

EXAMPLE	Delete Sub-Clause 1.5 and substitute:
	"The documents forming the Contract are to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found, the priority shall be such as may be accorded by the governing law. The Employer's Representative has authority to issue any instruction which he/she considers necessary to resolve an ambiguity or discrepancy."

Sub-Clause 1.6 Contract Agreement

It is important that the form of the Contract Agreement be included in the tender documents as an annex to the Special Provisions: an example form is included at the end of this publication (in the section "Sample Forms").

If lengthy tender negotiations were necessary, it is recommended that consideration be given to recording in the Contract Agreement: the Base Date and/or the Commencement Date.

Sub-Clause 1.9 Employer's Use of Contractor's Documents

Additional provisions may be required if all rights to particular items of computer software (for example) are to be assigned to the Employer. These provisions should take account of the applicable law.

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Sub-Clause 1.12 Compliance with Laws

For a plant contract, alternative arrangements may be appropriate:

EXAMPLE

Insert after sub-paragraph (d) of Sub-Clause 1.12:

"The Contractor shall submit, in good time, the details of Goods to the Employer, who shall then promptly obtain all import permits or licences required for these Goods.
The Employer shall also obtain or grant all consents including permits-to-work, rights-of-way and approvals required for the Works."

In respect of sub-paragraphs (b) and (c) of this Sub-Clause, if (in addition to the provisions of Sub-Clause 4.18 [*Protection of the Environment*]) the applicable law requires the Contractor to apply for and/or comply with particular environmental permits, these permits should be clearly described in detail in the Employer's Requirements together with the Contractor's obligations associated with each permit.

Sub-Clause 1.13 Joint and Several Liability

If it is likely that one or more of the tenderers will be a Joint Venture, detailed requirements for the JV may need to be specified in addition to those listed in the definition of "JV Undertaking" under Sub-Clause 1.1.41. For example, it may be desirable for each member of the JV to produce a parent company guarantee: an example form is included at the end of this publication (in the section "Sample Forms").

These requirements should be included in the Instructions to Tenderers. Normally the Employer will wish the leader of the JV to be appointed at an early stage, providing a single point of contact thereafter, and will not wish to be involved in a dispute between the members of a JV.

The Employer should scrutinise the JV Undertaking carefully and, where relevant, check if the project's financing institution(s) has/have to give consent.

Sub-Clause 1.14 Limitation of Liability

If it is required that the limitation of each Party's liability to the other Party is to include certain "indirect or consequential loss or damage" and is also to take into account liabilities which are to be insured under Clause 19 [*Insurance*], the Contract Data and this Sub-Clause may be varied:

EXAMPLE

In the Contract Data, add the following:

" 1.14 Amount of Sum A: _____
Amount of Sum B: _____
Amount of Sum C: _____ "

Delete Sub-Clause 1.14 and substitute:
"Except as stated in this Sub-Clause, neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract.

The Contractor's liability to the Employer under or in connection with the Contract shall be limited as follows:
(a) for failure to comply with Sub-Clause 8.2 [*Time for Completion*], the limit shall be the maximum amount of Delay Damages stated in the Contract Data;

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(b) for loss of profit, loss of any contract or loss of use of any part of the Permanent Works (after taking over under the Contract), caused by:

(i) defects attributable to the Contractor, the limit shall be the sum A stated in the Contract Data;

(ii) damage to the Works caused by the Contractor, the limit shall be the sum B stated in the Contract Data;

(iii) damage caused by the Contractor to the Employer's property other than the Works, the limit shall be fifty percent (50%) of the sum B stated in the Contract Data; and

(iv) any other matter attributable to the Contractor, the limit shall be fifty percent (50%) of the sum A stated in the Contract Data;

(c) for damage caused by the Contractor to the Works, the limit shall be the required value of cover of the insurance under Sub-Clause 19.2.1 [*The Works*];

(d) for damage caused by the Contractor to the Employer's property other than the Works, the limit shall be the required value of cover of the insurance under Sub-Clause 19.2.4 [*Injury to persons and damage to property*];

(e) for death or injury to the Employer's personnel by a cause attributable to the Contractor, the limit shall be the required value of cover of the insurance under Sub-Clause 19.2.5 [*Injury to employees*];

(f) for the Contractor's indemnity to the Employer for third party claims under the first paragraph of Sub-Clause 17.4 [*Indemnities by Contractor*], there shall be no limit; and

(g) for the Contractor's indemnity to the Employer under the second paragraph of Sub-Clause 17.4 [*Indemnities by Contractor*], the limit shall be the required value of cover of the insurance under Sub-Clause 19.2.3 [*Liability for breach of professional duty*];

(h) for all matters other than those described in sub-paragraphs (b) to (g) above and other than those under Sub-Clause 17.3 [*Intellectual and Industrial Property Rights*], the limit shall be the sum C stated in the Contract Data.

The Employer's liability to the Contractor under or in connection with the Contract shall be limited as follows:

(i) for loss of profit, loss of any contract or any other direct loss caused by termination of the contract under Sub-Clause 15.5 [*Termination for Employer's Convenience*] and Sub-Clause 16.2 [*Termination by Contractor*], the limit shall be twenty percent (20%) of the Contract Price stated in the Contract Agreement;

(ii) for damage caused by the Employer or Employer's Personnel to the Temporary Works or Plant and Materials not included in the Permanent Works, the limit shall be thirty percent (30%) of the required value of cover of the insurance under Sub-Clause 19.2.1 [*The Works*];

(iii) for damage caused by the Employer or Employer's Personnel to the Contractor's Equipment, Materials, Plant and/or Temporary Works, the limit shall be

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the required value of cover of the insurance under Sub-Clause 19.2.2 [*Goods*];

(iv) for death or injury to the Contractor's Personnel by a cause attributable to the Employer the limit shall be the required value of cover of the insurance under Sub-Clause 19.2.5 [*Injury to employees*];

(v) for the Employer's indemnity to the Contractor for third party claims under Sub-Clause 17.5 [*Indemnities by Employer*], there shall be no limit; and

(vi) for all matters other than those described in sub-paragraph (i) to (v) above and other than under Sub-Clause 17.3 [*Intellectual and Industrial Property Rights*], the limit shall be in accordance with Sub-Clause 14.14 [*Cessation of Employer's Liability*] as may be amended under Sub-Clause 21.4 [*Obtaining DAAB's Decision*], Sub-Clause 21.5 [*Amicable Settlement*] or Sub-Clause 21.6 [*Arbitration*].

This Sub-Clause shall not limit liability in any case of fraud, gross negligence, deliberate default or reckless misconduct by the defaulting Party."

Clause 2 The Employer

Sub-Clause 2.1 Right of Access to the Site

It may be necessary for the Contractor to have early access to the Site for the purposes of survey and sub-surface investigations. If so, the details of such early right of access should be given in the Employer's Requirements, including any restrictions on such access and whether or not it shall be exclusive to the Contractor.

If right of access to, and possession of, the Site cannot be granted by the Employer in the normal way, details should be given in the Employer's Requirements and appropriate amendments made to the first paragraph of this Sub-Clause and, if necessary, to the second paragraph.

Sub-Clause 2.3 Employer's Personnel and Other Contractors

The provisions concerning co-operation between contractors should be reflected in the Employer's contracts with any other contractors working on or near the Site.

Sub-Clause 2.6 Employer-Supplied Materials and Employer's Equipment

If Employer-Supplied Materials are listed in the Employer's Requirements for the Contractor's use in the execution of the Works, the following provisions may be added:

EXAMPLE After the last paragraph of Sub-Clause 2.6, add:

"The Employer shall supply to the Contractor the Employer-Supplied Materials listed in the Employer's Requirements, at the time(s) stated in the Employer's Requirements (if not stated, within the times that shall be required to enable the Contractor to proceed with execution of the Works in accordance with the Programme).

When made available by the Employer, the Contractor shall visually inspect the Employer-Supplied Materials and shall promptly

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give a Notice to the Employer's Representative of any shortage, defect or default in them. Thereafter, the Contractor shall rectify such shortage, defect or default to the extent instructed by the Employer's Representative. Such instruction shall be deemed to have been given under Sub-Clause 13.3.1 [*Variation by Instruction*]. After this visual inspection, the 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."

In the last paragraph of Sub-Clause 17.1 [*Responsibility for Care of the Works*] after the two instances of "Goods" add

", Employer-Supplied Materials,".

If Employer's Equipment is listed in the Employer's Requirements for the Contractor's use in the execution of the Works, the following provisions may be added:

EXAMPLE

After the last paragraph of Sub-Clause 2.6, add:

"The Employer shall make the Employer's Equipment listed in the Employer's Requirements available to the Contractor at the time(s) stated in the Employer's Requirements (if not stated, within the times that shall be required to enable the Contractor to proceed with execution of the Works in accordance with the Programme).

Unless expressly stated otherwise in the Employer's Requirements, the Employer's Equipment shall be provided for the exclusive use of the Contractor.

When made available by the Employer, the Contractor shall visually inspect the Employer's Equipment and shall promptly give a Notice to the Employer's Representative of any shortage, defect or default in them. Thereafter, the Contractor shall rectify such shortage, defect or default to the extent instructed by the Employer's Representative. Such instruction shall be deemed to have been given under Sub-Clause 13.3.1 [*Variation by Instruction*].

The Contractor shall be responsible for the Employer's Equipment while it is under the Contractor's control and/or any of the Contractor's Personnel is operating it, driving it, directing it, using it, or in control of it.

The Contractor shall not remove from the Site any items of the Employer's Equipment without the consent of the Employer. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel to or from the Site."

In the last paragraph of Sub-Clause 17.1 [*Responsibility for Care of the Works and Indemnities*] after the two instances of "Goods" add:

", Employer's Equipment",

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Clause 3 The Employer's Administration

Sub-Clause 3.1 The Employer's Representative

In the appointment of the Employer's Representative, the Employer may consider using the form of agreement FIDIC Clients/Consultants Model Services Agreement fifth Edition, 2017 (**http://fidic.org/books/clientconsultant-model-services-agreement-5th-ed-2017-white-book**).
In performing the Employer's Representative's duties and in exercising his/her authority under the Contract, it is recommended that the Employer's Representative takes due regard of:

a) FIDIC's Code of Ethics for consulting engineers: http://fidic.org/about-fidic/fidic-policies/fidic-code-ethics†;

and

b) the duty to prevent corruption and bribery as described in the publications:
- FIDIC Guidelines for Integrity Management (FIM) in the consulting industry, Part 1- Policies and principles first edition, 2011 (http://fidic.org/books/integrity-management-system-fims-guidelines-1st-ed-2011-part1†) and
- FIDIC Guidelines for Integrity Management System in the Consulting Industry 1st Ed (2015) Part 2, FIMS Procedures (http://fidic.org/books/guidelines-integrity-management-system-consulting-industry-1st-ed-2015-part-2†).

Sub-Clause 3.2 Other Employer's Personnel

If it is anticipated that the Employer's Representative's assistants may not all be fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*], consideration should be given to amending this Sub-Clause:

EXAMPLE

In the last paragraph of Sub-Clause 3.2, after "Sub-Clause 1.4 [*Law and Language*]" add the following:

"If any assistants are not fluent in this language the Employer's Representative shall make competent interpreters available during all working hours, in a number sufficient for those assistants to properly perform their assigned duties and/or exercise their delegated authority."

Sub-Clause 3.4 Instructions

If the applicable law prevents the Contractor from complying with any instruction that may have an adverse effect on the health and safety of the Contractor's Personnel, sub-paragraph (b) of this Sub-Clause may be amended:

EXAMPLE

At the end of sub-paragraph (b) of Sub-Clause 3.4, add the following:

"or will adversely affect the health and safety of the Contractor's Personnel".

If the Conditions of Contract are to allow for the giving of oral instructions by the Employer's Representative, this Sub-Clause may be amended:

EXAMPLE

At the end of Sub-Clause 3.5, add the following:

"If the Employer's Representative or a delegated assistant:
(a) gives an oral instruction;

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(b) receives a written confirmation of the instruction, from the Contractor, within two working days after giving the oral instruction; and

(c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation

then the Contractor's confirmation shall constitute the written instruction of the Employer's Representative or delegated assistant (as the case may be)."

Sub-Clause 3.5 Agreement or Determination

The Employer's Representative shall not delegate any of his/her duties under this Sub-Clause to any assistant, as stated under Sub-Clause 3.2 [*Other Employer's Personnel*].

As an alternative to determination of a matter or Claim by the Employer's Representative envisaged under this Sub-Clause, the Parties may prefer that, where agreement cannot be reached in respect of any Claim or matter, it is referred to the DAAB for a decision in which case the following amendments will be needed:

EXAMPLE

Delete the last paragraph of Sub-Clause 3.5.1 [*Consultation to reach agreement*], and replace with:

"If:

(a) no agreement is achieved within the time limit for agreement under Sub-Clause 3.5.3 [*Time limits*]; or

(b) both Parties advise the Employer's Representative that no agreement can be achieved within this time limit

whichever is the earlier, the matter or Claim shall be deemed to be a Dispute which may be referred by either Party to the DAAB for its decision under 21.4 [*Obtaining DAAB's Decision*] and sub-paragraph (a) of 21.4.1 [*Reference of a Dispute to the DAAB*] shall not apply.";

delete Sub-Clause 3.5.2 [*Employer's Representative's determination*];

delete the second and last paragraphs of Sub-Clause 3.5.3 [*Time Limits*] and replace with:
"If the Employer's Representative does not give the Notice of agreement within this time limit, the matter or Claim shall be deemed to be a Dispute which may be referred by either Party to the DAAB for its decision under 21.4 [*Obtaining DAAB's Decision*] and sub-paragraph (a) of 21.4.1 [*Reference of a Dispute to the DAAB*] shall not apply.";

in Sub-Clause 3.5.4 [*Effect of the agreement or determination*]:

- in the first paragraph, delete the words "or, in the case of a determination, it is revised under Clause 21 [*Disputes and Arbitration*]"; and
- replace all instances of "agreement or determination" with "agreement"; and

delete Sub-Clause 3.5.5 [*Dissatisfaction with Employer's Representative's determination*].

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Sub-Clause 3.6 Meetings

It may be useful to give information in the Employer's Requirements of a planned timetable of meetings such as management meetings, site meetings, technical meetings, and progress meetings.

Clause 4 The Contractor

Sub-Clause 4.1 Contractor's General Obligations

FIDIC strongly recommends that the Employer ensures that the Employer's Requirements contain a clearly identified, defined and described specific purpose or purposes for which the facility will be used when complete, in order that the Contractor can comply with the obligation to provide Works which are "fit for the purpose(s) for which they are intended" as stated in this Sub-Clause.

Sub-Clause 4.2 Performance Security

The acceptable form(s) of Performance Security should be included in the tender documents. Example forms are included at the end of this publication (in the section "Sample Forms"). They incorporate two sets of Uniform Rules published by the International Chamber of Commerce (the "ICC", which is based at 33-43 Avenue du Président Wilson, 75116 Paris, France), which also publishes guides to these Uniform Rules.

These example forms and the wording of the Sub-Clause may have to be amended to comply with applicable law.

EXAMPLE	At the end of the first paragraph of Sub-Clause 4.2.1 [*Contractor's Obligations*], insert: "If the Performance Security is in the form of a bank guarantee, it shall be issued either (i) by a bank located in the Country, or (ii) directly by a foreign bank to which the Employer gives consent. If the Performance Security is not in the form of a bank guarantee, it shall be issued by a financial entity registered, or licensed to do business, in the Country."

The example forms of Performance Security that are included at the end of this publication (in the section "Sample Forms") provide for the option to reduce the amount of the Performance Security following issue of the Taking-Over Certificate for the whole of the Works under Clause 10. If neither of the example forms is to be used, consideration should be given to adding provisions for this option to Sub-Clause 4.2.1.

Sub-clause 4.3 Contractor's Representative

If the Contractor's Representative is known at the time of submission of the tender, the tenderer may propose that person in his/her tender. The tenderer may wish to propose alternatives, especially if the contract award seems likely to be delayed.

The "main engineering discipline applicable to the Works" in which the Contractor's Representative is required to be qualified, experienced and competent should be the engineering discipline of the Works which is of highest value proportionate to the value of the Works. If it is necessary to stipulate that the Contractor's Representative shall be qualified, experienced and competent in a particular engineering discipline in relation to the Works, the following amendment will need to be made to this Sub-Clause:

EXAMPLE	In the second paragraph of Sub-Clause 4.3 delete "the main engineering discipline applicable to the Works" and replace with: [*Insert description of engineering discipline*],

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If it is necessary that the Contractor's Representative shall also be fluent in a particular language other than the language for communications defined in Sub-Clause 1.4 [*Law and Language*], the following amendment may be made:

EXAMPLE	At the end of the second paragraph of Sub-Clause 4.3, add: "The Contractor's Representative shall also be fluent in _____(*insert name of language*)."

If it is permissible that the Contractor's Representative is not fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*], consideration should be given to amending this Sub-Clause:

EXAMPLE	Insert at the end of the second paragraph of Sub-Clause 4.3: "If the Contractor's Representative is not fluent in this language the Contractor shall make competent interpreter(s) available during all working hours, sufficient for the Contractor's Representative to properly perform his/her duties and exercise his/her authority under the Contract."

If it is permissible that the Contractor's Representative's delegates are not all fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*], consideration should be given to amending this Sub-Clause:

EXAMPLE	Insert at the end of the last paragraph of Sub-Clause 4.3: "If any of these persons is not fluent in this language the Contractor shall make competent interpreters available during all working hours, in a number sufficient for those persons to properly perform their delegated powers, functions and/or authority."

Sub-clause 4.4 Subcontractors

It may be appropriate and/or desirable, taking account of the circumstances and locality of the project, to encourage the Contractor to employ local contractors in the execution of the Works:

EXAMPLE	At the end of the second paragraph of Sub-Clause 4.4, add: "The Contractor shall give reasonable opportunity to contractors from the Country to tender for subcontracts for the Works, and shall use reasonable endeavours to employ such contractors as Subcontractors."

If the Employer requires that all the Contractor's subcontracts should provide for assignment of the subcontract to the Employer in the event that Sub-Clause 15.2 [*Termination for Contractor's Default*] applies, the following amendment will need to be made to this Sub-Clause:

EXAMPLE	Insert at the end of the last paragraph of Sub-Clause 4.4: "All subcontracts relating to the Works shall include provisions which entitle the Employer to require the subcontract to be assigned to the Employer under sub-paragraph (a) of Sub-Clause 15.2.3 [*After Termination*]."

If the Employer requires that the Contractor assigns the benefit of the relevant subcontract in the event that a Subcontractor's obligations continue after expiry of the DNP relating to that Subcontractor's work, the following amendment will need to be made to this Sub-Clause:

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EXAMPLE	Insert at the end of the last paragraph of Sub-Clause 4.4: "If a Subcontractor's obligations to the Contractor extend beyond the expiry date of the DNP which is applicable to the Subcontractor's work and if the Contractor receives an instruction from the Employer's Representative to do so not less than 7 days before this expiry date, the Contractor shall assign the benefit of such obligations to the Employer. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for work carried out by the Subcontractor after the assignment takes effect."

Sub-Clause 4.5 Nominated Subcontractors

Normally the Contractor will select and employ subcontractor(s), (subject to any constraints stated in the Contract), but this Sub-Clause provides for the situation where the Employer may wish to select a particular subcontractor or subcontractors to be employed by the Contractor in the execution of the Works.

If this is the case, it is recommended that the Employer names the particular subcontractor(s) in the Employer's Requirements so that tenderers are aware of this requirement before submitting their tenders - although this Sub-Clause also makes provision for the Employer to instruct the Contractor to employ a subcontractor or subcontractors after contract award. It should be noted that:

a) once the Contractor has employed a subcontractor who has been nominated by the Employer, the second paragraph of Sub-Clause 4.4 [*Subcontractors*] applies; and

b) sub-paragraph (b) of Sub-Clause 13.4 [*Provisional Sums*] should provide for payment to the Contractor for works or services to be purchased by the Contractor from a nominated Subcontractor.

If the Employer anticipates that a Subcontractor is to be instructed under Sub-Clause 13.3 [*Variation Procedure*] but is not to be a nominated Subcontractor this Sub-Clause should be amended, describing the particular circumstances.

Sub-Clause 4.8 Health and Safety Obligations

If the Contractor is sharing occupation of the Site with others, it may not be appropriate for him/her to provide some of the listed items. In these circumstances:

- this Sub-Clause should be amended to specify exactly what health and safety obligations are the Contractor's under the Contract, and
- the health and safety obligations which are to be fulfilled by the Employer and/or others should be specified in the Employer's Requirements

so that it is clear which Party is responsible for what in respect of the health and safety obligations for the Site and for the Works.

Sub-Clause 4.9.1 Quality Management System

In the performance of the Contractor's obligations under this Sub-Clause, it is recommended that the Contractor and the Employer take due regard of the FIDIC publication Improving the Quality of Construction - a guide for actions, 2004 (http://fidic.org/books/improving-quality-construction-2004†).

If the Employer requires the Contractor to have a Quality Manager employed on the Site, such position should be specified in the Employer's Requirements as one of the positions of Key Personnel.

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If the Employer requires the Contractor to interface with others and/or with the Employer, the Employer's Requirements should clearly describe all such interfaces and should specify the extent in which the Contractor shall allow for such interfaces in the QM System.

Sub-Clause 4.12 Unforeseeable Difficulties

If the Works include tunnelling or other substantial sub-surface construction, it is usually preferable for the risk of unforeseen ground conditions to be allocated to the Employer.

Responsible contractors will be reluctant to take the risks of unknown ground conditions which are difficult or impossible to estimate in advance. FIDIC's Conditions of Contract for Plant and Design-Build, Second Edition 2017 should be used in these circumstances for works designed by (or on behalf of) the Contractor.

Sub-Clause 4.16 Transport of Goods

In some cases, the Contractor may be required to get permission prior to delivery of Goods to the Site. In such cases those Goods for which permission is required should be stated in the Employer's Requirements, and the following wording may be added to this Sub-Clause:

EXAMPLE

Insert at the end of Sub-Clause 4.16:

"The Contractor shall obtain the Employer's Representative's permission prior to delivering to the Site any item of Goods which is identified in the Employer's Requirements as requiring such permission. No such Goods shall be delivered without this permission, which shall not relieve the Contractor from any duty, obligation or responsibility under or in connection with the Contract."

Sub-Clause 4.17 Contractor's Equipment

If the Contractor is not to provide all the Contractor's Equipment necessary to execute the Works, the Employer's obligations should be specified: please see Sub-Clause 2.6 [*Employer-Supplied Materials and Employer's Equipment*] and the guidance notes for Sub-Clause 2.6 above.

If vesting of Contractor's Equipment to the Employer is required, and such vesting is consistent with the Laws of the Country, further paragraphs may be added to this Sub-Clause:

EXAMPLE

At the end of Sub-Clause 4.17, add the following paragraphs:

"Each item of Contractor's Equipment shall become the property of the Employer (free from liens and other encumbrances) when it arrives on the Site.

This vesting of property from the Contractor to the Employer shall not:

(a) affect the responsibility or liability of the Employer under the Contract;

(b) prejudice the Contractor's right to exclusive use of all items of Contractor's Equipment for the purpose of the Works; and/or

(c) relieve the Contractor from any duty, obligation or responsibility to operate and maintain all items of Contractor's Equipment.

The property in each item of Contractor's Equipment shall be deemed to re-vest in the Contractor (free from liens and other encumbrances) when he/she is entitled to remove it from the Site

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or to receive the Taking-Over Certificate for the Works, whichever is the earlier."

Sub-Clause 4.18 Protection of the Environment

If the applicable environmental law requires the Contractor to prepare project-specific environmental management plans, for review by the Employer's Representative and/or the Employer and approval by regulatory authorities, these plans should be clearly described in detail in the Employer's Requirements together with the review/approval process associated with each plan.

Sub-Clause 4.19 Temporary Utilities

If services are to be available on the Site for the Contractor to use, details of such services should be set out in the Employer's Requirements, including a description of each utility, the capacity of each utility that is available for the Contractor's use, its location and the price per unit of consumption.

Sub-Clause 4.21 Security of the Site

If the Contractor is sharing occupation of the Site with others, it may not be appropriate for the Contractor to be responsible for its security. In these circumstances, it is recommended that:

a) this Sub-Clause should be amended to specify exactly what security obligations are the Contractor's under the Contract,

and

b) the security obligations which are to be fulfilled by the Employer and/or others should be specified in the Employer's Requirements

so that it is clear which Party is responsible for what in respect of the security of the Site.

Sub-Clause 4.22 Contractor's Operations on Site

If the Contractor is sharing occupation of the Site with others, it is recommended that this Sub-Clause is amended by identifying and allocating responsibility for clearance and removal from the Site of any wreckage, rubbish, hazardous waste, temporary works and surplus material.

Additional Sub-Clause Milestones

If the Employer wishes to have certain parts of the Works completed within certain times but does not wish to take over such parts when completed (as distinct from the parts of the Works which the Employer wishes to take over after completion, which should be defined as Sections in the Contract Data), such parts of the Works should be clearly described in the Employer's Requirements as 'Milestones' and it is recommended that the following provisions are added to the Contract Data and to the Conditions of Contract:

EXAMPLE PROVISIONS FOR MILESTONES

In the Contract Data, add the following:
"4.24..... Definition of Milestones:

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Description of a part of the Plant or of the Works that shall be designated a Milestone for the purposes of the Contract	Time for Completion	Delay Damages (as a percentage of final Contract Price per day of delay)
	_____ days	__ %
	_____ days	__ %
	_____ days	__ %
	_____ days	__ %

Maximum amount of Delay Damages for Milestones (percent of final Contract Price) ….. ____ %."

Insert two new definitions under Sub-Clause 1.1:

" "**Milestone**" means a part of the Plant and/or a part of the Works stated in the Contract Data (if any), and described in detail in the Employer's Requirements as a Milestone, which is to be completed by the time for completion stated in Sub-Clause 4.24 [*Milestone Works*] but is not to be taken over by the Employer after completion.
"**Milestone Certificate**" means the certificate issued by the Employer's Representative under Sub-Clause 4.24 [*Milestones*]."
Add new Sub-Clause 4.24...Milestones

"If no Milestones are specified in the Contract Data, this Sub-Clause shall not apply.

The Contractor shall complete the works of each Milestone (including all work which is stated in the Employer's Requirements as being required for the Milestone to be considered complete) within the time for completion of the Milestone, as stated in the Contract Data, calculated from the Commencement Date.

The Contractor shall include, in the initial programme and each revised programme, under sub-paragraph (a) of Sub-Clause 8.3 [*Programme*], the time for completion for each Milestone.

Sub-paragraph (d) of Sub-Clause 8.4 [*Advance Warning*] and Sub-Clause 8.5 [*Extension of the Time for Completion*] shall apply to each Milestone, such that "Time for Completion" under Sub-Clause 8.5 shall be read as the time for completion of a Milestone under this Sub-Clause.

The Contractor may apply, by Notice to the Employer's Representative, for a Milestone Certificate not earlier than 14 days before the works of a Milestone will, in the Contractor's opinion, be complete. The Employer's Representative shall, within 28 days after receiving the Contractor's Notice:

(a) issue the Milestone Certificate to the Contractor, stating the date on which the works of the Milestone were completed in accordance with the Contract, except for any minor outstanding work and defects (as shall be listed in the Milestone Certificate); or

(b) reject the application, giving reasons and specifying the work required to be done and defects required to be remedied by the Contractor to enable the Milestone Certificate to be issued.

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The Contractor shall then complete the work referred to in sub-paragraph (b) of this Sub-Clause before issuing a further Notice of application under this Sub-Clause.

If the Employer's Representative fails either to issue the Milestone Certificate or to reject the Contractor's application within the above period of 28 days, and if the works of a Milestone are complete in accordance with the Contract, the Milestone Certificate shall be deemed to have been issued on the date which is 14 days after the date stated in the Contractor's Notice of application.

If Delay Damages for a Milestone are stated in the Contract Data, and if the Contractor fails to complete the works of the Milestone within the time for completion of the Milestone (with any extension under this Sub-Clause):

(i) the Contractor shall, subject to Sub-Clause 20.1 [*Claims*], pay Delay Damages to the Employer for this default;

(ii) such Delay Damages shall be the amount stated in the Contract Data, for every day which shall elapse between the time for completion for the Milestone (with any extension under this Sub-Clause) and the date stated in the Milestone Certificate;

(iii) these Delay Damages shall be the only damages due from the Contractor for such default; and

(iii) the total amount of Delay Damages for all Milestones shall not exceed the maximum amount stated in the Contract Data (this 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)."

If certain payment(s) to the Contractor is/are to be made on completion of each Milestone, such payment(s) should be specified in a Schedule of Payments in the Contract and consideration should be given to amending Sub-Clause 14.4 [*Schedule of Payments*] to make express reference to the Milestone payments.

Clause 5 Design

Sub-Clause 5.1 General Design Obligations

It is recommended that the Instructions to Tenderers require tenderers to include the name, address, detailed particulars and relevant experience of each proposed designer/design Subcontractor so that the Employer can assess whether and to what extent each tenderer's proposed designers/design Subcontractors comply with the three conditions set out in sub-paragraphs (a) to (c) of this Sub-Clause.

If the Employer's Requirements include an outline design, tenderers should be advised of the extent to which the Employer's outline design is a suggestion or a requirement.

If there are to be portions of the Employer's Requirements, and/or data and information provided by (or on behalf of) the Employer, which are to be immutable or are to be the responsibility of the Employer, then these should be stated in the Contract (by the Employer in the Employer's Requirements or by the Contractor in the documents to be submitted with the Tender),

Sub-Clause 5.2 Contractor's Documents

It is important that the Employer's Requirements should clearly specify which Contractor's Documents the Employer requires the Contractor to prepare, which may not necessarily

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include (for example) all the technical documents which the Contractor's Personnel will need in order to execute the Works.

For example, it may be appropriate for the Employer's Requirements for a plant contract to specify that the Contractor's Documents shall include drawings showing how the Plant is to be installed and any other information required for:

- preparing suitable foundations or other means of support,
- providing suitable access on the Site, for the Plant and any necessary equipment, to the place where the Plant is to be erected, and/or
- making necessary connections to the Plant.

Sub-Clause 5.2.2 Review by Employer

The "Contractor's Documents" under this Sub-Clause 5.2.2 are the documents that the Contractor must submit to the Employer for review, as specified in the Employer's Requirements or as stated in the Conditions of Contract (namely, as-built records under Sub-Clause 5.6 [*As-Built Records*] and O&M Manuals under Sub-Clause 5.7 [*Operation and Maintenance Manuals*]). It is important, therefore, that the Employer's Requirements clearly identify which of the Contractor's Documents the Employer requires the Contractor to submit to the Employer for review.

If a different Review Period than that stated under this Sub-Clause 5.2.2 is considered necessary, or different Review Periods are considered necessary for different (types of) Contractor's Documents, taking account of the time required to review the different types of Contractor's Documents and/or of the possibility of substantial submissions at particular stages of the design-build process, such different Review Period(s) should be clearly stated in the Employer's Requirements.

In some jurisdictions there may be a requirement under the applicable law for the mandatory review/checking of certain elements of design (by an authorised professional or other legally recognised individual) and/or verification that such design is in accordance with the applicable law, before such design can be implemented in the Works. If this is the case, it is essential that it is drawn to tenderers' attention in the Instruction to Tenderers and necessary amendments will need to be made to this Sub-Clause – taking due care and attention that the following is clear and unambiguous:

a) the mandatory review/checking and/or verification process(es) required by the applicable law, and details of the submission procedure(s) associated with such process(es);

b) which element(s) of design, and which type(s) of Contractor's Documents associated with such element(s), shall be subject to the mandatory review/checking and/or verification process(es);

c) whether, and to what extent, the mandatory review/checking and/or verification process(es) of an element of design (and the Contractor's Documents associated with such element) shall replace the Employer's review under this Sub-Clause;

d) a statement that any Notice of No-objection (or deemed Notice of No-objection) from the Employer with respect to any Contractor's Document shall not replace the mandatory review/checking and/or verification of the design (or a revised design).

It is strongly recommended that the Employer is advised by legal and engineering professionals with extensive experience in the mandatory review/checking and/or verification process(es) required by the applicable law when preparing the revised wording of this Sub-Clause.

Sub-Clause 5.5 Training

If the Works include Plant that comprises (in whole or in part) new or innovative technology in the Country or at the Employer's location, it is recommended that the Parties consider including

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in the Contract provision for training (by the Employer in the Employer's Requirements and/or by the Contractor in the documents to be submitted with the Tender) of the Employer's Personnel at the location of another plant facility, or at a number of other plant facilities, that are similar in nature to the Works.

Sub-Clause 5.7 Operation and Maintenance Manuals

If the Contractor is required to supply spare parts under the Contract, these should be detailed in the Employer's Requirements, which should also specify the required guarantee period for these spare parts.

Clause 6 Staff and Labour

Sub-Clause 6.3 Recruitment of Persons

It may be necessary to review and revise this Sub-Clause (or delete it in its entirety) if the relevant labour Laws applicable to the Contractor's Personnel and/or the Employer's Personnel do not permit any restriction on the right of any worker to seek other positions.

Sub-Clause 6.6 Facilities for Staff and Labour

If the Employer plans to make any facilities and/or accommodation (for example, office accommodation) available for the Contractor's occupation and/or use, the Employer's obligations to do so and details of such facilities and/or accommodation should be specified in the Employer's Requirements. See also the guidance under Clause 17 [*Care of the Works and Indemnities*] below for the suggested additional sub-clause in respect of responsibility for care of such facilities and/or accommodation.

Sub-Clause 6.8 Contractor's Superintendence

If it is permissible that the Contractor's superintending staff are not all fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*], then consideration should be given to amending this Sub-Clause:

EXAMPLE	Insert at the end of sub-paragraph (a) of Sub-Clause 6.8: "or, if not, the Contractor shall make competent interpreters available during all working hours, in a number sufficient for those persons to properly perform their superintendence duties."

If it is necessary to stipulate that the Contractor's superintending staff shall be fluent in a particular language, the following sentence should be added.

EXAMPLE	Insert at the end of Sub-Clause 6.8: "A reasonable proportion of the Contractor's superintending staff shall have a working knowledge of [*Insert name of language*], or the Contractor shall make interpreters available on Site during all working hours in a number deemed sufficient by the Employer's Representative."

Sub-Clause 6.12 Key Personnel

If it is permissible that all Key Personnel are not fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*], then consideration should be given to amending this Sub-Clause:

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EXAMPLE

Insert at the end of the last paragraph of Sub-Clause 6.12:

"If any of the Key Personnel are not fluent in this language the Contractor shall make competent interpreter(s) available during all working hours, sufficient for that person to properly perform his/her duties under the Contract."

Additional Sub-Clauses

It may be necessary, appropriate and/or desirable to include additional sub-clauses to take account of the circumstances and locality of the Site:

EXAMPLE SUB-CLAUSE FOR FOREIGN PERSONNEL

"The Contractor may bring into the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer shall, if requested by the Contractor, use all reasonable endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel.

The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial."

EXAMPLE SUB-CLAUSE FOR SUPPLY OF FOODSTUFFS

"The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Employer's Requirements at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract."

EXAMPLE SUB-CLAUSE FOR SUPPLY OF WATER

"The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel."

EXAMPLE SUB-CLAUSE FOR MEASURES AGAINST INSECT AND PEST NUISANCE

"The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide."

EXAMPLE SUB-CLAUSE FOR ALCOHOLIC LIQUOR OR DRUGS

"The Contractor shall not, other than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereto by the Contractor's Personnel."

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EXAMPLE SUB-CLAUSE FOR ARMS AND AMMUNITION

"The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow the Contractor's Personnel to do so."

EXAMPLE SUB-CLAUSE FOR FESTIVALS AND RELIGIOUS CUSTOMS

"The Contractor shall respect the Country's recognised festivals, days of rest and religious or other customs."

EXAMPLE SUB-CLAUSE FOR FUNERAL ARRANGEMENTS

"The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of the Contractor's local employees who may die while engaged upon the Works."

EXAMPLE SUB-CLAUSE FOR FORCED LABOUR

"The Contractor shall not employ forced labour, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements."

EXAMPLE SUB-CLAUSE FOR CHILD LABOUR

"The Contractor shall not employ children (any natural persons under the age of eighteen years) in a manner that is economically exploitative, or 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. Where the relevant labour Laws of the Country have provisions for employment of minors, the Contractor shall follow those Laws applicable to the Contractor."

EXAMPLE SUB-CLAUSE FOR EMPLOYMENT RECORDS OF WORKERS

"The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarised on a monthly basis and submitted to the Employer's Representative. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [*Contractor's Records*]."

EXAMPLE SUB-CLAUSE FOR WORKERS' ORGANISATIONS

"In countries where the relevant labour Laws recognise workers' rights to form and to join workers' organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such Laws. Where the relevant labour Laws substantially restrict workers' organisations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour Laws are silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organisations of their choosing or from bargaining collectively, and shall not discriminate or

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retaliate against the Contractor's Personnel who participate, or seek to participate, in such organisations and bargain collectively. The Contractor shall engage with such workers' representatives. Workers' organisations are expected to fairly represent the workers in the workforce."

EXAMPLE SUB-CLAUSE FOR NON-DISCRIMINATION AND EQUAL OPPORTUNITY

"The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labour Laws provide for non-discrimination in employment, the Contractor shall comply with such Laws. When the relevant labour Laws are silent on non-discrimination in employment, the Contractor shall meet the requirements under this Sub-Clause. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination."

Clause 7 Plant, Materials and Workmanship

Sub-Clause 7.7 Ownership of Plant and Materials

If the Contractor is to provide high-value items of Plant and/or Materials under the Contract, consideration may be given to amending this Sub-Clause:

EXAMPLE

Insert at the end of Sub-Clause 7.7:

"No Plant and/or Materials that is the property of the Employer shall be removed from the Site. If it becomes necessary to:

(i) remove any item of such Plant from the Site for the purposes of repair, the Contractor shall give a Notice, with reasons, to the Employer's Representative requesting consent to remove the defective or damaged item off the Site. This Notice shall clearly identify the item of defective or damaged Plant, and shall give details of: the defect or damage to be repaired; the place to which defective or damaged item of Plant is to be taken for repair; the transportation to be used (and insurance cover for such transportation); the proposed inspections and testing off the Site; and the planned duration required before the repaired item of Plant shall be returned to the Site. The Contractor shall also provide any further details that the Employer may reasonably require; or

(ii). replace any item(s) of such Plant and/or Materials, the Contractor shall give a Notice, with reasons, to the Employer's Representative clearly identifying the item(s) of Plant and/or Materials to be replaced, and giving details of the due date of delivery to the Site of the replacement item(s).

Where any item of Plant and/or Materials has become the property of the Employer under this Sub-Clause before it has been delivered

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to the Site, the Contractor shall ensure that such an item is not moved except for its delivery to the Site.

The Contractor shall indemnify and hold the Employer harmless against and from the consequences of any defect in title or encumbrance or charge (except any reasonable restriction arising from the intellectual property rights of the manufacturer or producer) on any item of Plant and/or Materials that has become the property of the Employer under this Sub-Clause."

Additional Sub-Clause

If the Contract is being financed by an institution whose rules or policies require a restriction on the use of its funds, a further sub-clause may be added:

EXAMPLE SUB-CLAUSE FOR GOODS FROM ELIGIBLE SOURCE COUNTRIES

"All Goods shall have their origin in eligible source countries as defined in
[*Insert name of published guidelines for procurement*].

Goods shall be transported by carriers from these eligible source countries, unless exempted by the Employer in writing on the basis of potential excessive costs or delays. Surety, insurance and banking services shall be provided by insurers and bankers from the eligible source countries".

Clause 8 Commencement, Delays and Suspension

Sub-Clause 8.2 Time for Completion

If the Works are to be completed and taken over in stages it is important that each stage is defined as a Section, and the Time for Completion of each Section is stated, in the Contract Data (please also see the guidance below under Sub-Clause 10.1 [*Taking Over the Works and Sections*].

Sub-Clause 8.3 Programme

It is strongly recommended that the programming software that is preferable to the Employer be clearly identified in the Employer's Requirements, and that such software is drawn to the attention of tenderers in the Instructions to Tender.

For less complex projects, the Employer may consider simplifying the requirements for the Contractor's programme as listed in sub-paragraphs (a) to (k) in this Sub-Clause (for example, by replacing sub-paragraphs (a) to (k) in this Sub-Clause with sub-paragraphs (a) to (d) as they appear under Sub-Clause 8.3 [*Programme*] of FIDIC's Conditions of Contract for EPC/ Turnkey Projects, First Edition 1999).

Sub-Clause 8.5 Extension of Time for Completion

It should be noted that this Sub-Clause does not entitle the Contractor to any extension of the Time for Completion for adverse climatic conditions. If it is preferable that the Contractor is to be entitled to EOT for "exceptionally adverse climatic conditions", consideration may be given to:

- adding the provisions of sub-paragraph (c) of Sub-Clause 8.5 [*Extension of Time for Completion*] of FIDIC's Conditions of Contract for Plant and Design-Build, Second Edition 2017 to this Sub-Clause; and

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- setting out in the Employer's Requirements what constitutes an "exceptionally adverse" event - for example, by reference to available weather statistics and return periods. It may also be appropriate to compare the adverse climatic conditions that have been encountered with the frequency with which events of similar adversity have previously occurred at or near the Site. For example, an exceptional degree of adversity might be regarded as one which has a probability of occurrence of once every four or five times the Time for Completion of the Works (for example, once every eight to ten years for a two-year contract).

The final paragraph of this Sub-Clause provides that the rules and procedures for assessing the Contractor's entitlement to an EOT where there is concurrency between delays attributable to both Parties shall be stated in the Special Provisions. This provision has been drafted by FIDIC in this manner because there is no one standard set of rules/procedures in use internationally (though, for example the approach given in the Delay and Disruption Protocol published by the Society of Construction Law (UK): https://www.scl.org.uk/sites/default/files/SCL_Delay_Protocol_2nd_Edition_Final.pdf† is increasingly being adopted internationally) and different rules/procedures may apply in different legal jurisdictions.)

In preparing the Special Provisions, therefore, it is strongly recommended that the Employer be advised by a professional with extensive experience in construction programming, analysis of delays and assessment of extension of time in the context of the governing law of the Contract.

Sub-Clause 8.8 Delay Damages

Under the laws of many countries or other jurisdictions, the amount of these pre-defined damages must be a reasonable estimate of the anticipated or actual loss caused to the Employer by the delay. Therefore if the Delay Damages are fixed at an unreasonably large amount, they may be unenforceable in common law jurisdictions or subject to downward adjustment in civil law jurisdictions.

If the Contract Price stated in the Contract Agreement is to be quoted as the sum of figures in more than one currency, it may be preferable to define these damages (per day) as a percentage to be applied to each of these figures. If the Contract Price stated in the Contract Agreement is expressed in the Local Currency, the damages per day may either be defined as a percentage or be defined as a figure in Local Currency: see Sub-Clause 14.15(c).

Additional Sub-Clause

Incentives for early completion may be included (in addition to sub-paragraph (a) of Sub-Clause 13.2 [*Value Engineering*] which refers to accelerated completion):

EXAMPLE SUB-CLAUSE FOR INCENTIVES FOR EARLY COMPLETION

"The Contractor shall be entitled to a bonus payment if the Works and/or each Section is completed earlier than the Time for Completion for the Works or Section (as the case may be). The amount of bonus for early completion of the Works and/or each Section is stated in the Employer's Requirements.

For the purposes of calculating any bonus payment, the applicable Time for Completion stated in the Contract Data is fixed and no adjustments of this time by reason of granting an EOT will be allowed."

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Clause 9 Tests on Completion

Sub-Clause 9.1 Contractor's Obligations

The Employer's Requirements should describe the tests which the Contractor is to carry out before being entitled to a Taking Over Certificate. It may also be appropriate for the Contractor to include, in documents submitted with the Tender, detailed arrangements, instrumentation, etc.

If the Works are to be tested and taken over in Sections, it is strongly recommended that consideration be given to testing requirements in the Employer's Requirements that take due account of the effect of other parts of the Works being incomplete.

The Employer may wish the Employer's permanent operating and maintenance personnel to witness the operational tests and/or trial operation (including during the training of the Employer's Personnel under Sub-Clause 5.5 [*Training*]), in which case, this should be clearly stated in the Employer's Requirements.

The wording in sub-paragraphs (a) to (c) of this Sub-Clause includes the conditions which are typically applicable for a plant contract, but otherwise may require amendment. In particular, sub-paragraph (c) refers to trial operation, during which any product produced by the Works becomes the property of the Employer. As such, the Employer becomes responsible for disposing of such product, and entitled to retain the proceeds if the product is sold. If the product is to be retained by the Contractor, this Sub-Clause should be amended accordingly.

For less complex projects, the Employer may consider simplifying the testing requirements under this Sub-Clause.

Clause 10 Employer's Taking Over

Sub-Clause 10.1 Taking Over the Works and Sections

If the Works are to be completed and taken over in stages it is important that each stage is defined as a Section in the Contract Data. Precise geographical definitions are advisable, and the Contract Data should include a table to also define for each Section:

- the relevant percentage for release of Retention Money,
- the Time for Completion, and
- the applicable Delay Damages.

An example form of such a table is shown in the example form of Contract Data included in this publication.

Clause 11 Defects after Taking Over

Sub-Clause 11.3 Extension of Defects Notification Period

Depending on the complexity of the project and the nature of the Works, the Employer may consider amending the period of "two years" stated at the end of the first paragraph of this Sub-Clause to be a longer or a shorter period.

Sub-Clause 11.10 Unfulfilled Obligations

It may be necessary to review the effect of this Sub-Clause in relation to the period of liability imposed by the applicable law.
In particular, the second paragraph of this Sub-Clause may require amending to take account of the applicable law.

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Additional Sub-Clause

If the Works include the Plant that comprises (in whole or in part) new or innovative technology in the Country or at the Employer's location, consideration may be given to including in the Employer's Requirements a requirement for the Contractor to provide supervisory assistance to the Employer's permanent operating personnel in the operation and maintenance of the Plant during the DNP of the Works.

EXAMPLE SUB-CLAUSE FOR SUPERVISORY ASSISTANCE DURING DNP

> "The Contractor shall provide supervisory assistance to the Employer during the DNP for the Works. Such supervisory assistance shall be as described in the Employer's Requirements for the purpose of supporting the Employer's operation and maintenance of the Plant for the period of [*insert number of months*] after the Date of Completion."

Clause 12 Tests after Completion

Sub-Clause 12.1 Procedure for Tests after Completion

In an EPC turnkey project, the Contractor is typically required to prove the reliability and performance of the Plant during the Tests on Completion, and the Works are only taken over after successful completion of these tests. Exceptionally, it may be considered necessary for Tests after Completion to be carried out after the Employer has taken over and operated the Works, so that the guaranteed performance can be demonstrated under normal operating conditions: for example, after operational fouling of the plant.

The Employer's Requirements should describe the tests the Employer requires the Contractor to carry out after taking-over to verify that the Works fulfil the Employer's performance requirements. For some types of Works, these Tests may be the most difficult to specify well, although they are critical to a successful outcome. It may be appropriate for the Instructions to Tenderers to require tenderers to include, in the documents to be submitted with the Tender, detailed arrangements, and/or to define and allow for the provision of any instrumentation or other items required in addition to that included in the Plant, to demonstrate compliance with the Employer's performance requirements.

With many types of Works, it is essential to specify, in the Schedule of Performance Guarantees, the performance criteria which the Plant will be required to achieve. In such cases, the Instructions to Tenderers should include information on the base physical input conditions (such as raw water quality for a water treatment Plant) the Contractor can rely on to design and construct the facility to achieve such performance criteria.

The provisions in the General Conditions are based upon the Tests after Completion being carried out by the Contractor, with the assistance of the Employer as regards personnel, consumables, etc. These details may need to be specified in the Employer's Requirements. If other arrangements are envisaged, they should be specified in the Employer's Requirements, and this Sub-Clause should be amended accordingly. For example, the provisions of Sub-Clause 12.1 in FIDIC's Conditions of Contract for Plant and Design-Build, Second Edition 2017 are based upon these Tests being carried out by the Employer and his operating personnel, with guidance from the Contractor's staff.

If the works of a Section are to be tested under this Sub-Clause, it is strongly recommended that consideration be given to testing requirements in the Employer's Requirements that take due account of the effect of other parts of the Works being incomplete.

The Tests after Completion may comprise:

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(a) performance tests – to be carried out shortly after taking-over (the exact timing of such tests should be specified in the Employer's Requirements or as otherwise stated in the O&M Manuals referred to under sub-paragraph (f)(iii) of this Sub-Clause), to measure the performance of the Works or Section against the performance criteria specified under the Contract; and

(b) availability tests – to be carried out during an initial period of the DNP (which period should be specified in the Employer's Requirements), to measure the availability of the Works or Section during that period.

In some jurisdictions there may be a requirement under the applicable law for mandatory testing of the Works after taking-over and before operation. If this is the case, it is essential that it is drawn to tenderers' attention in the Instruction to Tenderers, giving details of such mandatory testing.

Sub-Clause 12.4 Failure to Pass Tests after Completion

If the first paragraph of this Sub-Clause is to apply, the method of calculating the Performance Damages (based on the extent of the failure) should be defined in the Schedule of Performance Guarantees, which should also clearly specify the minimum acceptable performance criteria.

Clause 13 Variations and Adjustments

Variations can be initiated by any of three ways:

a) the Contractor may initiate his own proposals under Sub-Clause 13.2 [*Value Engineering*], which are intended to benefit both Parties;

b) the Employer may instruct Variations under Sub-Clause 13.3.1 [*Variation by Instruction*]; or

c) the Employer may request a proposal from the Contractor under Sub-Clause 13.3.2 [*Variation by Request for Proposal*].

Sub-Clause 13.4 Provisional Sums

Provisional Sums may be required for parts of the Works which are not required to be priced at the risk of the Contractor. For example, a Provisional Sum may be necessary to cover goods or services which the Employer wishes to select after award of the Contract, or to deal with a major uncertainty regarding sub-surface conditions. It is essential to define the scope of each Provisional Sum (it is recommended that this be included in a Schedule prepared by the Employer), since the amount of each Provisional Sum corresponding to the defined scope will then be excluded from the other elements of the Contract Price stated in the Contract Agreement.

Sub-Clause 13.7 Adjustments for Changes in Cost

The provision for adjustments under this Sub-Clause may be required if it would be unreasonable for the Contractor to bear the risk of escalating costs due to inflation.

If the amounts payable to the Contractor are to be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, for this Sub-Clause to apply it is important that a Schedule (or Schedules) of cost indexation is (are) included in the Contract and that such Schedule(s) include a formula or formulae for calculation of the applicable adjustment under this Sub-Clause.

For a plant contract, it may be preferable to adopt a formula or formulae which is/are more directly related to the timing of the costs incurred by manufacturers.

It is recommended that the Employer be advised by a professional with experience in construction costs and the inflationary effect on construction costs when preparing the contents of the Schedule(s) of cost indexation.

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SCHEDULE OF COST INDEXATION: EXAMPLE FORMULA FOR ADJUSTMENT FOR CHANGE IN COST

$$Pn = a + b\frac{Ln}{Lo} + c\frac{En}{Eo} + d\frac{Mn}{Mo} + \ldots\ldots$$

where:
"Pn" is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period "n", this period being a month;

"a" is a fixed coefficient, representing the non-adjustable portion in contractual payments;

"b", "c", "d", … are coefficients representing the estimated proportion of each cost element related to the execution of the Works, such tabulated cost elements may be indicative of resources such as labour, equipment and materials;
(particular care should be taken in the calculation of the weightings/ coefficients ("a", "b", "c",...,) the total of which must not exceed unity)

"Ln", "En", "Mn", … are the current cost indices or reference prices (stated in the Schedule of cost indexation) for period "n", expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular payment relates); and

"Lo", "Eo", "Mo", … are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

The weightings (coefficients) for each of the factors of cost stated in the following table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

Table(s) of adjustment data for payments each month/[*YEAR*] (delete as appropriate) in …… (currency)

Coefficient; scope of index	Country of origin; currency of index	Source of index; Title/definition	Value on stated date(s)* Value ..... Date
a= 0.10 Fixed			
b= ____Labour			
c=			
d=			
e=			

* These values and dates confirm the definition of each index, but do not define Base Date indices

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Clause 14 Contract Price and Payment

The procedures and timing for making payments under this Clause 14 should be checked to ensure that they are acceptable to both the Employer and any financing institution the Employer may be using to fund the project.

Sub-Clause 14.1 The Contract Price

When writing the Special Provisions, consideration should be given to the amount and timing of payment(s) to the Contractor. A positive cash-flow is clearly of benefit to the Contractor, and tenderers will take account of the interim payment procedures when preparing their tenders.

Normally, an EPC/turnkey contract is based on a lump sum price, with little or no measurement. The Contractor thus takes the risk of changes in cost arising from the Contractor's design. The lump sum price may consist of two or more amounts, quoted in the currencies of payment (which may, but need not, include the Local Currency).

In order to value Variations, tenderers may be required to include in their Tenders detailed price break-downs, including quantities, unit rates and other pricing information. This information can also be useful for the assessment of interim payments but may not have been priced competitively. When the tender documents are being prepared, the Employer must therefore decide whether he/she will accept being bound by the tenderer's price break-downs. If not, the Employer should ensure that the Employer's Representative has the necessary expertise to value any Variations which may be required.

Additional Sub-Clauses may be required to cover any exceptions to the provisions set out in Sub-Clause 14.1, and any other matters relating to payment.

If the Contractor is not required to pay import duties on Goods imported by the Contractor into the Country, an additional Sub-Clause should be added and sub-paragraph (b) of Sub-Clause 14.1 [*The Contract Price*] of the General Conditions should be amended accordingly:

EXAMPLE SUB-CLAUSE FOR EXEMPTION FROM DUTIES

"All Goods imported by the Contractor into the Country shall be exempt from customs and other import duties, if the Employer's prior written approval is obtained for import. The Employer shall endorse the necessary exemption documents prepared by the Contractor for presentation in order to clear the Goods through Customs, and shall also provide the following exemption documents:

(*describe the necessary documents, which the Contractor will be unable to prepare*)

If exemption is not then granted, the customs duties payable and paid shall be reimbursed by the Employer.

All imported Goods, which are not incorporated in or expended in connection with the Works, shall be exported on completion of the Contract.

If not exported, the Goods will be assessed for duties as applicable to the Goods involved in accordance with the Laws of the Country.

However, exemption may not be available for:

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(a) Goods which are similar to those locally produced, unless they are not available in sufficient quantities or are of a different standard to that which is necessary for the Works; and

(b) any element of duty or tax inherent in the price of goods or services procured in the Country, which shall be deemed to be included in the Contract Price stated in the Contract Agreement.

Port dues, quay dues and, except as set out above, any element of tax or duty inherent in the price of goods or services shall be deemed to be included in the Contract Price stated in the Contract Agreement."

If expatriate staff are exempted from paying local income tax, a suitable Sub-Clause should be added and sub-paragraph (b) of Sub-Clause 14.1 [*The Contract Price*] of the General Conditions should be amended accordingly. However, advice should be sought from a qualified tax expert before drafting any such additional Sub-Clause.

EXAMPLE SUB-CLAUSE FOR EXEMPTION FROM TAXES

"Expatriate (foreign) personnel shall not be liable for income tax levied in the Country on earnings paid in any foreign currency, or for income tax levied on subsistence, rentals and similar services directly furnished by the Contractor to Contractor's Personnel, or for allowances in lieu. If any Contractor's Personnel have part of their earnings paid in the Country in a foreign currency, they may export (after the conclusion of their term of service on the Works) any balance remaining of their earnings paid in foreign currencies.

The Employer shall seek exemption for the purposes of this Sub-Clause. If it is not granted, the relevant taxes paid shall be reimbursed by the Employer."

Sub-Clause 14.2 Advance Payment

When writing the Particular Conditions, consideration should be given to the benefits of the Employer making an advance payment to the Contractor. Unless this Sub-Clause is not to apply, the advance payment and the currencies in which it is to be paid must be specified in the Contract Data. The rate of deduction for the repayments should be checked to ensure that repayment is achieved before the Contractor's completion of the Works. The typical figures in sub-paragraphs (a) and (b) of Sub-Clause 14.2.3 [*Repayment of Advance Payment*] of the General Conditions are based on the assumption that the advance payment is less than 22% of the Contract Price stated in the Contract Agreement.

The acceptable form of Advance Payment Guarantee should be included in the tender documents, annexed to the Particular Conditions: an example form is included at the end of this publication (in the section "Sample Forms").

If the Employer wishes to provide the advance payment in instalments, the Contract Data and this Sub-Clause will need to be amended.

EXAMPLE The Contract Data:

- delete the words "14.2 ……. Amount of Advance Payment. (percent of Contract Price stated in the Contract Agreement): ……." and replace with:
"14.2 ……Total Advance Payment ___% of the Contract Price stated in the Contract Agreement

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14.2 ……Number and timing of instalments: _____".

- delete the words "14.2 ……. Currencies of payment if different to the currencies quoted in the Contract ……" and replace with:

  "14.2 ……Currencies and proportions ….. ___% in _____ ___% in _____".

Delete the second sentence of the second paragraph of Sub-Clause 14.2 and replace with:

> "The total amount of the advance payment, the number and timing of instalments, and the applicable currencies and proportions shall be as stated in the Contract Data.".

Sub-Clause 14.2.1 [*Advance Payment Guarantee*]:

- delete the words "equal to the advance payment" from the first sentence and replace with: "equal to the total amount of the advance payment".

- in the second paragraph before "the advance payment has been repaid" add the words: "the total amount of".

- in the third paragraph before "the advance payment has not been repaid" add the words: "the total amount of".

- in sub-paragraph (a) before "the advance payment has been repaid" add the words: "the total amount of".

- in the last sentence, before "the advance payment" add the words: "the first instalment of"

Sub-Clause 14.2.2 [*Advance Payment*]:

- in the first sentence before "the advance payment" add the words: "the first instalment of".

- delete sub-paragraph (b) replace with: "(b) the Employer has received a copy of the Contractor's application for the first instalment of the advance payment."

- at the end of this Sub-Clause add the following wording: "Thereafter, the Employer shall pay each subsequent instalment of the advance payment, which the Contractor is entitled to under the Contract, within 14 days after the Employer has received the Contractor's application (in the form of a Statement) for that instalment of advance payment."

Sub-Clause 14.2.3 [*Repayment of Advance Payment*]:

- in the last sentence before "the advance payment has not been repaid" add the words: "the total amount of".

Sub-Clause 14.4 Schedule of Payments

The General Conditions contains provisions for interim payments to the Contractor, which may be based on a Schedule of Payments. If another basis is to be used for determining interim valuations, details should be added in the Special Provisions.

If payments are to be specified in a Schedule of Payments, consideration may be given to the Schedule of Payments being in one of the following forms:

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a) an amount, or percentage of the estimated final Contract Price, for each month (or other period) during the Time for Completion (but this can prove unreasonable if the Contractor's progress differs significantly from the expectation on which the Schedule was based); or

b) amounts based on the actual progress achieved by the Contractor in executing the Works, which necessitates careful definition of the payment milestones (but disagreements may arise when the work required for a payment milestone is nearly achieved but the balance of the work, albeit minor, cannot be completed until some months later).

The figures inserted by a tenderer in the Schedule of Payments may be compared with his/her tender programme (if any), in order to assess whether they are reasonably consistent with each other.

Alternatively, if the Works consist of only a few different types of operations, a simple measurement approach for interim valuations may be appropriate.

EXAMPLE SUB-CLAUSE FOR INTERIM VALUATION PROCEDURE

Prior to commencing construction of the Permanent Works, the Contractor shall submit a bill of principal quantities of the Permanent Works (the "BPQPW"), together with any supporting information and calculations reasonably required by the Employer. The BPQPW shall include the anticipated final quantities of the principal items of Permanent Works, which shall have been priced using all-in rates such that the total amount equals the estimated final Contract Price. The BPQPW shall not contain priced items for design or for Temporary Works. The value of each element of this work, and of any other work elements not described in the BPQPW, shall each be included in the rates for Permanent Works which are to be constructed after the element is carried out.

The BPQPW shall be subject to review and a Notice of No-objection by the Employer, and shall be without prejudice to the final amount due under the Contract. The BPQPW shall be revised and reissued by the Contractor if it appears at any time before Taking-Over that it will not fully represent the Permanent Works when complete.

During the Time for Completion, the contract value for the purposes of sub-paragraph (i) of Sub-Clause 14.3 [*Application for Interim Payment*] shall not exceed the amount calculated from the current BPQPW, based on the quantities of Permanent Works which have been constructed in accordance with the Contract. Each Statement shall:

(a) be in the same form as that of the current BPQPW,

(b) include statement signed by the Contractor's Representative that the current BPQPW (including anticipated final quantities) and the as-constructed quantities are all correct, and

(c) be accompanied by a certificate signed by the Contractor's Representative, certifying that the part of the Permanent Works constructed to date complies with the Contract.

Sub-Clause 14.7 Payment

Periods for payment should be long enough for the Employer to meet, but not so long as to prejudice the Contractor's positive cash-flow.

If the country or countries of payment need to be specified, details may be included in a Schedule.

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Sub-Clause 14.8 Delayed Payment

As an alternative to the second paragraph of this Sub-Clause, consideration may be given to the payment of the Contractor's actual financing Costs, taking account of local financing arrangements.

Sub-Clause 14.9 Release of Retention Money

If part of the Retention Money is to be released and substituted by an appropriate guarantee, an additional Sub-Clause may be added. The acceptable form(s) of guarantee should be included in the tender documents, annexed to the Particular Conditions: an example form is included at the end of this publication (in the section "Sample Forms"). Also, a limit of Retention Money should be stated in the Contract Data.

EXAMPLE SUB-CLAUSE FOR RELEASE OF RETENTION

When the Retention Money has reached three-fifths (60%) of the limit of Retention Money stated in the Contract Data, after the Employer has received the guarantee referred to below the Employer shall make payment of half (50%) of the limit of Retention Money to the Contractor.
The Contractor shall obtain (at the Contractor's cost) a guarantee in amounts and currencies equal to half (50%) of the limit of Retention Money stated in the Contract Data, and shall submit it to the Employer. This guarantee shall be issued by an entity and from within a country (or other jurisdiction) to which the Employer gives consent, and shall be based on the sample form included in the tender documents or on another form agreed by the Employer (but such consent and/or agreement shall not relieve the Contractor from any obligation under this Sub-Clause).

The Contractor shall ensure that the guarantee is valid and enforceable until the Contractor has executed the Works, as specified for the Performance Security in Sub-Clause 4.2.1. If the terms of the guarantee specify an expiry date, and the Contractor has not so executed the Works by the date 28 days before the expiry date, the Contractor shall extend the validity of the guarantee.

The release of Retention Money under this Sub-Clause shall be in lieu of the release of the second half of the Retention Money under the second paragraph of Sub-Clause 14.9 [*Release of Retention Money*].

Sub-Clause 14.15 Currencies of Payment

If all payments are to be made in Local Currency, this currency must be named in the Contract Agreement, and this Sub-Clause may be replaced:

EXAMPLE SUB-CLAUSE FOR A SINGLE CURRENCY CONTRACT

All payments made in accordance with the Contract shall be in Local Currency. The Local Currency payments shall be fully convertible, except those for local costs. The percentage attributed to local costs shall be as stated in the Contract Data.

Financing Arrangements

For major contracts in some markets, there may be a need to secure finance from entities such as aid agencies, development banks, export credit agencies, or other international

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financing institutions. If financing is to be procured from any of these sources, the Special Provisions may need to incorporate the financing institution's special requirements. The exact wording will depend on the relevant institution, so reference will need to be made to the institution to ascertain its requirements, and to seek approval of the draft tender documents.

These requirements may include tendering procedures which need to be adopted in order to render the eventual contract eligible for financing, and/or additional Sub-Clauses which may need to be incorporated into the Special Provisions. The following examples indicate some of the topics which the institution's requirements may cover:

- prohibition from discrimination against the shipping companies of any one country;
- ensuring that the Contract is subject to a widely-accepted neutral law;
- provision for arbitration under recognised international rules and at a neutral location;
- giving the Contractor the right to suspend/terminate in the event of default under the financing arrangements;
- restricting the right to reject Plant;
- specifying the payments due in the event of termination;
- specifying that the Contract does not become effective until certain conditions precedent have been satisfied, including pre-disbursement conditions for the financing arrangements; and
- obliging the Employer to make payments from his own resources if, for any reason, the funds under the financing arrangements are insufficient to meet the payments due to the Contractor, whether due to a default under the financing arrangements or otherwise.

The financing institution may wish the Contract to include references to the financing arrangements, especially if funding from more than one source is to be arranged to finance different elements of supply. It is not unusual for the Special Provisions to include particular provisions identifying different categories of Works and specifying the documents to be presented to the relevant financing institution to obtain payment. If the financing institution's requirements are not met, it may be difficult (or even impossible) to secure suitable financing for the project, and/or the institution may decline to provide finance for part or all of the Contract.

Where the financing is not tied to the export of goods and services from any particular country but is simply provided by commercial banks lending to the Employer, those banks may need to ensure that the Contractor's rights are very restricted.

Alternatively, the Contractor may be prepared to initiate financing arrangements for the Contract and retain responsibility for them, although the Contractor would probably be unable or unwilling to provide finance from the Contractor's own resources. The Contractor's financing bank's requirements are then likely to affect the Contractor during contract negotiations. For example, the financing bank may require the Employer to make interim payments, although a large proportion of the Contract Price might be withheld until the Works are complete. Since the Contractor would then have to arrange financing to cover the shortfall between the payments and the Contractor's outgoings, the Contractor (and the financing bank) would probably require some form of security from the Employer, guaranteeing payment when due.

It may be appropriate for the Employer, when preparing the tender documents, to anticipate the latter requirement by undertaking to provide a guarantee for the element of payment which the Contractor is to receive when the Works are complete. The acceptable form(s) of guarantee should be included in the tender documents, annexed to the Particular Conditions: an example form is included at the end of this publication (in the section "Sample Forms"). The following Sub-Clause may be added.

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EXAMPLE SUB-CLAUSE FOR CONTRACTOR FINANCE

"The Employer shall obtain (at the Employer's cost) a payment guarantee in the amount and currencies, and provided by an entity, as stated in the Contract Data. The Employer shall deliver the guarantee to the Contractor within 28 days after both Parties have entered into the Contract Agreement. The guarantee shall be in the form annexed to these Special Provisions, or in another form acceptable to the Contractor. Unless and until the Contractor receives the guarantee, the Employer's Representative shall not give the notice under Sub-Clause 8.1 [*Commencement of Works*].

The guarantee shall be returned to the Employer at the earliest of the following dates:

(a) when the Contractor has been paid theContract Price;

(b) when obligations under the guarantee expire or have been discharged; or

(c) when the Employer has performed all obligations under the Contract."

Clause 15 Termination by Employer

Sub-Clause 15.2 Termination for Contractor's Default

Before inviting tenders, the Employer should verify that the wording of this Sub-Clause, and each anticipated ground for termination, is consistent with the law governing the Contract.

Sub-Clause 15.2.1 Notice

Sub-paragraph (h) in this Sub-Clause is intended to include situations where the Contractor or any of the Contractor's employees, agents, Subcontractors or Contractor's Personnel gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward for showing or forbearing to show favour or disfavour to any person in relation to the Contract. However, this is not intended to include lawful inducements and rewards by the Contractor to the Contractor's Personnel.

Sub-Clause 15.2.3 After termination

If the Employer has made available any Employer-Supplied Materials and/or Employer's Equipment in accordance with Sub-Clause 2.6, consideration should be given to an additional sub-paragraph under this Sub-Clause:

EXAMPLE Insert the following new sub-paragraph at the end of sub-paragraph (b) of Sub-Clause 15.2.3:

"(iv) all Employer-Supplied Materials and/or Employer's Equipment made available to the Contractor in accordance with Sub-Clause 2.6 [*Employer-Supplied Materials and Employer's Equipment*], and".

Sub-Clause 15.5 Termination for Employer's Convenience

In many jurisdictions under the applicable law it may not be permissible for the Employer to terminate the Contract for convenience (termination of the Contract only being permitted in the event of default on the part of the Contractor and, thereafter, arranging an equitable, non-discriminatory and transparent procurement process to select a replacement contractor). Therefore, before inviting tenders the Employer should verify that the wording of this Sub-Clause is consistent with the law governing the Contract.

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Clause 16 Suspension and Termination by Contractor

Sub-Clause 16.2 Termination by Contractor

Before inviting tenders, the Employer should verify that the wording of this Sub-Clause is consistent with the law governing the Contract.

Sub-Clause 16.2.1 Notice

Sub-paragraph (i) in this Sub-Clause is intended to include situations, where the Employer or any of the Employer's employees, agents or Employer's Personnel gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward for showing or forbearing to show favour or disfavour to any person in relation to the Contract. However, this is not intended to include lawful inducements and rewards by the Employer to the Employer's Personnel.

Sub-Clause 16.3 Contractor's Obligations After termination

If the Employer has made available any Employer-Supplied Materials and/or Employer's Equipment in accordance with Sub-Clause 2.6, consideration should be given to amending this Sub-Clause:

EXAMPLE Delete sub-paragraph (c) in Sub-Clause 16.3 and replace with:

"(c) deliver to the Employer's Representative all Employer-Supplied Materials and/or Employer's Equipment made available to the Contractor in accordance with Sub-Clause 2.6 [*Employer-Supplied Materials and Employer's Equipment*]; and

(d) remove all other Goods from the Site, except as necessary for safety, and leave the Site."

Clause 17 Care of the Works and Indemnities

Sub-Clause 17.4 Indemnities by Contractor

In respect of the Contractor's obligation to indemnify under the second paragraph of this Sub-Clause, it should be noted that:

a) as this liability is not excluded under the first paragraph of Sub-Clause 1.14 [*Limitation of Liability*], the Contractor has no liability for any indirect or consequential loss or damage suffered by the Employer as a result of any negligence by the Contractor in designing the Works to be fit for purpose;

b) as this liability is not excluded under the second paragraph of Sub-Clause 1.14 [*Limitation of Liability*], it falls within the Contractor's limitation of liability under Sub-Clause 1.14; and

c) this liability may be covered by the insurance to be taken out by the Contractor under Sub-Clause 19.2.3 [*Liability for breach of professional duty*], in which case a statement to this effect should be included in the Contract Data.

Additional Sub-Clause

If the Contractor is to be allowed to use and/or occupy any of the Employer's facilities and/or accommodation temporarily during the Contract, it is recommended that an additional sub-clause be added to Clause 17 to cover the responsibility for care of such facilities and/or accommodation:

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EXAMPLE SUB-CLAUSE FOR CONTRACTOR'S USE OF EMPLOYER'S FACILITIES/ ACCOMMODATION

"The Contractor shall take full responsibility for the care of the items of the Employer's facilities and/or accommodation listed below, from the date of use and/or occupation by the Contractor until the date on which such use and/or occupation is re-vested in the Employer.

[*List of items and details*]

If any loss or damage happens to any of the above items during a time when the Contractor is responsible for its care, arising from any cause other than a cause for which the Employer is responsible or liable, the Contractor shall promptly rectify the loss or damage at the Contractor's risk and cost."

Clause 19 Insurance

If the Employer wishes to change the insurance provisions of this Clause – for example by providing some of the insurance cover under the Employer's own policy(ies) – it will be necessary to review and revise the relevant Sub-Clause(s) under this Clause 19.

If this is the case, it is strongly recommended that:

a) the tender documents include details of such insurances as an annex to the Special Provisions so that tenderers can estimate what other insurances they may wish to have for their own protection. The details should include the conditions of insurance, limits, exceptions and deductibles; preferably in the form of a copy of each insurance policy; and

b) the Employer is advised by a professional with extensive experience in construction insurance and liability in the preparation of the wording of the revised sub-clauses. If the insurance provisions are changed without due care and attention, there is a risk that the Employer will inadvertently carry liabilities for which the Employer is neither prepared nor covered by insurance.

Clause 20 Employer's and Contractor's Claims

Sub-Clause 20.1 Claims

In respect of any Claim under sub-paragraph (c) of this Sub-Clause, it should be noted that "another entitlement or relief …or the execution of the Works" may include such matters as:

- interpretation of a provision of the Contract,
- rectification of an ambiguity or discrepancy found in the Contract documents,
- a declaration in favour of the claiming Party,
- access to the Site or to places where the Works are being (or to be) carried out, and/ or
- any other matter of entitlement under the Conditions of Contract or in connection with, or arising out of, the Contract that does not involve payment by one Party to the other Party and/or EOT and/or extension of the DNP.

Consideration may be given to replacing the words "within a reasonable time" in the last paragraph of this Sub-Clause by a specified time period.

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Clause 21 Disputes and Arbitration

Sub-Clause 21.1 Constitution of the DAAB

It is generally accepted that construction projects depend for their success on the avoidance of Disputes between the Employer and the Contractor and, if Disputes do arise, the timely resolution of such Disputes.

Therefore, the Contract should include the provisions under Clause 21 which, while not discouraging the Parties from reaching their own agreement on Disputes as the Works proceed, allow them to bring contentious matters to an independent and impartial dispute avoidance/adjudication board ("DAAB") for resolution.

The provisions of this Sub-Clause are intended to provide for the appointment of the DAAB, and FIDIC strongly recommends that the DAAB be appointed, as a 'standing DAAB' – that is, a DAAB that is appointed at the start of the Contract who visits the Site on a regular basis and remains in place for the duration of the Contract to assist the Parties:

a) in the avoidance of Disputes,

and

b) in the 'real-time' resolution of Disputes if and when they arise

to achieve a successful project.
It is for this reason that, under the first paragraph of this Sub-Clause, the Parties are under a joint obligation to appoint the member(s) of the DAAB within 28 days after the Parties signed the Contract Agreement if no other time is stated in the Contract Data. That said, it is preferable that the member(s) of the DAAB are appointed before signing the Contract Agreement.

At an early stage in the Employer's planning of the project, consideration should be given as to whether a sole-member DAAB or a three-member DAAB is preferable for a particular project, taking account of its size, duration and the fields of expertise which will be involved.

This Sub-Clause provides for two alternative arrangements for the DAAB:

- a sole-member DAAB of one natural person, who has entered into a tripartite agreement with both Parties;

or

- a three-member DAAB of three natural persons, each of whom has entered into a tripartite agreement with both Parties.

The tripartite agreement above is referred to as the *DAAB Agreement* under the Conditions of Contract. It is recommended that the form of this agreement be one of the two alternative example forms included at the end of this publication (in the section "Sample Forms"), as appropriate to the arrangement adopted.

It should be noted that both forms of the DAAB Agreement incorporate (by reference) the *General Conditions of Dispute Avoidance/Adjudication Agreement* with its Annex *DAAB Procedural Rules*, which are included as the Appendix to the General Conditions in this publication.

Under either of these alternative forms of DAAB Agreement, each natural person of the DAAB is referred to as a *DAAB Member*.

A very important factor in the success of the dispute avoidance/adjudication procedure is the Parties' confidence in the agreed individual(s) who will serve on the DAAB. Therefore, it is essential that candidates for this position are not imposed by either Party on the other Party. The appointment of the DAAB is facilitated by the provision in the Contract Data for each Party to name potential DAAB Members. It is important that the Employer and the Contractor each

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avail himself/herself of the opportunity at the tender stage of the Contract to name potential DAAB members in the Contract Data.

The Contract Data includes two lists for potential DAAB Members to be named: one for the Employer to list three names, the other for the Contractor to list three names. This ensures that both Parties have equal opportunity to put forward (the same number of) names for potential DAAB Members, and so avoid any question that DAAB Member(s) may be imposed on one Party by the other Party.

This provides a total of six potential DAAB Members from which the sole member or three members (as the case may be) can be selected by the Parties. If it is considered necessary to have a wider selection of DAAB Member(s) to choose from, then provision may be made for longer lists in the Contract Data for both the Contractor and the Employer to name (the same number of) additional DAAB Members.

If the Parties cannot agree on any DAAB member, Sub-Clause 21.2 [*Failure to Appoint DAAB Member(s)*] applies and the selection and appointment of the DAAB member(s) should be made by a wholly impartial entity with an understanding of the nature and purpose of a DAAB. The President of FIDIC is prepared to perform this role if this authority has been delegated in accordance with the example wording in the Contract Data. FIDIC maintains a list of approved and experienced adjudicators for this specific purpose: *The FIDIC President's List of Approved Dispute Adjudicators* (http://fidic.org/president-list†).

If no potential DAAB members' names are given in the Contract Data, consideration should be given to stating a time period in the Contract Data that is greater than the default period of 28 days stated in the first paragraph of this Sub-Clause.

The period of 224 days stated in sub-paragraph (i) of this Sub-Clause has been arrived at by taking account of certain time allowances, as follows:

date of termination + 28 days to give a Notice of Claim under Sub-Clause 20.2.1 [*Notice of Claim*]

+ 84 days to submit detailed particulars for the Claim under Sub-Clause 20.2.4 [*Fully detailed Claim*]

+ 84 days for the Employer's Representative's agreement/determination of the Claim under Sub-Clause 3.5 [*Agreement or Determination*]

+ 28 days for a NOD under Sub-Clause 3.5 [*Agreement or Determination*]

= 224 days after the date of termination.

As noted above, FIDIC strongly recommends that the DAAB be appointed at the start of the Contract and remain in place for the duration of the Contract. However, as an alternative to the 'standing DAAB' envisaged under this Sub-Clause, the Parties may prefer the dispute board to be appointed on an 'ad-hoc' basis. In such case, the dispute board would be appointed when a Dispute arises, its appointment would be limited to resolution of the Dispute, it would have no role to play in the avoidance of Disputes between the Parties, and its appointment would cease when it had given its decision on that Dispute. Should a new Dispute arise, a new ad-hoc DAAB would be appointed. Given that such a dispute board would have no role in dispute avoidance, it is more correctly referred to as a "Dispute Adjudication Board" or "DAB". If the Parties wish to provide for an 'ad-hoc DAB', rather than the recommended 'standing DAAB', then the following amendments will be needed:

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EXAMPLE	Delete the definitions under Sub-Clause 1.1.22 and 1.1.23 and replace with: " "Dispute Adjudication Board" or "DAB" means the person or three persons (as the case may be) so named in the Contract, or appointed under Clause 21." and replace all references in the Conditions of Contract to "DAAB" with "DAB". Sub-Clause 21.1, plus the Appendix *General Conditions of Dispute Avoidance/Adjudication Agreement* with its Annex DAAB Procedural Rules, should be amended to comply with the wording contained in the corresponding provisions of FIDIC's Conditions of Contract for EPC/Turnkey Projects, First Edition 1999. Delete Sub-Clause 21.3 [*Avoidance of Disputes*]; in the first paragraph of Sub-Clause 21.4 [*Obtaining DAAB's Decision*]: • after the words "If a Dispute arises between the Parties then, " add: "after a DAB has been appointed"; • delete the words "(whether or not any informal discussions have been held under Sub-Clause 21.3 [*Avoidance of Disputes*])"; and delete sub-paragraph (a) of Sub-Clause 21.4.1 [*Reference of a Dispute to the DAAB*].

To facilitate the appointment of the member(s) of an 'ad-hoc DAB', it is important that the Employer and the Contractor each avail themselves of the opportunity at the tender stage of the Contract to name three potential members in the Contract Data.

Sub-Clause 21.5 Amicable Settlement

In circumstances where the DAAB has given its decision but one or both Parties is/are dissatisfied with the decision, the provisions of this Sub-Clause are intended to encourage the Parties to settle a Dispute amicably, without the need for arbitration.

Rather than considering the 28 day period stated in this Sub-Clause as a 'cooling-off period', FIDIC recommends that the Parties avail themselves of this opportunity to actively engage with each other with a view to settling their Dispute.

Such active engagement may be by, for example:

- direct negotiation by senior executives from each of the Parties;
- mediation (please see below);
- expert determination (using, for example, the Expert Rules published by the International Chamber of Commerce (the "ICC", which is based at 33-43 Avenue du Président Wilson, 75116 Paris, France) https://iccwbo.org/publication/icc-expert-rules-english-version/ †);
- or other form of alternative dispute resolution that is not as formal, time-consuming and costly as arbitration.

In this regard, it is recommended that consideration be given by the Parties to agree to a longer time period than the period of 28 days stated in this Sub-Clause in an effort to arrive at an amicable settlement procedure chosen by the Parties.

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Amicable settlement procedures typically depend for their success on the consensual involvement of both Parties, on confidentiality and on both Parties' acceptance of the particular procedure. Therefore, while it is recommended that both Parties engage actively to settle the Dispute amicably, neither Party should seek to impose the procedure on the other Party.

If the Parties wish to adopt a mediation procedure in their attempt to settle the Dispute amicably, then consideration may be given to the Mediation Rules, 2017 published by the International Chamber of Commerce (the "ICC", which is based at 33-43 Avenue du Président Wilson, 75116 Paris, France) https://iccwbo.org/dispute-resolution-services/mediation/mediation-rules/ †

or, alternatively, to the following mediation rules:

EXAMPLE

MEDIATION RULES

Appointment of Mediator

If the Parties are unable to agree on the choice of an independent and impartial mediator, or if the chosen mediator is unable or unwilling to act, then either Party may immediately apply to the appointing entity or official named in the Contract Data to appoint a mediator.

Once the mediator has been appointed, the Dispute shall immediately be referred to the mediator by the Parties or by either Party.

Obligations of the Parties

In addition to the Parties' obligations as set out in the provisions that follow below, during the mediation process the Parties shall engage with the mediator and with each other in co-operation, in a timely manner and in good faith.

Agreement of the Mediation Timetable

The mediator shall, within 7 days of his/her appointment, or other period as may be proposed by the mediator and agreed by both Parties, consult with the Parties to agree a timetable for the exchange of any relevant information, the date/time/venue of the mediation meeting, and the procedure to be adopted for the negotiations. The agreement of the timetable shall have regard to the period stated under Sub-Clause 21.5 [*Amicable Settlement*] of the Conditions of Contract or as may be amended by the agreement of the Parties.

Confidentiality

The Parties' negotiations facilitated by the mediator shall be conducted on a strictly private and confidential basis. Neither Party shall disclose to any third party any detail of the mediation process, including but not limited to: the fact of the mediation, the identity of the mediator, any matter discussed during the mediation process, any information or document exchanged with the mediator, any negotiations during the mediation meeting and/or the outcome of the mediation.

The mediation, and/or any negotiations taking place during the mediation meeting, shall not be referred to by either Party in any concurrent or subsequent proceedings, unless such negotiations conclude with a written legally binding agreement.

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Written Agreement to be Binding

If the Parties accept the mediator's recommendations, or otherwise reach agreement on the settlement of the Dispute, such agreement shall be recorded in writing and, once signed by the designated representative(s) of both Parties, shall be binding on the Parties.

Mediator's Opinion

If no agreement is reached by the Parties after negotiations have been facilitated by the mediator, either Party may invite the mediator to provide to both Parties a non-binding opinion in writing. Such opinion shall not be used in evidence in any concurrent or subsequent proceedings.

Costs of Mediation

The Parties will bear their own costs of participating in the mediation, including but not limited to the costs of preparing and submitting evidence to the mediator and attending the mediation meeting.

Each Party shall be responsible for paying one-half of the remuneration of the mediator (and, if the mediator has been appointed by the appointing entity or official named in the Contract Data, the remuneration of such appointing entity or official). However, if the mediator finds that a Party has initiated the mediation, or has engaged in the mediation, in a frivolous or vexatious manner, then the mediator shall have the power to order that Party to pay the reasonable costs of the other Party for preparing for and attending the mediation meeting. If these costs cannot be agreed, they will be assessed by the mediator, whose assessment shall be binding on the Parties.

Sub-Clause 21.6 Arbitration

The Contract should include provisions for the resolution by international arbitration of any Dispute which is not settled amicably by the Parties. In international contracts, international commercial arbitration has numerous advantages over litigation in national courts and is likely to be more acceptable to the Parties.

Careful consideration should be given to ensuring that the international arbitration rules that are chosen are compatible with the provisions of Clause 21 and with the other elements to be set out in the Contract Data. The Arbitration Rules published by the International Chamber of Commerce (the "ICC", which is based at 33-43 Avenue du Président Wilson, 75116 Paris, France) https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/† are frequently incorporated by reference in international contracts.

It is important that the Parties agree on the number of arbitrators and the language of arbitration. In the absence of specific stipulations as to the number of arbitrators and the place of arbitration in the Contract, the International Court of Arbitration of the ICC will decide these matters.

If the arbitration rules published by the United Nations Commission on International Trade Law ("UNCITRAL" which is based at the Vienna International Centre, A-1400 Vienna, Austria) http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-revised/arb-rules-revised-2010-e.pdf† or other non-ICC arbitration rules are preferred, it may be necessary to designate, in the Contract Data, an institution to appoint the arbitrators or to administer the arbitration, unless the institution is named (and their role specified) in the arbitration rules. It may also be necessary to ensure, before so designating an institution in the Contract Data, that the institution is prepared to appoint or administer.

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For major projects tendered internationally, it is desirable that the place of arbitration be situated in a country other than that of the Employer or Contractor. This country should have a modern and liberal arbitration law and should have ratified a bilateral or multilateral convention (such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards), or both, that would facilitate the enforcement of an arbitral award in the states of the Parties.

It may be considered desirable in some cases for other Parties to be joined into any arbitration between the Parties or for two or more pending arbitrations to be consolidated, thereby creating a multi-party arbitration. While the ICC Arbitration Rules address multi-party arbitration, such arbitration may in some cases be feasible only if the parties have included multi-party arbitration clauses in their contracts. Such clauses require skilful drafting, and usually need to be prepared on a case-by-case basis.

It is not unusual that the arbitration of a complex dispute is concluded sometime after performance of the Contractor's obligations under the Contract have been completed, in which case it may not be fair and reasonable in the circumstances for any arbitral award which requires the payment of an amount by one Party to the other Party to be in the currencies of payment and in the proportions provided for under Sub-Clause 14.15 [*Currencies of Payment*]. For example, the Contractor may no longer have any need for local currency after completion of the Works; or the local currency may have declined in value in the interim or be a 'blocked currency' that, consequently, cannot be removed from the country concerned.

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Advisory Notes to Users of FIDIC Contracts Where the Project Uses Building Information Modelling Systems

Building Information Modelling (BIM), is a process which is changing many elements of the design profession, the construction industry and, possibly, even the operation and maintenance of a facility.

BIM is one of the digital data technologies used in all aspects of project planning, investigation, design, construction and operation. Digital data technologies include systems for: data acquisition; document management; design and process management; estimating, planning, and scheduling; contract management; performance management; and building information modelling.

BIM has varying degrees of complexity ranging from rather isolated use of computer aided design tools to full sharing of models and information by the entire project team. Currently, BIM is more often used and better understood in developed countries, many of which are encouraging or even mandating its use to improve quality, accuracy and delivery times for projects as well as to provide cost savings. BIM has the potential to dramatically improve productivity in the construction industry and reduce operational costs of facilities as well.

BIM is not a set of contract conditions; it is a mechanism to provide an environment where all parties have access to information relevant to their role in the design and construction of a project. Wherever possible, a combined (sometimes called federated or collaborative) model is developed for all parties to share, even if, as is often the case, various designers have used different computer aided design programs to develop their respective designs. Drawings and specifications are held in a common database accessible to everyone which can be used for clash detection, coordination of designs, communication of changes, and construction sequencing.

Coordination of goals and effort is essential and is generally achieved by a BIM Protocol and a BIM Execution Plan, both key documents to access and understand work in this environment. A designer needs to understand and work to the Levels of Design (or Detail) (LOD) that will be spelled out in these documents to ensure that there is sufficient detail at each level to allow all designs to progress efficiently and avoid unnecessary changes.

BIM is founded on a team approach and successful projects utilising BIM encourage collaboration. FIDIC contracts are designed to be fair to all parties and are considered suitable for use with projects featuring the use of BIM - providing that the parties recognise the difference in approach and use the contract appropriately. This starts with proper planning and, unless an employer has appropriate expertise in house, they are well advised to retain an engineer who is appropriately qualified to assist them in the solicitation of interest, proposals, selection and negotiation of contracts with the selected project team. Legal advice is also necessary, of course, especially during the latter steps. The request for proposal (RFP) must clearly outline what the client's (employer's) expectations of the consultant are. The expectations should focus on the specific BIM goals and benefits desired. If properly developed, the RFP will help the proposers be responsive and the employer select the consultant (or in the case of a design build project, the project team) best qualified to deliver the desired BIM outcome. This process will in turn help all parties develop appropriate contract terms and conditions. Ideally the selection process would use FIDIC's Quality Based Selection (QBS) guideline.

It should be noted that the improved quality of information in projects utilising BIM can result in a significant reduction in variations. It is worth thinking about how the traditional roles of Contractor and Employer fit into this structure. In general, BIM is well suited for integrated project delivery, including Design Build and especially Design Build Operate projects where early proactive involvement of the design engineer, contractor and employer are essential. If advanced levels of BIM are anticipated for the project, the possibility of adding operation and maintenance elements of the constructed facility might be considered.

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For advanced levels of BIM where fully open sharing of information is required, a qualified individual needs to be assigned the duty of managing the combined model. This should be separate from the project manager's role to ensure clear delineation of project responsibilities. This may require special outsourcing, if such skills are not available from the employer. Managing the BIM elements of a project may also involve risks that are beyond the normal coverage of professional indemnity (PI) insurance policies. Specialist advice should be sought from PI insurers if there is any doubt on coverage for this role. The competence and responsibilities of this position need to be understood and should include experience in data back-up and integrity, continuity planning and cyber security.

All parties involved in a project utilising BIM should take special care in checking their assigned scope and contract to ensure that they are aware of their BIM related responsibilities. The risks that FIDIC has identified in working in a BIM environment arise from these key features:

- misunderstanding of scope of services
- use of data for an inappropriate purpose and reliance on inappropriate data
- ineffective information, document or data management
- cyber security and responsibility for "holding" the models or data
- definition of deliverables, approval, and delivery

To manage these and other digital technology related risks, the consultant is encouraged to clearly define adequately their proposed services, addressing such issues as:

- the systems and versions or releases they propose and the management processes they will adopt
- access rights and limitations of the client, other consultants and contractors
- reliance other parties in the project may place on data in the digital environment
- limitations in terms of uptime and access and potential exclusion of liability for down-time
- potential exclusion of liability in the event of cyber attack
- potential exclusion or limitations on professional liability in respect of the actions of others
- access to the current and previous issues of the combined model and to the complete audit trail of changes to the model

At the completion of the project the model may need to be brought up to as-built status. This involves not only the drawing elements but also the embedded data. Experience shows that this is a significant effort, so responsibilities for completing this task should be clear and appropriate allowances provided.

The process for the delivery of contractual notices should be checked to determine if this will be through the common data environment or by more traditional means.

If sub-contractors are to be utilised, they should be bound by the BIM Protocol and Execution Plan.

The dispute resolution processes in the agreement should be appropriate, considering the collaborative nature of the BIM process. Professionals with engineering, construction and legal expertise should be consulted in this regard.

Legal counsel should review the contract to ensure that it does not create an unintended joint venture which may be a risk in some jurisdictions.

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If there is a fitness for purpose clause, make sure that it is clear who is responsible for ensuring compliance and how responsibility for rectification is spread between participants.
Make sure that audit trails for modifications to the composite or federated model are controlled by a process which can generate an audit trail that is preserved during and after completion. The audit trail should be accessible by appropriate parties during and after project completion.
Given that there will be many parties the design and construction effort, ensure that there are appropriate limits of liability in place for each participant and for the project as a whole.

For EPC/Turnkey projects involving BIM, in addition to considering the general principles as introduced above, the following (non-exhaustive) list of Sub-Clauses of the General Conditions of Contract for EPC/Turnkey Projects [©FIDIC 2017 Second Edition] should be thoroughly reviewed when drafting the Particular Conditions:

Sub-Clause No.	**Sub-Clause Title**
1.1	Definitions
1.3	Notices and Other Communications
1.5	Priority of Documents
1.9	Employer's Use of Contractor's Documents
1.10	Contractor's Use of Employer's Documents
1.14	Limitation of Liability
2.3	Employer's Personnel and Other Contractors
2.5	Site Data and Items of Reference
3.1	The Employer's Representative
3.2	Other Employer's Personnel
4.1	Contractor's General Obligations
4.6	Co-operation
4.7	Setting Out
4.9	Quality Management and Compliance Verification Systems
4.20	Progress Reports
5.1	General Design Obligations
5.2	Contractor's Documents
5.6	As-Built Records
5.7	Operation and Maintenance Manuals
5.8	Design Error
6.8	Contractor's Superintendence
6.10	Contractor's Records
8.3	Programme
9.1	Contractor's Obligations (Tests on Completion)
13.3	Variation Procedure
17.3	Intellectual and Industrial Property Rights
17.4	Indemnities by Contractor
17.5	Indemnities by Employer
17.6	Shared Indemnities
19.2.6	Other insurances required by Laws and by local practice

FIDIC intends to publish a "Technology Guideline" and a "Definition of Scope Guideline Specific to BIM" with the aim of providing further detailed support. These documents are under preparation and expected to be released shortly after the publication of the updates of the 1999 suite of FIDIC contract forms.

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Annexes FORMS OF SECURITIES

Acceptable form(s) of security should be included in the tender documents: for Annex A and/or B, in the Instructions to Tenderers; and for Annexes C to G, annexed to the Particular Conditions. The following example forms, which (except for Annex A) incorporate Uniform Rules published by the International Chamber of Commerce (the "ICC", which is based at 33-43 Avenue du Président Wilson, 75116 Paris, France, www.iccwbo.org), need to be carefully reviewed against, and may have to be amended to comply with, applicable law. Although the ICC publishes guides to these Uniform Rules, legal advice should be taken before the securities are written. Note that the guaranteed amounts should be quoted in all the currencies, as specified in the Contract, in which the guarantor pays the beneficiary.

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Annex A EXAMPLE FORM OF PARENT COMPANY GUARANTEE

Name of Contract/Contract No.: _____

Name and address of Employer: _____

_____ (together with successors and assigns).

We have been informed that _____ (hereinafter called the "Contractor") is submitting an offer for such Contract in response to your invitation, and that the conditions of your invitation require his/her offer to be supported by a parent company guarantee.

In consideration of you, the Employer, awarding the Contract to the Contractor, we (name of parent company) irrevocably and unconditionally guarantee to you, as a primary obligation, the due performance of all the Contractor's obligations and liabilities under the Contract, including the Contractor's compliance with all its terms and conditions according to their true intent and meaning.

If the Contractor fails to so perform his/her obligations and liabilities and comply with the Contract, we will indemnify the Employer against and from all damages, losses and expenses (including legal fees and expenses) which arise from any such failure for which the Contractor is liable to the Employer under the Contract.

This guarantee shall come into full force and effect when the Contract comes into full force and effect. If the Contract does not come into full force and effect within a year of the date of this guarantee, or if you demonstrate that you do not intend to enter into the Contract with the Contractor, this guarantee shall be void and ineffective. This guarantee shall continue in full force and effect until all the Contractor's obligations and liabilities under the Contract have been discharged, when this guarantee shall expire and shall be returned to us, and our liability hereunder shall be discharged absolutely.

This guarantee shall apply and be supplemental to the Contract as amended or varied by the Employer and the Contractor from time to time. We hereby authorise them to agree any such amendment or variation, the due performance of which and compliance with which by the Contractor are likewise guaranteed hereunder. Our obligations and liabilities under this guarantee shall not be discharged by any allowance of time or other indulgence whatsoever by the Employer to the Contractor, or by any variation or suspension of the works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Contractor or the Employer, or by any other matters, whether with or without our knowledge or consent.

This guarantee shall be governed by the law of the same country (or other jurisdiction) as that which governs the Contract and any dispute under this guarantee shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such Rules. We confirm that the benefit of this guarantee may be assigned subject only to the provisions for assignment of the Contract.

SIGNED by: _____	SIGNED by[1]: _____
(signature)	*(signature)*
_____	_____
(name)	*(name)*
_____	_____
(position in the company)	*(position in the company)*

Date:

[1] *Whether one or more signatories for the parent company are required will depend on the parent company and/or applicable law.*

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Annex B EXAMPLE FORM OF TENDER SECURITY

Guarantee No.: _____ [*insert guarantee reference number*]

The Guarantor:_____
[*insert name and address of place of issue, unless indicated in the letterhead*]

Name of Contract/Contract No.:_____[*insert reference number or other information identifying the contract with regard to which the tender is submitted*]

The Beneficiary (the "Employer"): _____ [*insert name and address of the Beneficiary*]

We have been informed that _____ [*insert name and address of the Tenderer*] (hereinafter called the "Applicant") is submitting an offer for such Contract in response to your invitation, and that the conditions of your invitation (the "Conditions of Invitation", which are set out in a document entitled Instructions to Tenderers) require his/her offer to be supported by a tender security.

At the request of the Applicant, we _____ [*insert name of Guarantor*] hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of _____ [*insert in figures and words the maximum amount payable and the currency in which it is payable*] upon receipt by us of your demand in writing and your written statement (in the demand) that:

(a) the Applicant has, without your agreement, withdrawn his/her offer after the latest time specified for its submission and before the expiry of its period of validity, or

(b) the Applicant has refused to accept the correction of errors in his/her offer in accordance with such Conditions of Invitation, or

(c) you entered into the Contract with the Applicant and he/she has failed to deliver a performance security complying with Sub-Clause 4.2.1 of the Conditions of Contract.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at the following office [*insert address of office*] on or before _____ [*insert the date 35 days after the expiry of the validity of the Letter of Tender*], when this guarantee shall expire.

The party liable for the payment of any charges: _____
_____ [*insert the name of the party*].

This guarantee shall be governed by the laws of _____ [*insert the law governing the guarantee*], and shall be subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

SIGNED by: _____ SIGNED by[(1)]: _____
(signature) *(signature)*

_____ _____
(name) *(name)*

Date: _____

[(1)] Whether one or more signatories for the bank are required will depend on the bank and/or applicable law.

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Annex C EXAMPLE FORM OF PERFORMANCE SECURITY - DEMAND GUARANTEE

Guarantee No.: _____ [*insert guarantee reference number*]

The Guarantor:_____
[*insert name and address of place of issue, unless indicated in the letterhead*]

Name of Contract/Contract No.: _____[*insert reference number or other information identifying the contract between the Applicant and the Beneficiary on which the guarantee is based*]

The Beneficiary (the "Employer"): _____
_____ [*insert name and address of the Beneficiary*]

We have been informed that _____ [*insert name and address of the Contractor*] (hereinafter called the "Applicant") is your Contractor under such Contract, which requires him/her to obtain a Performance Security.

At the request of the Applicant, we _____ [*insert name of Guarantor*] hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of _____ [*insert in figures and words the maximum amount payable and the currency in which it is payable*] (the "Guaranteed Amount") upon receipt by us of your demand in writing and your written statement indicating in what respect the Applicant is in breach of its obligations under the Contract.

[*Following receipt by us of an authenticated copy of the Taking-Over Certificate for the whole of the Works under Clause 10 of the Conditions of Contract, the Guaranteed Amount shall be reduced by _____ % and we shall promptly notify you that we have received such certificate and have reduced the Guaranteed Amount accordingly.*] (1)

Following receipt by us of an authenticated copy of a statement issued by you that, pursuant to Sub-Clause 4.2.1 of the Conditions of Contract, variations or adjustments under Clause 13 of the Conditions of Contract have resulted in an accumulative increase or decrease of the Contract Price by more than twenty percent (20%) of the Contract Price stated in the Contract Agreement, and that therefore the Guaranteed Amount should be adjusted by the percentage specified in the statement equal to the accumulative increase or decrease, respectively, we shall promptly inform you that we have received such statement and have adjusted the Guaranteed Amount accordingly. In the case of a request for a decrease of the amount of the Performance Security, the above statement shall be accompanied by your written consent to such decrease.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at the following office [*insert address of office*] on or before _____ (*insert the date 70 days after the expected expiry of the Defects Notification Period for the Works*) (the "Expiry Date"), when this guarantee shall expire.

The party liable for the payment of any charges: [*insert the name of the party*].

This guarantee shall be governed by the laws of _____ [*insert the law governing the guarantee*], and shall be subject to the Uniform Rules for Demand Guarantees, (URDG) 2010 Revision, ICC Publication No. 758.

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SIGNED by: _____ SIGNED by[2]: _____

(signature) *(signature)*

_____ _____

(name) *(name)*

Date: _____

[1] When drafting the tender documents, the writer should ascertain whether to include the optional text, shown in parentheses [ ].

[2] Whether one or more signatories for the bank are required will depend on the bank and/or applicable law.

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Annex D EXAMPLE FORM OF PERFORMANCE SECURITY - SURETY BOND

Name of Contract/Contract No.: _____

Name and address of Beneficiary (the "Employer"): _____

_____

We have been informed that _____ [*insert name of the Contractor*] (hereinafter called the "Principal") is your contractor under such Contract, which requires him/her to obtain a Performance Security.

By this Bond, _____

_____ [*insert name and address of contractor*]

(who is your Contractor under such Contract) as Principal and: _____

_____ [*insert name and address of Guarantor*] as Guarantor are irrevocably held and firmly bound to the Beneficiary in the total amount of _____ [*insert in figures and words the maximum amount payable and the currency in which it is payable*] (the "Bond Amount") for the due performance of all such Principal's obligations and liabilities under the above named Contract.

[Such Bond Amount shall be reduced by _____ % upon the issue of the Taking-Over Certificate for the whole of the Works under Clause 10 of the Conditions of Contract.](1)

This Bond shall become effective on the Commencement Date defined in the Contract.

Upon Default by the Principal to perform any contractual obligation, or upon the occurrence of any of the events and circumstances listed in Sub-Clause 15.2.1 of the Conditions of Contract, the Guarantor shall satisfy and discharge the damages sustained by the Beneficiary due to such Default, event or circumstances.(2) However, the total liability of the Guarantor shall not exceed the Bond Amount.

The obligations and liabilities of the Guarantor shall not be discharged by any allowance of time or other indulgence whatsoever by the Beneficiary to the Principal, or by any variation or suspension of the Works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Principal or the Beneficiary, or by any other matters, whether with or without the knowledge or consent of the Guarantor.

Any claim under this Bond must be received by the Guarantor on or before _____ [*insert the date six months after the expected expiry of the Defects Notification Period for the Works*] (the "Expiry Date"), when this Bond shall expire and shall be returned to the Guarantor.

The benefit of this Bond may be assigned subject to the provisions for assignment of the Contract, and subject to the receipt by the Guarantor of evidence of full compliance with such provisions.

This Bond shall be governed by the law of _____ [*insert the law governing the bond*] being the same country (or other jurisdiction) as that which governs the Contract. This Bond incorporates and shall be subject to the Uniform Rules for Contract Bonds, published as number 524 by the International Chamber of Commerce, and words used in this Bond shall bear the meanings set out in such Rules.

Whereas this Bond has been issued by the Principal and the Guarantor on _____ [*date*]

Signatures for and on behalf of the Principal(3):

_____ _____

(signature) *(signature)*

_____ _____

(name) *(name)*

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Signatures for and on behalf of the Guarantor[4]:

_____	_____
(signature)	*(signature)*
_____	_____
(name)	*(name)*

[1] When writing the tender documents, the writer should ascertain whether to include the optional text, shown in parentheses [ ].

[2] Insert: [and shall not be entitled to perform the Principal's obligations under the Contract.]
Or: [or at the option of the Guarantor (to be exercised in writing within 42 days of receiving the claim specifying such Default) perform the Principal's obligations under the Contract.]

[3] Whether one or more signatories for the Principal are required will depend on the Principal and/or applicable law.

[4] Whether one or more signatories for the Guarantor are required will depend on the Guarantor and/or applicable law.

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Annex E EXAMPLE FORM OF ADVANCE PAYMENT GUARANTEE

Guarantee No.: _____ [*insert guarantee reference number*]

The Guarantor: _____
_____ [*insert name and address of place of issue, unless indicated in the letterhead*]

Name of Contract/Contract No.: _____
_____[*insert reference number or other information identifying the contract between the Applicant and the Beneficiary on which the guarantee is based*]

The Beneficiary (the "Employer"): _____
_____ [*insert name and address of the Beneficiary*]

We have been informed that _____
_____ [*insert name and address of the Contractor*] (hereinafter called the "Applicant") is your Contractor under such Contract and wishes to receive an advance payment, for which the Contract requires him/her to obtain a guarantee.

At the request of the Applicant, we _____ [*insert name of Guarantor*] hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of _____ [*insert in figures and words the maximum amount payable and the currency in which it is payable*] (the "Guaranteed Amount") upon receipt by us of your demand in writing and your written statement that:

(a) the Applicant has failed to repay the advance payment in accordance with the Conditions of Contract, and

(b) the amount of the advance payment which the Applicant has failed to repay.

This guarantee shall become effective upon receipt [of the first instalment] of the advance payment by the Applicant. The Guaranteed Amount shall be reduced by the amounts of the advance payment repaid to you, as evidenced by your notices issued under Sub-Clause 14.6 of the Conditions of Contract. Following receipt of a copy of each purported notice, we shall promptly notify you of the revised Guaranteed Amount accordingly.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at the following office [*insert address of office*] on or before _____ [*insert the date 70 days after the expected expiry of the Time for Completion*] (the "Expiry Date"), when this guarantee shall expire.

The party liable for the payment of any charges: _____[*insert the name of the party*].

This guarantee shall be governed by the laws of _____[*insert the law governing the guarantee*], and shall be subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

Signed by: _____ Signed by[(1)]: _____
(signature) *(signature)*

_____ _____
(name) *(name)*

Date: _____

[(1)] Whether one or more signatories for the bank are required will depend on the bank and/or applicable law.

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Annex F EXAMPLE FORM OF RETENTION MONEY GUARANTEE

Guarantee No.: _____ [*insert guarantee reference number*]

The Guarantor: _____
_____ [*insert name and address of place of issue, unless indicated in the letterhead*]

Name of Contract/Contract No.: _____
_____ [*insert reference number or other information identifying the contract between the Applicant and the Beneficiary on which the guarantee is based*]

The Beneficiary (the "Employer"): _____
_____ [*insert name and address of the Beneficiary*]

We have been informed that _____
_____ [*insert name and address of the Contractor*] (hereinafter called the "Applicant") is your Contractor under such Contract and wishes to receive an early payment of [*part of*] the retention money, for which the Contract requires him/her to obtain a guarantee.

At the request of the Applicant, we _____ [*insert name of Guarantor*] hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of _____ [*insert in figures and words the maximum amount payable and the currency in which it is payable*] (the "Guaranteed Amount") upon receipt by us of your demand in writing and your written statement that the Applicant has failed to carry out his/her obligation(s) to rectify the following defect(s) for which he/she is responsible under the Contract [*state the nature of the defect(s)*].

At any time, our liability under this guarantee shall not exceed the total amount of retention money released to the Applicant by you, as evidenced by your notices issued under Sub-Clause 14.6 of the Conditions of Contract with a copy being submitted to us.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at the following office [*insert address of office*] on or before _____ [*insert the date 70 days after the expected expiry of the Defects Notification Period for the Works*], (the "Expiry Date"), when this guarantee shall expire.

We have been informed that the Beneficiary may require the Applicant to extend this guarantee if the Performance Certificate under the Contract has not been issued by the date 28 days prior to such Expiry Date. We undertake to pay you the Guaranteed Amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the Performance Certificate has not been issued, for reasons attributable to the Applicant, and that this guarantee has not been extended.

The party liable for the payment of any charges: _____[*insert the name of the party*].

This guarantee shall be governed by the laws of _____ [*insert the law governing the guarantee*] and shall be subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

Signed by: _____ Signed by[1]: _____
(signature) *(signature)*

_____ _____
(name) *(name)*

Date: _____

[1] Whether one or more signatories for the bank are required will depend on the bank and/or applicable law.

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Annex G EXAMPLE FORM OF PAYMENT GUARANTEE BY EMPLOYER

Guarantee No.: _____ [*insert guarantee reference number*]

The Guarantor: _____
_____ [*insert name and address of place of issue, unless indicated in the letterhead*]

Name of Contract/Contract No.: _____
_____ [*insert reference number or other information identifying the contract between the Applicant and the Beneficiary on which the guarantee is based*]

The Beneficiary (the "Contractor"): _____
_____ [*insert name and address of the Beneficiary*]

We have been informed that _____
_____ [*insert name and address of the Employer*] (hereinafter called the "Applicant") is required to obtain a bank guarantee.

At the request of the Applicant, we _____ [*insert name of Guarantor*] hereby irrevocably undertake to pay you, the Beneficiary/Contractor, any sum or sums not exceeding in total the amount of _____ [*insert in figures and words the maximum amount payable and the currency in which it is payable*] upon receipt by us of your demand in writing and your written statement that:

(a) in respect of a payment due under the Contract, the Applicant has failed to make payment in full by the date fourteen days after the expiry of the period specified in the Contract as that within which such payment should have been made, and

(b) the amount(s) which the Applicant has failed to pay.

Any demand for payment must be accompanied by a copy of _____ [*insert list of documents evidencing entitlement to payment and the language in which these documents are to be submitted*], in respect of which the Applicant has failed to make payment in full.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at the following office [*address of office*] on or before _____ [*insert the date six months after the expected expiry of the Defects Notification Period for the Works*] when this guarantee shall expire.

The party liable for the payment of any charges: _____[*insert the name of the party*].

This guarantee shall be governed by the laws of _____ [*insert the law governing the guarantee*] and shall be subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

Signed by: _____ Signed by[1]: _____
(signature) *(signature)*

_____ _____
(name) *(name)*

Date: _____

[1] *Whether one or more signatories for the bank are required will depend on the bank and/or applicable law.*

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GENERAL CONDITIONS

GUIDANCE FOR THE PREPARATION OF PARTICULAR CONDITIONS AND ANNEXES: FORMS OF SECURITIES

FORMS OF LETTER OF TENDER, CONTRACT AGREEMENT AND DISPUTE ADJUDICATION/ AVOIDANCE AGREEMENT

FIDIC® Conditions of Contract for **EPC/TURNKEY PROJECTS**

Forms of Letter of Tender, Contract Agreement and Dispute Adjudication Avoidance Agreement

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES

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LETTER OF TENDER

NAME OF CONTRACT:

TO:

We have examined the Conditions of Contract, Employer's Requirements, Schedules, the Contract Data and Addenda Nos _____ for the above-named Contract and the words and expressions used herein shall have the meanings assigned to them in the Conditions of Contract. We have examined, understood and checked these documents and have ascertained that they contain no errors or other defects. We accordingly offer to design, execute and complete the Works and remedy any defects therein, in conformity with such documents and our enclosed Tender (including this letter), for the lump sum of:

_____

[*currency and amount in figures*]

_____

[*currency and amount in words*]

We agree to abide by this Tender until _____ [*date*] and it shall remain binding upon us and may be accepted at any time before that date.

If this offer is accepted, we will provide the specified Performance Security, commence the Works as soon as is reasonably practicable after the Commencement Date, and complete the Works in accordance with the above-named documents within the Time for Completion. We guarantee that the Works will then conform with the Schedule of Performance Guarantees.

We understand that you are not bound to accept the lowest or any tender you may receive.

Signature _____ in the capacity of _____

duly authorised to sign tenders for and on behalf of _____ _____

Address: _____

Date: _____

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CONTRACT AGREEMENT

This Agreement made the _____ day of_____ _____
Between _____ of _____ (hereinafter called "the Employer") of the one part,
and _____ of _____ (hereinafter called "the Contractor") of the other part

Whereas the Employer desires that the Works known as _____ [*name and number of the Contract*] should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein, for the lump sum Contract Price of:

_____
[*currency and amounts in figures*]

_____
[*currency and amounts in words*]

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
   (a) The memoranda annexed hereto (which includes a breakdown of the Contract Price)
   (b) The Conditions of Contract
   (c) The Employer's Requirements
   (d) The completed Schedules
   (e) The Tender and
   (f) The JV Undertaking.*

   * [*if the Contractor constitutes an unincorporated JV, otherwise delete*]

3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to design, execute and complete the Works and remedy any defects therein, in conformity with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor, in consideration of the design, execution and completion of the Works and the remedying of defects therein, the final Contract Price at the times and in the manner prescribed by the Contract.

[5. The Contract shall come into full force and effect on the date when the following conditions are satisfied:

   _____
   [*List of pre-conditions*]

   The Employer shall promptly confirm to the Contractor the date on which all these conditions have been satisfied. If any of these conditions has not been satisfied within _____ days of the above-mentioned date on which this Agreement is made, this Agreement shall be void and ineffective and any securities issued in relation to the above Works shall be returned._____ *optional*]

[5. The Commencement Date shall be _____ *optional*]

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In Witness whereof the parties hereto have caused this Agreement to be executed the day and year first before written in accordance with their respective laws.

SIGNED by: _____	Witness: _____
for and on behalf of the Employer in the	Name: _____
presence of	Address: _____
	Date: _____
SIGNED by: _____	Witness: _____
for and on behalf of the Contractor in the	Name: _____
presence of	Address: _____
	Date: _____

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DISPUTE AVOIDANCE/ADJUDICATION AGREEMENT

[*All italicised text and any text within square brackets (except sub-clause headings) in this form of agreement is for use in preparing the form and should be deleted from the final product*].

Name and details of the Contract _____
_____

This Agreement made the _____day of _____ [*month*], _____ [*year*], between

Name and contact details of the Employer _____ (name)
_____ (*address*)
_____ (*telephone*)
_____(*email / other contact details*);

Name and contact details of the Contractor _____ (*name*)
_____ (*address*)
_____ (*telephone*)
_____(*email / other contact details*);

and

Name and contact details of the DAAB Member _____ (*name*)
_____ (*address*)
_____ (*telephone*)
_____(*email / other contact details*);

("**DAA Agreement**")

Whereas:

A. the Employer and the Contractor have entered (or intend to enter) into the Contract;

B. under the Contract, the "**DAAB**" or "**Dispute Avoidance/Adjudication Board**" means the sole member or three members (as stated in the Contract Data of the Contract) so named in the Contract, or appointed under Sub-Clause 21.1 [*Constitution of the DAAB*] or Sub-Clause 21.2 [*Failure to Appoint DAAB Members*] of the Conditions of Contract;

C. the Employer and the Contractor desire jointly to appoint the above-named DAAB Member to act on the DAAB as:

(a) the sole member of the DAAB, and where this is the case, all references to the "Other Members" do not apply; or

(b) one of three members / chairman [*delete the one which is not applicable*] of the DAAB and, where this is the case, the other two persons are:

_____ *(name)* _____ *(address)* _____*(telephone)* _____ *(email / other contact details)*	_____ *(name)* _____ *(address)* _____*(telephone)* _____ *(email / other contact details)*

the "**Other Members**"; and

D. the DAAB Member accepts this appointment.

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The Employer, Contractor and DAAB Member jointly agree as follows:

1. The conditions of this DAA Agreement comprise:
   (a) Clause 21 [*Disputes and Arbitration*] of the Conditions of Contract, and any other provisions of the Contract that are applicable to the DAAB's Activities; and
   (b) the "General Conditions of Dispute Avoidance/Adjudication Agreement", which is appended to the General Conditions of the "Conditions of Contract for Construction" Second Edition 2017 published by FIDIC ("GCs"), as amended and/or added to by the following provisions.

2. [Details of amendments to the GCs, if any. For example:
   In the procedural rules annexed to the GCs, Rule _ is deleted and replaced by: " … "]

3. The DAAB Member shall be paid in accordance with Clause 9 of the GCs. The currency of payment shall be _____.

   In respect of Sub-Clauses 9.1 and 9.2 of the GCs, the amounts of the DAAB Member's monthly fee and daily fee shall be:

   monthly fee _____ per month, and

   daily fee of _____ per day

   (or as otherwise set under Sub-Clause 9.3 of the GCs).

4. In consideration of the above fees, and other payments to be made to the DAAB Member in accordance with the GCs, the DAAB Member undertakes to act as DAAB Member in accordance with the terms of this DAA Agreement.

5. The Employer and the Contractor shall be jointly and severally liable for the DAAB Member's fees and other payments to be made to the DAAB Member in accordance with the GCs.

6. This DAA Agreement shall be governed by the law of _____ (if not stated, the law that governs the Contract under Sub-Clause 1.4 of the Conditions of Contract).

SIGNED by: _____	SIGNED by: _____	SIGNED by: _____
Print name: _____	Print name: _____	the DAAB Member
Title: _____	Title: _____	Title: _____
for and on behalf of the Employer	for and on behalf of the Contractor	
in the presence of	in the presence of	in the presence of
Witness: _____	Witness: _____	Witness: _____
Name: _____	Name: _____	Name: _____
Address: _____	Address: _____	Address: _____
_____	_____	_____
Date: _____	Date: _____	Date: _____

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