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Government of the Republic of Sierra Leone

Port Elizabeth II Upgrading Project

Engineering, Procurement and

Construction Contract

CONTRACT No: 1

29th November, 2017

Xiangtan, China



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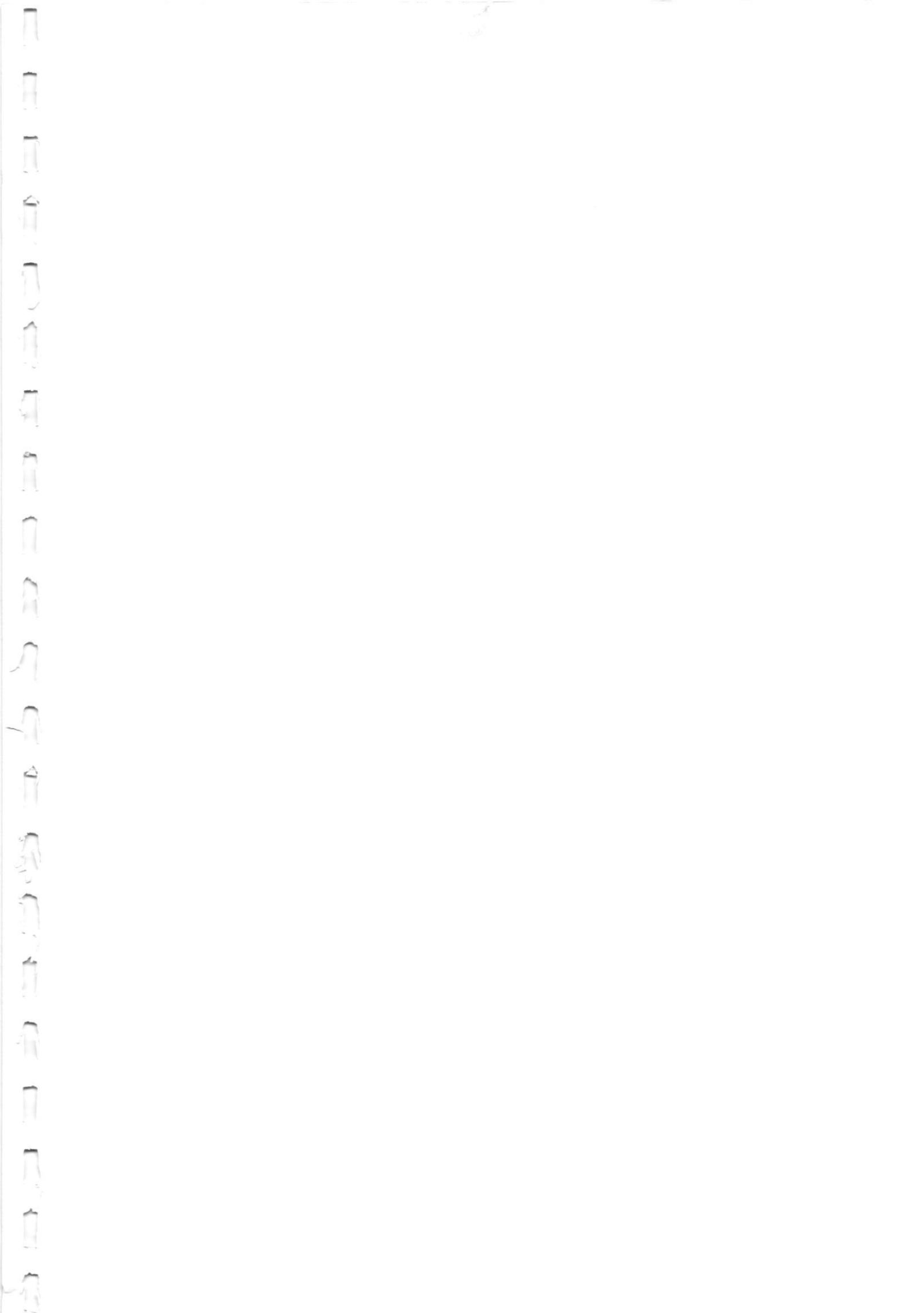
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Part 1 Contract Agreement for Engineering, Procurement and Construction

This Contract made on 8th March, 2017, by and between:

PARTIES

- (1) **NATIONAL PORT DEVELOPMENT (SL) LTD(NPD)**, an entity duly established and validly existing under the laws of the Republic of Sierra Leone as the employer (the "Employer").
- (2) The group formed jointly by the following entities, as the contractor (the "Contractor"):
 - a. **Tidfore Heavy Equipment Group Co., Ltd.**, a limited liability company duly established and validly existing under the laws of the People's Republic of China ("PRC") as the leader of the group (the "Group Leader"),
 - b. **China Integrity International Oceanering, Co., Ltd.**, a subsidiary 100% owned by the Consortium Leader duly established and validly existing under the laws of PRC, having its principal place of business at #3, Haichuan Road, Qingdao, Shandong Province, PRC,
 - c. **Tidfore (Tianjin) Oceanering Equipment Co., Ltd.**, a company duly established and validly existing under the laws of PRC, having its principal place of business at Room 3028, Building No.1, Harbor Economic Area, Binhai New District, Tianjin, PRC, and
 - d. **Tianjin Jinhao International Trade Co., Ltd.**, a company duly established and validly existing under the laws of PRC, having its principal place of business at Room 610, Building No.3, Rong Qing Yuan, 71 Qing He Avenue, Heping District, Tianjin, PRC.

Each of a, b, c and d above shall be referred to as a "Group Member", and together, the "Group Members".

RECITALS

(A) The Government of the Republic of Sierra Leone ("GOSL"), the Contractor and other parties entered into a framework agreement dated March 25, 2015 regarding the design, build, construction of the works necessary for the expansion project of Port Elizabeth II in Freetown Port, the Republic of Sierra Leone.

(B) The Employer desires that the engineering, procurement and construction of the Works for the expansion project of Port Elizabeth II should be executed by the Contractor and has accepted the Contractor's proposal for such engineering, procurement and construction of the Works and the remedying of any defects therein.

The Employer and the Contractor, after friendly consultations regarding the engineering, procurement and construction ("EPC") for the expansion project of Port Elizabeth II in Freetown Port, the Republic of Sierra Leone, including the survey, design, procurement and construction thereof, hereby agree as follows:

I. Overview of the Project

The name of project shall be the expansion project of Port Elizabeth II in Freetown Port, the Republic of Sierra Leone (the "Project").

Location of the Project shall be in Freetown, the Republic of Sierra Leone.

According to Sub-Clause 1.1.2 of the Particular Conditions, the scope of EPC for the Project to be completed by the Contractor under this Contract shall be all works essential for the survey, design, construction, commissioning, trial run, performance test, acceptance and the warranty liability within the Defects Notification Period of the Project as prescribed and required by the relevant terms of this Contract as well as the other works that shall be completed as required hereunder (collectively "EPC Works Scope").

II. Total Contract Price

According to Sub-Clause 1.6 of the Particular Conditions, the total Contract Price for the Contractor to complete the EPC Works Scope hereunder shall be US\$708,295,101 (Say: United States Dollars Seven Hundred and Eight Million Two Hundred Ninety-Five Thousand One Hundred and One),

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III. Quality Standard for Works

The Contractor shall complete the Works for the Project according to the requirements set forth in Appendix V (*Technical Standards and Quality Assurance System*) hereto.

IV. Contract Documents

The following documents shall be deemed to form and be read and construed as part of this Contract which for the purposes of interpretation, the priority of the documents shall be in sequence provided:

1. The summary and agreement of amendments agreed upon by the parties through consultations in relation to this Contract;
2. this Contract Agreement;
3. Particular Conditions;
4. General Conditions;
5. Employer's Requirements;
6. Appendixes to this Contract;
7. Drawings; and
8. Other documents forming the contract documents as agreed by the parties.

V. Defined Terms

In this Contract words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, unless the context requires otherwise.

VI. Effectiveness

This Contract is signed on this 8th day of March, 2017 in London, the United Kingdom.

This Contract shall not become effective unless:

1. The legal representatives of the Parties or their authorized agents have signed this Contract and affixed their official seals (if any) thereupon; and
2. The Employer has duly executed a loan agreement for this Project with the relevant financing bank(s).

VII. Joint and Several Liabilities

The Contractor constitutes (under applicable Laws) an unincorporated grouping of four persons and, notwithstanding whether or not the Contractor constitutes under applicable Laws a joint venture, consortium or other unincorporated grouping of four persons, the Parties agree that:

1. each of the Group Members shall be jointly and severally liable to the Employer for the performance, obligations and liabilities of the Contractor under the Contract;
2. the Employer may, at its election, take action against, or release or compromise the liability of the Group Leader or any Group Member, or grant time or other indulgence, without affecting the liability of any other Group Member;
3. the Group Leader shall have authority to bind the Contractor and each of the Group Member; and
4. the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

This Contract is made in quadruplicate, including two originals and two duplicates, with each Party holding one original and one duplicate.

Employer: National Port Development (SL) Ltd

Domicile: 18 Charlotte Street, Freetown, Sierra Leone

Legal Representative: David Ben Lulu

Authorized Agent: Ministry of Finance and Economic Development of the Republic of Sierra Leone

Tel:

Fax:

Bank: Account No.

Tax File No.

Postcode:

Contractor: Tidfore Heavy Equipment Group Co., Ltd

Domicile: 6 Benchi Road, Jihua Eco-Tech Development Zone, Xiangtan, Hunan, P.R.China

Legal Representative: Zhang Yong

Authorized Agent: Tidfore Heavy Equipment Group Co., Ltd

Tel: (+86)731-52837216

Fax: (+86)731-52837294

Bank:

Account No.

Tax File No.

Postcode:

Part 2 General Conditions

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General Provisions

1.1 Definitions

In the Conditions of Contract ("these Conditions"), which include Particular Conditions and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

- 1.1.1.1 "Contract" means the Contract Agreement these Conditions, the Employer's Requirements, the Tender, and the further documents (if any) which are listed in the Contract Agreements.
- 1.1.1.2 "Contract Agreement" means the contract agreement referred to in Sub-Clause 1.6 [Contract Agreement], including any annexed memoranda.
- 1.1.1.3 "Employer's Requirements" means Appendix A, as included in the Contract, and any additions and modifications to such document in accordance with the Contract. Such document specifies the purpose, scope, and/or design and/or other technical criteria, for the Works.
- 1.1.1.4 "Defects Notification Period Bond" means the document issued in accordance with Sub-Clause 1.6.5 of the Particular Conditions.
- 1.1.1.5 "Performance Guarantees" and "Schedule of Payments" mean the documents so named (if any), as included in the Contract.

1.1.2 Parties and Persons

- 1.1.2.1 "Party" means the Employer or the Contractor, as the context requires.
- 1.1.2.2 "Employer" means the person named as employer in the Contract Agreement and the legal successors in title to this person.
- 1.1.2.3 "Contractor" means the person(s) named as contractor in the Contract Agreement and the legal successors in title to this person(s).
- 1.1.2.4 "Employer's Representative" means the person named by the Employer in the Contract or appointed from time to time by the Employer under Sub-Clause 3.1 [The Employer's Representative], who acts on behalf of the Employer.
- 1.1.2.5 "Contractor's Representative" means the person or the subsidiary of Contractor named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [Contractor's Representative], who acts on behalf of the Contractor.
- 1.1.2.6 "Employer's Personnel" means the Employer's Representative, the assistants referred to in Sub-Clause 3.2 [Other Employer's Personnel] and all other staff, labour and other employees of the Employer's Representative, and any other personnel notified to the Contractor, by the Employer or the Employer's Representative, as Employer's Personnel.
- 1.1.2.7 "Contractor's Personnel" means the Contractor's Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and

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any other personnel assisting the Contractor in the execution of the Works.

- 1.1.2.8 **“Subcontractor”** means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.
- 1.1.2.9 **“DAB”** means the person or three persons so named in the Contract, or other person(s) appointed under Sub-Clause 20.2 [*Appointment of the Dispute Adjudication Board*] or Sub-Clause 20.3 [*Failure to Agree Dispute Adjudication Board*].
- 1.1.2.10 **“FIDIC”** means the Federation Internationale des Ingenieurs-Conseils, the international federation of consulting engineers.
- 1.1.3
Dates, Tests,
Periods and
Completion
- 1.1.3.1 **“Base Date”** means the date 28 days after the Employer confirms that the survey and design documents relating to the hydrologic condition of the Project delivered to the Employer by the Contractor (which has conducted such survey and design as entrusted by the Employer) as the basic condition and then notifies so to the Contractor.
- 1.1.3.2 **“Commencement Date”** means the date notified under Sub-Clause 8.1 [*Commencement of Works*], unless otherwise defined in the Contract Agreement.
- 1.1.3.3 **“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 Particular Conditions (with any extension under Sub-Clause 8.4 [*Extension of Time for Completion*]), calculated from the Commencement Date.
- 1.1.3.4 **“Tests on Completion”** means the tests before non-loaded combined commissioning 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 by the Employer.
- 1.1.3.5 **“Taking-Over Certificate”** means a certificate issued under Clause 10 [*Employer’s Taking Over*].
- 1.1.3.6 **“Defects Notification Period”** means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*], as stated in Sub-Clause 1.7. of the Particular Conditions, calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [*Taking Over of the Works and Sections*].
- 1.1.3.7 **“Performance Certificate”** means the certificate issued under Sub-Clause 11.9 [*Performance Certificate*].
- 1.1.3.8 **“day”** means a calendar day, “months” means a calendar month and “year” means 365 days.
- 1.1.3.9 **“Milestone Progress Node”** means the specific time set forth in Appendix D.
- 1.1.4
Money and
Payments
- 1.1.4.1 **“Contract Price”** means the agreed amount stated in the Particular Conditions for the design, execution and completion of the Works and the remedying of any defects, and includes adjustments (if any) in accordance

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with the Contract.

- 1.1.4.2 "Cost" means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.
- 1.1.4.3 "Final Statement" means the statement defined in Sub-Clause 14.11 [Application for Final Payment].
- 1.1.4.4 "Foreign Currency" means a currency in which part (or all) of the Contract Price is payable, but not the Local Currency. The foreign Currency in this Contract shall be United States Dollars, which shall be the lawful currency in the United States from time to time.
- 1.1.4.5 "Local Currency" means the currency of the Country.
- 1.1.4.6 "Statement" means a statement submitted by the Contractor as part of an application for payment under Clause 14 [Contract Price and Payment].
- 1.1.5
Works and Goods
- 1.1.5.1 "Contractor's Equipment" means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor's Equipment excludes Temporary Works, Employer's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.
- 1.1.5.2 "Goods" means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.
- 1.1.5.3 "Materials" means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.
- 1.1.5.4 "Permanent Works" means the permanent works to be designed and executed by the Contractor under the Contract.
- 1.1.5.5 "Plant" means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.
- 1.1.5.6 "Section" means a part of the Works specified in the Particular Conditions as a Section.
- 1.1.5.7 "Temporary Works" means all temporary works of every kind (other than Contractor's Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.
- 1.1.5.8 "Works" mean the Permanent Works and the Temporary Works, or either of them as appropriate.
- 1.1.6
Other Definitions
- 1.1.6.1 "Contractor's Documents" means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature supplied by the Contractor under the Contract; as described in Sub-Clause 5.2 [Contractor's Documents].
- 1.1.6.2 "Country" means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed, i.e., the Republic of Sierra Leone.
- 1.1.6.3 "Employer's Equipment" means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the

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execution of the Works, as stated in the Employer's Requirements; but does not include Plant which has not been taken over by the Employer.

- 1.1.6.4 "Force Majeure" is defined in Clause 19 [*Force Majeure*].
- 1.1.6.5 "Laws" means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.6.6 "Performance Security" means the security (or securities, if any) under Sub-Clause 4.2 [*Performance Security*].
- 1.1.6.7 "Site" means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site or any places within the construction red line as designated by the Employer.
- 1.1.6.8 "Variation" means any change to the Employer's Requirements or the Works, which is instructed or approved as a variation under Clause 13 [*Variations and Adjustments*].

1.2 Interpretation

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (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, and
- (d) "written" or "in writing" means hand-written, type-written, printed or electronical mail, fax or scanned made, and resulting in a permanent record.

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

1.3 Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:

- (a) i in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission (e.g., e-mail) as agreed to by the Parties; and
- (b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract. However:
 - (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed.

1.4 Law and Language

The Contract shall be governed by English law.

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

The language for communications shall be English. If no language is stated there, the language for communications shall be the language in which the Contract (or most of it) is written.

1.5

N/A

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 in Sierra Leone and by contractor in PRC.

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 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 its right to any moneys due, or to become due, under the Contract.

1.8

Care and Supply of Documents

Each of the Contractor's Documents shall be in the custody and care of the Documents Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Employer six copies of each of the Contractor's Documents.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Employer's Requirements, the Contractor's Documents, and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

1.9

Confidentiality

Subject to Sub-Clauses 1.3.1.2 and 1.3.2.6 of the Particular Conditions, both Parties shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws.

1.10

Employer's Use of Contractor's Documents

As between the Parties, the Contractor shall retain the copyright and other intellectual Contractor's Documents 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) to give to the Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them solely for the purpose of the Project. This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and

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- (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

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

**1.11
Contractor's Use of
Employer's Documents**

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

They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

**1.12
Confidential Details**

The Contractor shall not be required to disclose, to the Employer, any information which the Contractor described as being confidential. The contractor shall disclose all the information that related to this contract includes and arrangement with any sub contractor.

**1.13
Compliance with Laws**

The Contractor shall, in performing the Contract, comply with applicable Laws of Sierra Leone. Unless otherwise stated in the Particular Conditions:

- (a) the Employer shall have obtained (or shall obtain) the planning, zoning or similar permission for the Permanent Works, and any other permissions described in the Employer's Requirements as having been (or being) obtained by the Employer (details of permission see Sub-Clause 2.2.1 in Particular Conditions); and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; The financial cost will be cover by the contractor and
- (b) the Contractor shall give all notices, pay all taxes, duties and fees, and the Contractor shall and shall ensure its relevant subsidiaries shall obtain all permits, licences and approvals, as required by the Laws in relation to the design, execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

**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 the Site parts of the Site within the time (or times) stated in the Particular Conditions. 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 Particular Conditions, the Employer shall give the Contractor right of access to, and possession of, the Site from the date when the Contractor starts survey and design of the Project.

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 give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*].
- 原合同有 b 条款 (b) payment of any such Cost plus reasonable profit. Which shall be added to the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

2.2 Permits, Licences or Approvals

The Employer shall provide reasonable assistance to the Contractor at the request of the Contractor:

- (a) by obtaining copies of the Laws of the Country which are relevant to the Contract but are not readily available, and
- (b) for the Contractor's applications for any permits, licences or approvals required by the Laws of the Country:
 - (i) which the Contractor is required to obtain under Sub-Clause 1.13 [*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

The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors on the Site:

- (a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [*Co-operation*], and
- (b) take actions similar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) of Sub-Clause 4.8 [*Safety Procedures*] and under Sub-Clause 4.18 [*Protection of the Environment*].

2.4 Employer's Financial Arrangements

The Employer shall submit, within 7 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price (as estimated at that time) in accordance with Clause 14 [*Contract Price and Payment*]. If the Employer intends to make any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.

2.5 Employer's Claims

If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, he shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [*Electricity, Water and Gas*], under Sub-Clause 4.20 [*Employer's Equipment and Free-Issue Material*], or for other services requested by the Contractor.

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The notice shall be given as soon as practicable in 14 days after the Employer became aware of the event or circumstances giving rise to the claim.

If the Employer fails to give notice of a claim within such period of 14 days, the Employer shall not be entitled to additional payment, and the Contractor shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Employer shall then proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the amount (if any) which the Employer is entitled to be paid by the Contractor.

The Employer may deduct this amount from any moneys due, or to become due, to the Contractor. The Employer shall only be entitled to set off against or make any deduction from an amount due to the Contractor, or to otherwise claim against the Contractor, in accordance with this Sub-Clause or with sub-paragraph (a) and/or (b) of Sub-Clause 14.6 [*Milestone Payments*].

2.6
Rights of Way and
Facilities

The Employer at its costs shall provide the Contractor with special and/or temporary rights-of-way which the Contractor may require, including those for access to the Site. The Employer shall also obtain, at his risk and cost, any additional facilities outside the Site which the Contractor may require for the purposes of the Works.

2.7
Access Route

The Employer shall ensure that the suitability and availability of access routes to the Site meet the Contractor's criteria and are to the satisfaction of the Contractor. The Employer shall prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel, and the Contractor shall use reasonable efforts to provide cooperation to the Employer in this regard. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- (a) The Employer shall be responsible for any maintenance which may be required for the use of access routes;
- (b) The Employer shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for the use of routes, signs and directions;
- (c) The Contractor shall not be responsible for any claims which may arise from the use or otherwise of any access route;
- (d) The Contractor does not guarantee the suitability or availability of particular access routes; and

原合同有 e 条款 (e) Costs due to non-suitability to non-availability. For the use required by the Contractor, of access routes shall be borne by the Employer.

3

The Employer's Administration

3.1
The Employer's
Representative

The Employer may appoint an Employer's Representative to act on his behalf under the Contract. In this event, he shall give notice to the Contractor of the name, address, duties and authority of the Employer's Representative.

The Employer's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him, by the Employer. Unless and until the Employer notifies the Contractor otherwise, the Employer's Representative shall be deemed to have the full authority of the Employer under the Contract, except in respect of Clause 15 [Termination by Employer].

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

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. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall not take effect until a copy of it has been received by the Contractor.

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]

3.3
Delegated Persons

All these persons, including the Employer's Representative and assistants, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, Inspection, instruction, notice, proposal, request, test, or similar act by a delegated person, in accordance with the 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 responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances;
- (b) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Employer to reject the work, Plant or Materials; and
- (c) if the Contractor questions any determination or instruction of a delegated person, the Contractor may refer the matter to the Employer, who shall promptly confirm, reverse or vary the determination or instruction.

3.4
Instructions

The Employer may issue to the Contractor instructions which may be necessary for the Contractor to perform his obligations under the Contract. Each instruction shall be given in writing and shall state the obligations to which relates and the Sub-Clause (or other term of the Contract) in which the obligations are specified. If any such instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

The Contractor shall take instructions from the Employer, or from the Employer's Representative or an assistant to whom the appropriate authority has been delegated under this Clause.

3.5
Determinations

Whenever these Conditions provide that the Employer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Employer shall consult with the Contractor in an endeavour to reach agreement. If agreement is not achieved, the Employer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.



The Employer shall give notice to the Contractor of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination, unless the Contractor gives notice, to the Employer, of his dissatisfaction with a determination within 14 days of receiving it. Either Party may then refer the dispute to the DAB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*].

4

The Contractor

4.1

Contractor's General Obligations

The Contractor shall design, execute and complete the Works in accordance with the Contract, and shall remedy the defects in the Works caused by the Contractor. When completed, the Works shall be fit for the purposes for which the Works are intended as defined in the Contract.

The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects caused by the Contractor.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, 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 having previously been notified to the Employer.

4.2

Performance Security

The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount and currencies stated in the Particular Conditions Sub-Clause 1.6.5. If an amount is not stated in the Particular Conditions, this Sub-Clause shall not apply.

The Contractor shall deliver the Performance Security to the Employer within 28 days after this Contract becomes effective. The Performance Security shall be issued by an entity or bank and from within a country (or other jurisdiction) approved by the Employer, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Taking-Over Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed.

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 the preceding paragraph, in which event the Employer may claim the full amount of the Performance Security,
- (b) failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under Sub-Clause 2.5 [*Employer's Claims*] or Clause 20 [*Claims, Disputes and Arbitration*], within 42 days after this agreement or determination,
- (c) failure by the Contractor to remedy a default within 42 days after receiving the Employer's notice requiring the default to be remedied, or



- (d) circumstances which entitle the Employer to termination under Sub-Clause 15.2 [*Termination by Employer*], irrespective of whether notice of termination has been given.

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 to which the Employer was not entitled to make the claim.

The Employer shall return the Performance Security to the Contractor within 3 days after the Contractor:

- (a) has received the Taking-Over Certificate, and;
- (b) has provided Defects Notification Period Bond under Particular Conditions Sub-Clause 1.6.5.

4.3

Contractor's Representative

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

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to 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 person for such appointment.

The Contractor shall not, without the prior consent of the Employer, revoke the appointment of the Contractor's Representative or appoint a replacement.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.4 [*Instructions*].

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Employer has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative and 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 the whole of the Works.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Where specified in the Particular Conditions, the Contractor shall give the Employer not less than 28 days' notice of:

- (a) the intended appointment of the Subcontractor, with detailed particulars which shall include his relevant experience,
- (b) the intended commencement of the Subcontractor's work, and
- (c) the intended commencement of the Subcontractor's work on the Site.

4.5

N/A

4.6

Co-operation

The Contractor shall, as specified in the Contract or as instructed by the Employer, allow appropriate opportunities for carrying out work to:

the Employer's Personnel,

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- (a) any other contractors employed by the Employer, and
- (b) the personnel of any legally constituted public authorities,
- (c) who may be employed in the execution on or near the Site of any work not included in the Contract.

Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to incur Cost in an amount which was not reasonably foreseeable by an experienced contractor by the date for submission of the Tender. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.

The Contractor shall be responsible for his construction activities on the Site, and shall co-ordinate his own activities with those of other contractors to the extent (if any) specified in the Employer's Requirements.

If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Employer in the time and manner stated in the Employer's Requirements.

4.7
Setting Out

The Contractor shall set out the Works in relation to original, points, lines and levels of reference specified in the Contract. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

4.8
Safety Procedures

The Contractor shall:

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all the Contractor's Personnel entitled to be on the Site, persons other than Contractor's Personnel entitled to be on the Site shall comply with the on-Site safety rules and be responsible for his respective safety,
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons, and
- (d) provide fencing and lighting of the Works until completion and taking over under Clause 10 [*Employer's Taking Over*].

4.9
Quality Assurance

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Employer shall be entitled to audit any aspect of the system. Details of all procedures and compliance documents shall be submitted to the Employer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Employer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system (Appendix E) shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

4.10
Site Data

The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on subsurface and hydrological conditions at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data which come into the Employer's possession after the Base Date.



The Contractor shall be responsible for verifying and interpreting all such data (see Appendix x). After verifying such data, the Contractor shall be responsible for the accuracy, sufficiency and completeness of such data. The Employer shall have no responsibility for the accuracy, sufficiency or completeness of such data which is verified and interpreted by the Contractor, except as stated in Sub-Clause 5.1 [*General Design Responsibilities*].

4.11
Sufficiency of the
Contract Price

The Contractor shall be deemed to have satisfied himself as to the correctness and Sufficiency of the sufficiency of the Contract Price.

Unless otherwise stated in the Contract, the Contract Price covers all the Contractor's obligations under the Contract and all things necessary for the proper design, execution and completion of the Works and the remedying of any defects caused by the Contractor.

4.12
Avoidance of
Interference

Upon notification to the Contractor by the Employer, 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.

4.13
Transport of Goods

Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall give the Employer not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- (b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- (c) the Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport.

4.14
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.

4.15
Protection of the
Environment

The Contractor shall take all reasonable steps according to the Employer's instructions to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated in the Employer's Requirements, and shall not exceed the values prescribed by applicable Laws.

4.16
Electricity, Water and
Gas

The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require.

The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the Employer's Requirements. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed.



- (a) charts 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; photographs showing the status of manufacture and of progress on the Site;
- (b) 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) Contractor's inspections, tests, and
 - (ii) shipment and arrival at the Site;
 - (iii) commencement of manufacture
 - (iv) the details described in Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment];
- (c) copies of quality assurance documents, test results and certificates of Materials;

Each report shall include:

Milestone progress reports shall be prepared by the Contractor and submitted to the Employer in six copies according to the Milestone Progress Node set forth under Appendix D (Milestone Plan and Payment Schedule) hereto. Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

4.18
Milestone Progress Reports

After this visual inspection, the free-issue 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.

The Employer shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Employer's Requirements. The Employer shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them, and shall promptly give notice to the Employer of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Employer shall immediately rectify the notified shortage, defect or default.

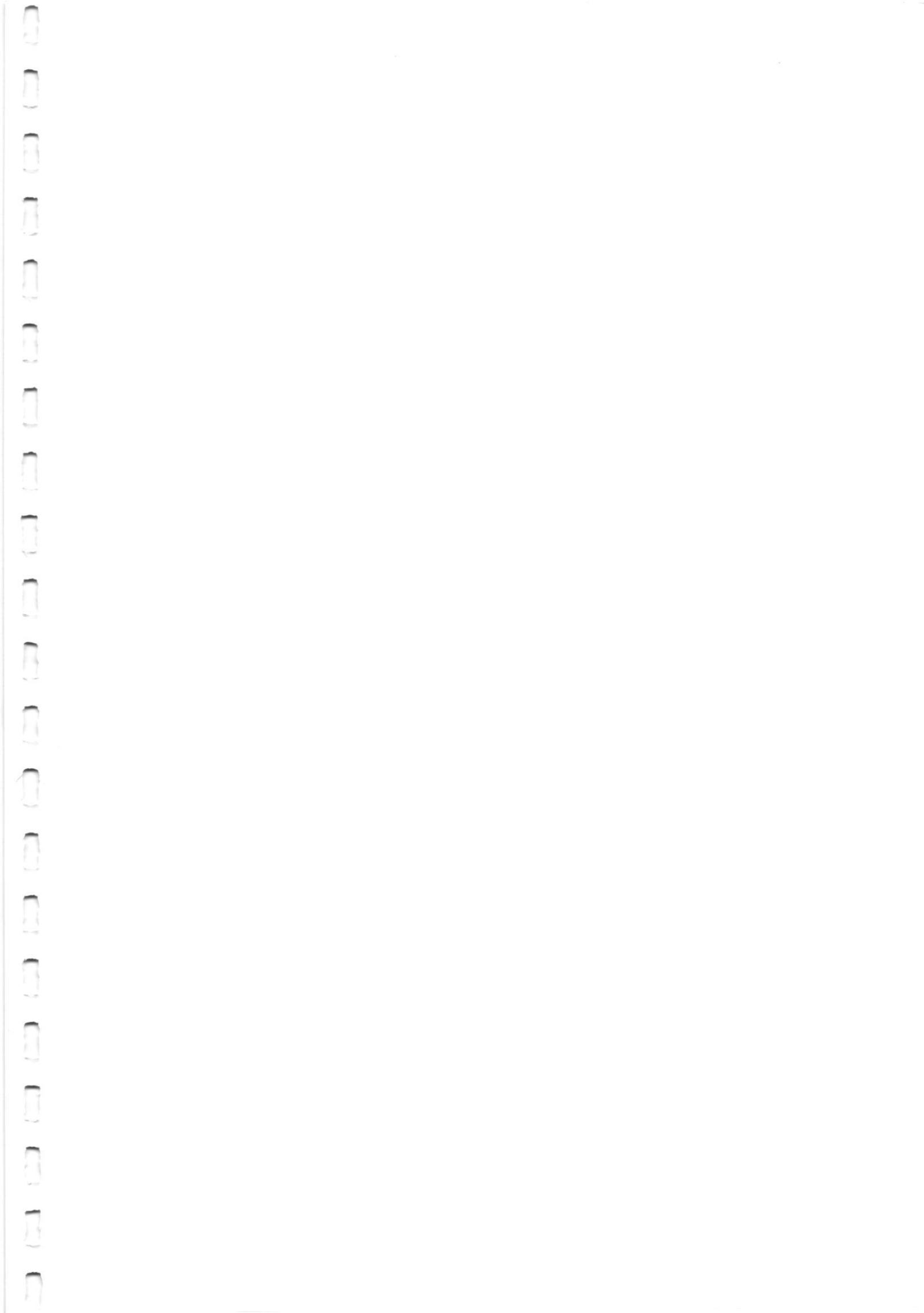
- (a) the Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.
 - (b) The appropriate quantities and the amounts due (at such stated prices) for the use of Employer's Equipment shall be agreed or determined in accordance with Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Employer.
- The Employer shall be responsible for the Employer's Equipment, except that

Requirements:

Contractor in the execution of the Works in accordance with the details, arrangements and prices stated in the Employer's Requirements. Unless otherwise stated in the Employer's

4.17
Employer's Equipment and Free-Issue Material

The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined in accordance with Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Employer.



- (f) list of Variations, notices given under Sub-Clause 2.5 [*Employer's Claims*] and notices given under Sub-Clause 20.1;
- (g) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

4.19

Security of the Site

Unless otherwise stated in the Particular Conditions:

- (a) The Employer shall be responsible for keeping unauthorised persons off the Site, including guarding and watching, The financial cost will be cover by contractor and
- (b) Authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by (or on behalf of) the Employer, as authorised personnel of the Employer's other contractors on the Site.

4.20

Contractor's Operations on Site

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

During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.

Upon the issue of the Taking-Over Certificate for the Works, the Contractor shall clear away and remove all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

4.21

Fossils

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 reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Employer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and

- (a) payment of any such Cost, which shall be added to the Contract Price.
- (b) After receiving this further notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.



5 Design

5.1 General Design Obligations

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

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 below. Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from his responsibility for the design and 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 (Appendix X) 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

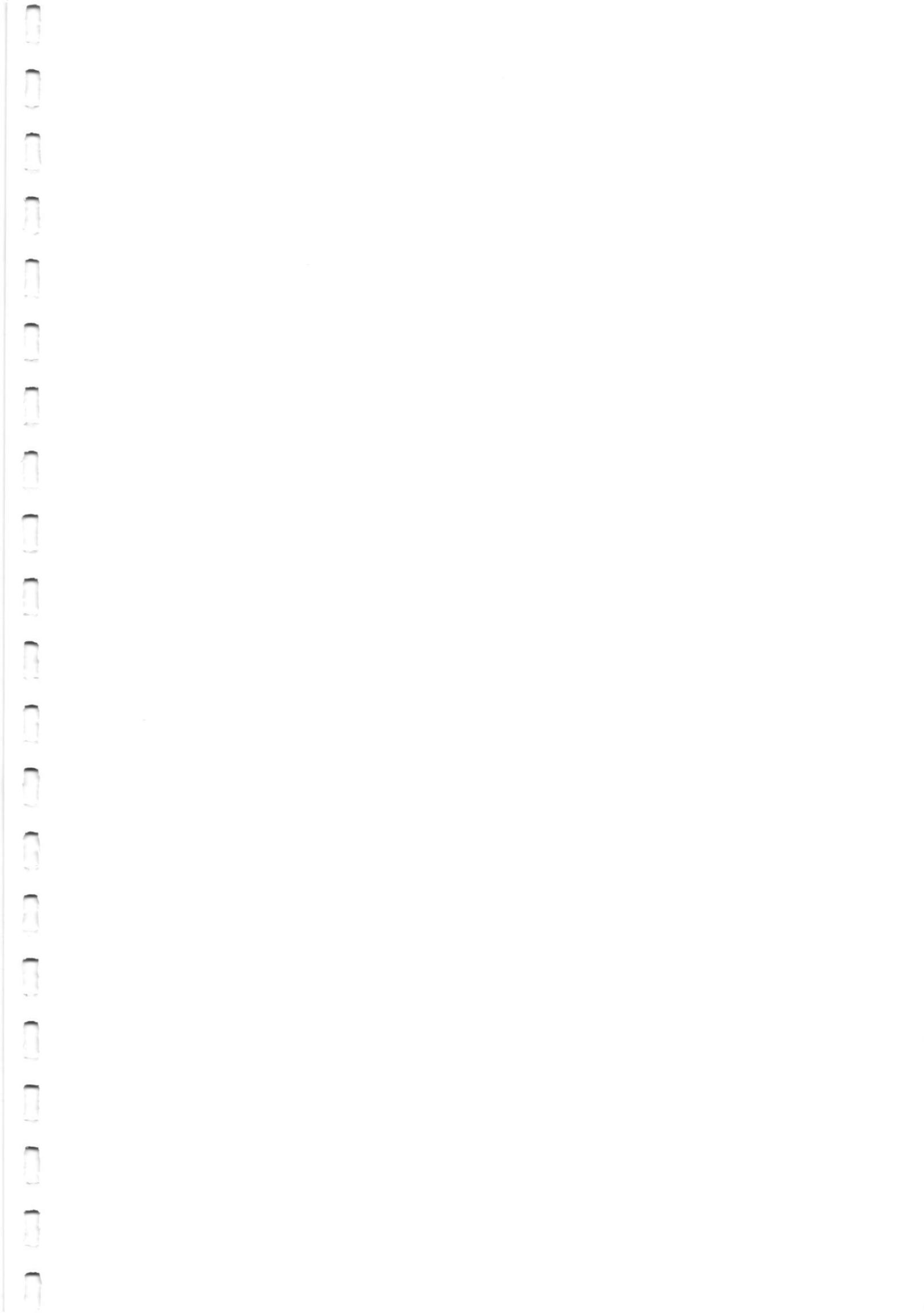
The Contractor's Documents shall comprise the technical documents specified in the Employer's Requirements (details see Appendix A), and the documents described in Sub-Clause 5.6 [*As-Built Documents*] and Sub-Clause 5.7 [*Operation and Maintenance Manuals*]. Unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

If the Employer's Requirements describe the Contractor's Documents which are to be submitted to the Employer for review, they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the Employer for review, and (ii) "Contractor's Documents" exclude any documents which are not specified as being required to be submitted for review.

Unless otherwise stated in the Employer's Requirements, each review period shall not exceed 3 days, calculated from the date on which the Employer receives a Contractor's Document and the Contractor's notice. This notice shall state that the Contractor's Document is considered ready, both for review in accordance with this Sub-Clause and for use. The notice shall also state that the Contractor's Document complies with the Contract, or the extent to which it does not comply.

The Employer may, within the review period, give one notice to the Contractor that a Contractor's Document fails (to the extent stated) to comply with the Contract. If a Contractor's Document so fails to comply, it shall be rectified, resubmitted and reviewed in accordance with this Sub-Clause, at the Contractor's cost.

For each part of the Works, and except to the extent that the Parties otherwise agree:



- (a) the review of the design and execution of the Works shall be completed within the relevant review periods; if at the expiry of the relevant periods, the Contractor has not received any notice, then the Contractor's Documents shall be deemed approved by the Employer, and in order to ensure the Milestone Progress Schedule will be complied with, the Contractor may commence or resume Works. If the completion of the Project is delayed due the review delay by the Employer under this Sub-Clause, the Contractor shall be entitled to claim extension or damages according to Sub-Clause 20.1;
- (b) execution of such part of the Works shall be in accordance with these Contractor's Documents, as submitted for review; and
- (c) if the Contractor wishes to modify any design or document which has previously been submitted for review, the Contractor shall immediately give notice to the Employer. Thereafter, the Contractor shall submit revised documents to the Employer in accordance with the above procedure.

5.3
Contractor's
Undertaking

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

- (a) the Laws in the Country, and
- (b) the documents forming the Contract, as altered or modified by Variations.

5.4
Technical Standards and
Regulations

The design, the Contractor's Documents, the execution and the completed Works shall comply with the technical standards set forth in Appendix V (*Technical Standards and Quality Assurance System*), building, construction and environmental Laws.

All these Laws shall, in respect of the Works and each Section, be those prevailing when the Works or Section are taken over by the Employer 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.

5.5
Training

The Contractor shall carry out the training of Employer's Personnel in the operation and maintenance of the Works to the extent specified in the Appendix F.

5.6
As-Built Documents

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. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Two copies shall be supplied to the Employer prior to the commencement of the Tests on Completion.

In addition, the Contractor shall supply to the Employer as-built drawings of the Works, showing all Works as executed, and submit them to the Employer for review under Sub-Clause 5.2 [*Contractor's Documents*]. The Contractor shall obtain the consent of the Employer as to their size, the referencing system, and other relevant details.

Prior to the issue of any Taking-Over Certificate, the Contractor shall supply to the Employer the specified numbers and types of copies of the relevant as-built drawings, in accordance with the Employer's Requirements.

5.7
Operation and
Maintenance Manuals

Prior to commencement of the Tests on Completion, the Contractor shall supply to the Employer provisional operation and maintenance manuals in sufficient detail complying with international and commonly used industrial standards for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Plant.



The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 *[Taking Over of the Works and Sections]* until the Employer has received final operation and maintenance manuals in such detail, and any other manuals specified in the Employer's Requirements for these purposes.

5.8
Design Error

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, they and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval, under this Clause.

6 Staff and Labour

6.1
Engagement of Staff
and Labour

Except as otherwise stated in the Employer's Requirements, the Contractor shall and make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment.

6.2
Rates of Wages and
Conditions of Labour

The Contractor shall pay rates of wages, and observe conditions of labour, which 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
Persons in the Service of
Others

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer'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, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

6.5
Working Hours

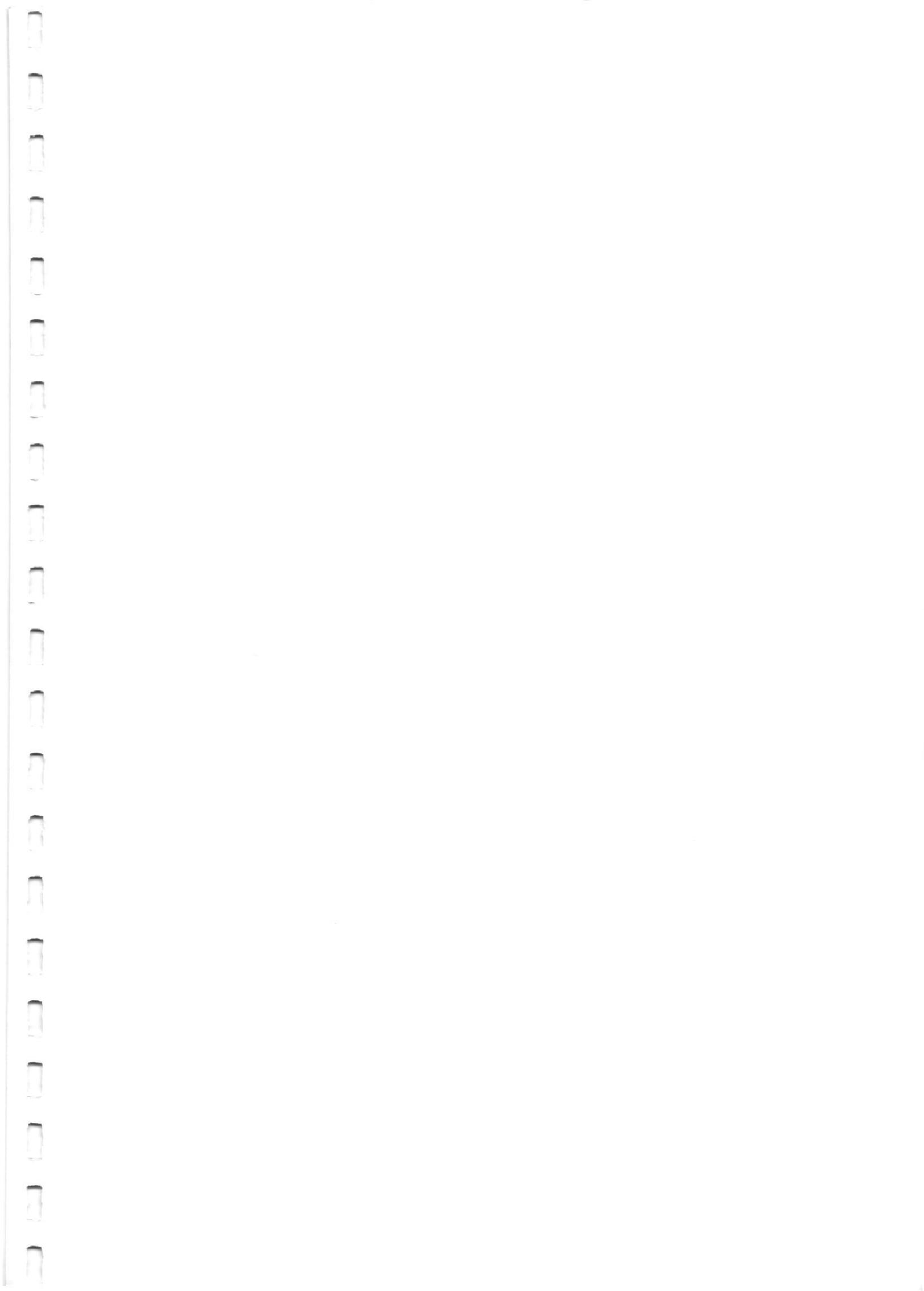
No work shall be carried out on the Site on locally recognised days of rest, or outside normal working hours, unless:

- (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 advise the Employer.

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.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.



6.7
Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's Personnel, and the Employer shall ensure that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Employer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Employer may reasonably require.

6.8
Contractor's
Superintendence

Throughout the design and execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [*Law and Language*]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

6.9
Contractor's Personnel

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations pursuant to the laws of the PRC or the Republic of Sierra Leone. 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 if applicable, who:

- (a) persists in any misconduct or lack of care,
- (b) carries out duties incompetently or negligently,
- (c) fails to conform with any provisions of the Contract, or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

6.10
Records of Contractor's
Personnel and
Equipment

The Contractor shall submit, to the Employer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site.

6.11
Disorderly Conduct

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



7

Plant, Materials and Workmanship

7.1

Manner of Execution

The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

- (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

Inspection

The Employer's Personnel shall at all reasonable times, at its own cost and with the accompany of the Contractor's Personnel:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
- (b) during production, manufacture and construction (at the Site and, to the extent specified in the Contract, elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give the Employer's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

In respect of the work which Employer's Personnel are entitled to examine, inspect, measure and/or test, the Contractor shall give notice to the Employer whenever any such work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Employer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Employer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Employer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

7.3

Testing

This Sub-Clause shall apply to all tests before the non-loaded combined commissioning.

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Employer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Employer may, under Clause 13 [*Variations and Adjustments*], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests (under the same conditions and according to the same standards). If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract. If these varied or additional tests show that the tested Plant, Materials or workmanship is in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Employer.



The Employer shall give the Contractor not less than 24 hours' notice of the Employer's intention to attend the tests. If the Employer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Employer, and the 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 these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and 原合同有条款 b (b) payment of any such Cost plus reasonable profit. Which shall be added to the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

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 certificate to him, to that effect. If the Employer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

7.4
Rejection

If, as a result of an examination, inspection, measurement or testing jointly conducted by the Contractor and the Employer, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Employer may reject the Plant, Materials, design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

If the Employer requires this Plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claims*] pay these costs to the Employer.

7.5
Ownership of Plant and
Materials

Each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer at whichever earlier of the following times:

- (a) when the Contractor has received the amount payable by the Employer upon delivery of such Plant or Materials to the Site in accordance with the Milestone Payment Schedule; and;
- (b) when the Contractor has received the amount payable by the Employer upon delivery of the Plant and Materials.

7.6
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 Contract.



8

Commencement, Delays and Suspension

8.1 Commencement of Works

Upon satisfaction of the following conditions, the Employer may issue a notice for Commencement of Works to the Contractor:

- (a) The Contractor has received the Initial Advance Payment pursuant to Clause 1.6.7 of the Particular Conditions;
- (b) The Employer has obtained all permits, licenses and certificates set forth in Sub-Clause 2.2.1 of the Particular Conditions and has provided their original copies to the Contractor;
- (c) The Employer will assist the contractor for the following work:
 - (i) To connect temporary water, power and gas supply to the places designated by the Contractor and meet the Contractor's requirements for time, place and supply before commencement of Works. The Employer shall ensure supply of the same to the places at the temporary building area as designated by the Contractor. The Contractor will make connections by itself for temporary water and power supply..
 - (ii) To complete the connection routes from the worksite to public roads and coordinated for the convenience and smooth traffic of the roads necessary for access to the Site;
 - (iii) To obtain the approval documents required for the construction of the Project from the government and parliament; and
 - (iv) To complete the land expropriation, demolition, removal and compensation.
- (d) If the Employer uses bank loans to pay the Contract Price, the Employer and the Bank shall have satisfied the financial closing conditions for such financing;
- (e) The Employer has obtained tax reductions and exemptions (including without limitation import and export duties, income tax and goods and services tax) for this Project.
- (f) The Employer has provided all other documents required by the Contractor (including without limitation other permits not mentioned in Sub-clause (B) above).

The Commencement Date for the Contractor's works hereunder shall occur within seven (7) days after receipt of the notice for Commencement of Works from the Employer.

The Contractor shall commence the design and execution of the Works 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, end each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:

- (a) achieving the passing of the Tests on Completion, and
- (b) completing all work which is stated in the 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 of the Works and Sections*].

8.3 Programme

Appendix C hereto is the time programme prepared by the Contractor based on the conditions in existence on the date of this Contract. If the time programme needs to be updated after the Commencement Date, the Contractor shall submit an updated time programme to the Employer within 28 days after the Commencement Date. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Unless otherwise stated in the Contract, each programme shall include:



- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each major stage of the Works,
- (b) the periods for reviews under Sub-Clause 5.2 [*Contractor's Documents*], and
- (c) a supporting report which includes:
 - (i) a general description of the methods which the Contractor intends to adopt for the execution of each major stage of the Works, and
 - (ii) the approximate number of each class of Contractor's Personnel and of each type of Contractor's Equipment for each major stage.

Unless the Employer, within 21 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer's Personnel, shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Employer of specific probable future events or circumstances which may adversely affect or delay the execution of the Works. In this event, or if the Employer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Employer in accordance with this Sub-Clause.

8.4
Extension of Time for
Completion

The Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [*Taking Over of the Works and Sections*] is or will be delayed by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [*Variation Procedure*]),
- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions, or
- (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.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Employer in accordance with Sub-Clause 20.1 [*Contractor's Claims*]. When determining each extension of time under Sub-Clause 20.1, the Employer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

8.5
Delays Caused by
Authorities

If the following conditions apply, namely

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
- (b) these authorities delay or disrupt the Contractor's work, and
- (c) the delay or disruption was not reasonably foreseeable by an experienced contractor by the date for executing this Contractor,

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

8.6
Rate of Progress

If, at any time:



- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme],

other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Employer may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the Employer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay these costs to the Employer, in addition to delay damages (if any) under Sub-Clause 8.7 below.

8.7 Delay Damages

If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay delay damages to the Employer for this default. These delay damages shall be the sum stated in Sub-Clause 1.4. of the Particular Conditions, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages stated in the Particular Conditions.

These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by Employer] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or, from any other duties, obligations or responsibilities which he may have under the Contract.

8.8 Suspension of Work

The Employer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Employer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

8.9 Consequences of Suspension

If the Contractor suffers delay and/or incurs Cost from complying with the Employer's instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be added to the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.8 [Suspension of Work].



8.10

Payment for Plant and Materials in Event of Suspension

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

- (a) the work on Plant or delivery of Plant and/or Materials, has been suspended for more than 28 days, and
- (b) the Contractor has arranged the production and/or procurement of the Plant and/or Materials as the Employer's property in accordance with the Employer's instructions or the requirements of milestone payments.

The Employer shall determine and certify each addition if the following conditions are satisfied:

(a) The Contractor has:

- (i) Kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
- (ii) submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;

or

(b) The relevant Plant and Materials:

- (i) are those listed in the Appendix to Tender 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 Engineer together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee issued by an entity approved by the Employer in amounts and currencies equal to the amount due under this Sub-Clause which shall be in the form annexed to the Particular Conditions or in another form approved by the Employer 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 Appendix to Tender 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 additional amount to be certified shall be the equivalent of eighty percent of the Engineer's determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.

The currencies for this additional amount shall be US Dollars. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

8.11

Prolonged Suspension

If the suspension under Sub-Clause 8.8 [*Suspension of Work*] has continued for more than 30 days, the Contractor may request the Employer's permission to proceed. If the Employer does not give permission within 7 days after being requested to do so, the Contractor may, by giving notice to the Employer, treat the suspension as an omission under Clause 13 [*Variations and Adjustments*] of the affected part of the Works, however the Contract Price for this item shall not be adjusted. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [*Termination by Contractor*].



8.12
Resumption of Work

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

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*] after providing the documents in accordance with Sub-Clause 5.6 [*As-Built Documents*] and Sub-Clause 5.7 [*Operation and Maintenance Manuals*].

The Contractor shall give to the Employer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. The Tests on Completion shall be completed according to Sub-Clauses 1.1.2.2, 1.1.2.3 and 1.9 of the Particular Conditions.

9.2
Delayed Tests

If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 7.4 [*Testing*] (fifth paragraph) and/or Sub-Clause 10.3 [*Interference with Tests on Completion*] shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Employer may by notice 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 that period as the Contractor may fix and of which he shall give notice to the Employer.

If the Contractor fails to carry out the Tests on Completion; within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. These Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the 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 [*Rejection*] shall apply, and the Employer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

9.4
Failure to Pass Tests on Completion

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;
- (b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [*Failure to Remedy Defects*]; or
- (c) if requested by the Employer, issue a Taking-Over Certificate.



In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [*Employer's Claims*] and Sub-Clause 3.5 [*Determinations*].

10 Employer's Taking Over

10.1 Taking Over of the Works and Sections

Except as stated in Sub-Clause 9.4 [*Failure to Pass Tests on Completion*], the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [*Time for Completion*] and except as allowed in sub-paragraph (a) below, and (ii) 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 by notice to the Employer for a Taking-Over Certificate not earlier 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.

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

- (a) 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 which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- (b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.



If the Employer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

If any Part of the Works has indeed been put into use by the Employer before the issuance of the Taking-Over Certificate, then:

(a) Such used Part of the Works shall be deemed to have been accepted by the Employer from the date of such use;

(b) The Contractor's responsibility for taking care of the used Part of the Works shall cease and be transferred to the Employer from the date of such use; and

(c) Upon request by the Contractor, the Engineer shall issue the Taking-Over Certificate for such Part of the Works.

After the Employer issues the Taking-Over Certificate for such Part of the Works, the Employer shall as soon as possible provide the Contractor with the opportunity to take necessary steps to carry out any outstanding Tests on Completion. The Contractor shall carry out such Tests on Completion at an earlier possible date before the expiration of the Defects Notification Period.

If the Contractor incurs any costs and expenses due to the Employer's Taking-Over and/or use of such Part of the Works (except for such use as set forth herein or agreed by the Contractor), the Contractor shall (i) notify the Employer, and (ii) pursuant to Clause 20.1 [Contractor's Claims] of the General Conditions, have the right to claim for additional payment for such costs and expenses as well as reasonable profits, by adding the amount of such additional payment to the Contract Price. Upon receipt of the claim notice, the Employer shall, pursuant to Clause 3.5 [Determinations] of the General Conditions, reach an agreement or make a determination in respect of such costs, expenses and profits.

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 Contract 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 from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Works or the Section shall be deemed to be taken-over by the Employer on the originally scheduled date to carry out such Tests on Completion, and in this case, the Employer shall issue a Taking-Over Certificate to the Contractor.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost plus reasonable profit, which shall be added to the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.



11

Defects Liability

11.1

Completion of Outstanding Work and Remediating 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 date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Employer, and
- (b) execute all work required to remedy defects or damage, as may be notified by the Employer on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Employer shall notify the Contractor accordingly.

11.2

Cost of Remediating Defects

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remediating 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,
- (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-Clauses 5.5 to 5.7 or otherwise), or
- (d) failure by the Contractor to comply with any other obligation in this Contract.

If and to the extent that such work is attributable to any other cause, the costs and risks of remedying such defects shall be on the Employer and the Employer shall give notice to the Contractor accordingly, and Sub-Clause 13.3 [*Variation Procedure*] shall apply.

11.3

Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remediating Defects*], the Employer may (at his option):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claims*] pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [*Determinations*]; or



- (c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

11.4
Removal of Defective
Work

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged.

11.5
Further Tests

If the work of remedying of any defect or damage may affect the performance of the Works, the Employer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [*Cost of Remedying Defects*], for the cost of the remedial work.

11.6
Right of Access

Until the Performance Certificate has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the operation and performance of the Works, except as may be inconsistent with the Employer's reasonable security restrictions.

11.7
Contractor to Search

The Contractor shall, if required by the Employer, search for the cause of any defect, under the direction of 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 Cost of the search plus reasonable profit shall be agreed or determined in accordance with Sub-Clause 3.5 [*Determinations*] and shall be added to the Contract Price.

11.8
Performance Certificate

Performance of the Contractor's obligations 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 completed his obligations under the Contract.

The Employer shall issue the Performance Certificate as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works. If the Employer fails to issue the Performance Certificate accordingly:

- (a) 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, and
- (b) Sub-Clause 11.11 [*Clearance of Site*] and sub-paragraph (a) of Sub-Clause 14.14 [*Cessation of Employer's Liability*] shall be inapplicable.

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

11.9
Unfulfilled Obligations

After the Performance Certificate has been issued, 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.



11.10
Clearance of Site

Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

12 Variations and Adjustments

12.1
Right to Vary

Variations may be initiated by the Employer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. A Variation shall not comprise the omission of any work which is to be carried out by others.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Employer stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, (ii) it will reduce the safety or suitability of the Works, or (iii) it will have an adverse impact on the achievement of the Performance Guarantees. Upon receiving this notice, the Employer shall cancel, confirm or vary the instruction.

12.2
Value Engineering

The Contractor may, at any time, submit to the Employer a written proposal which (in the Contractor's opinion) will, if adopted, (1) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [Variation Procedure].

12.3
Variation Procedure

If the Employer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed design and/or work to be performed and a programme for its execution,
- (b) the Contractor's proposal for any necessary modifications 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.

The Employer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Employer to the Contractor, who shall acknowledge receipt.



Upon instructing or approving a Variation, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine adjustments to the Contract Price and the Schedule of Payments. These adjustments shall include reasonable profit, and shall take account of the Contractor's submissions under Sub Clause 13.2 [*Value Engineering*] if applicable.

12.4
Payment in Applicable
Currencies

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, 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 for payment of the Contract Price.

12.5
Daywork

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 included in the Contract, and the following procedure shall apply. If a daywork schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Contractor shall submit quotations to the Employer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

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 which shall include the following details of the resources used in executing the previous day's work:

- (a) the names, occupations and time of Contractor's Personnel,
- (b) the identification, type and time of Contractor's Equipment and Temporary Works, and
- (c) the quantities and types of Plant and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Employer and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Employer, prior to their inclusion in the next Statement under Sub-Clause 14.3 [*Application for Milestones Payments*].

12.6
Adjustments for Changes
in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be added to the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.



- 12.7
Adjustments for Changes in Costs If the Contract Price is to be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, the adjustments shall be calculated in accordance with the provisions in the Particular Conditions.

13 Contract Price and Payment

- 13.1
The Contract Price See Particular Conditions Sub-Clause 1.6.1.

- 13.2
Advance Payment The Employer shall make an advance payment, as an interest-free loan for mobilization and design, when the Contractor submits a guarantee in accordance with this Sub-Clause including the details stated in the Particular Conditions Sub-Clause 1.6.7.

- 13.3
Application for Interim Payments The Contractor shall submit a Statement in six copies to the Employer after the end of the period of payment stated in the Contract (if not stated, after the end of each month), in a form approved by the Employer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the relevant report on progress in accordance with Sub-Clause 4.21 *[Progress Reports]*.

The Statement shall include the following items, as applicable, which shall be expressed in US Dollars, in the sequence listed:

- (a) contract value of the Works corresponding to such Milestones Progress Node;
- (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 *[Adjustments for Changes in Legislation]* and Sub-Clause 13.8 *[Adjustments for Changes in Cost]*;
- (c) any amounts to be added and deducted for the advance payment and repayments in accordance with Sub-Clause 14.2 *[Advance Payment]* and Sub-Clause 1.6.7 of the Particular Conditions;
- (d) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 *[Claims, Disputes and Arbitration]*; and
- (e) the deduction of amounts included in previous Statements.

- 13.4
Milestone Payments No amount for the milestone payments will be paid until the Employer has received and approved the Performance Security. Thereafter, the Employer shall within 28 days after receiving:

- (i) a Statement from the Contractor applying for Milestone Payments based on the Project milestones,
- (ii) the Project Milestones Progress Report compiled pursuant to Clause 4.21 of the General Conditions, and
- (iii) an invoice showing the corresponding amount payable issued by the Contractor pursuant to Clause 1.6.6 of the Particular Conditions, give to the Contractor notice of any items in the Statement with which the Employer disagrees, with supporting particulars.

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Payments due shall not be withheld, except that:

- (a) if any thing supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
- (b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Employer, the value of this work or obligation may be withheld until the work or obligation has been performed.

Subject to the Contractor's consent, the Employer may, by any payment, make any correction or modification that should properly be made to any amount previously considered due.

13.5

Timing of Payments

Except as otherwise stated in Sub-Clause 2.5 [*Employer's Claims*], the Employer shall pay to the Contractor:

- (a) the first instalment of the advance payment within 15 days after the date on which the Contract came into full force and effect or within 21 days after the Employer receives the documents in accordance with Sub-Clause 4.2 [*Performance Security*] and Sub-Clause 14.2 [*Advance Payment*], whichever is later;
- (b) the amount which is due in respect of each Statement, other than the Final Statement, within 15 days after receiving the Statement and supporting documents; and
- (c) the final amount due, within 15 days after receiving the Final Statement and written discharge in accordance with Sub-Clause 14.11 [*Application for Final Payment*] and 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.

13.6

Delayed Payment

If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [*Timing of Payments*], 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 Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the financing bank providing debt financing to the Employer for this Project and shall be paid in UD Dollars and the Contractor shall be entitled to liquidated damages for the late payment made by the Employer at 0.1% of the total amount owing and unpaid by the Employer provided that in no event shall such damages paid by the Employer exceed 0.5% of the total Contract Price (i.e., US\$3,541,476).

The Contractor shall be entitled to this payment without formal notice, and without prejudice to any other right or remedy.

13.7

Statement at Completion

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Employer six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [*Application for Milestones Payments*], showing:

- (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- (b) any further sums which the Contractor considers to be due, and
- (c) an estimate of any other amounts which the Contractor considers will



become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Employer shall then give notice to the Contractor in accordance with Sub-Clause 14.6 [*Milestone Payments*] and make payment in accordance with Sub-Clause 14.7 [*Timing of Payments*].

13.8

Application for Final Payment

Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Employer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Employer:

- (a) the value of all work done in accordance with the Contract, and
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Employer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Employer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Employer the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However if, following discussions between the Parties and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Employer shall pay the agreed parts of the draft final statement in accordance with Sub-Clause 14.6 [*Milestone Payments*] and Sub-Clause 14.7 [*Timing of Payments*]. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*] or Sub-Clause 20.5 [*Amicable Settlement*], the Contractor shall then prepare and submit to the Employer a Final Statement.

13.9

Discharge

When submitting the Final Statement, the Contractor shall submit a written discharge which confirms that the total of the Final 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 it becomes effective when the Contractor has received the Performance Security and the out-standing balance of this total, in which event the discharge shall be effective on such date.

13.10

Final Payment

In accordance with sub-paragraph (c) of Sub-Clause 14.7 [*Timing of Payments*], the Employer shall pay to the Contractor the amount which is finally due, less all amounts previously paid by the Employer and any deductions in accordance with Sub-Clause 2.5 [*Employer's Claims*].

13.11

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:

- (a) in the Final Statement and also
- (b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [*Statement at Completion*].

However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

13.12

Currencies of Payment

The Contract Price shall be paid in the currency or currencies named in the Contract Agreement. Unless otherwise stated in the Particular Conditions, if more than one



currency is so named, payments shall be made as follows:

- (a) if the Contract Price was expressed in Local 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 Agreement, except as otherwise agreed by both Parties;
 - (ii) payments and deductions under Sub-Clause 13.5 [*Provisional Sums*] and Sub-Clause 13.7 [*Adjustments for Changes in Legislation*] shall be made in the applicable currencies and proportions; and
 - (iii) other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [*Application for Milestones Payments*] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;
- (b) payment of the damages specified in the Particular Conditions shall be made in the currencies and proportions specified in the Particular Conditions;
- (c) 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;
- (d) 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
- (e) if no rates of exchange are stated in the Contract, they shall be those prevailing on the Base Date and determined by the central bank of the Country.

14

Termination by Employer

14.1

Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Employer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

14.2

Termination by Employer

The Employer shall be entitled to terminate the Contract if the Contractor:

- (a) fails to comply with Sub-Clause 4.2 [*Performance Security*] or with a notice under Sub-Clause 15.1 [*Notice to Correct*],
- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- (c) without reasonable excuse fails to proceed with the Works in accordance with Clause 8 [*Commencement, Delays and Suspension*],
- (d) subcontracts the whole of the Works or assigns the Contract without the required agreement,
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts



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- or events, or
- (f) 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:
- (i) for doing or forbearing to do any action in relation to the Contract, or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

In any of these events or circumstances, the Employer may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Employer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

14.3
Valuation at Date of
Termination

As soon as practicable after a notice of termination under Sub-Clause 15.2 [*Termination by Employer*] has taken effect, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

14.4
Payment after
Termination

After a notice of termination under Sub-Clause 15.2 [*Termination by Employer*] has taken effect, the Employer may:

- (a) proceed in accordance with Sub-Clause 2.5 [*Employer's Claims*],
- (b) with-hold further payments to the Contractor until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or
- (c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [*Valuation at Date of Termination*]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.



14.5

Employer's Entitlement
to Termination

The Employer shall be entitled to terminate the Contract, at any time for the to Employer's convenience, by giving notice of such termination to the Contractor. The termination 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. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*] and shall be paid in accordance with Sub-Clause 19.6 [*Optional Termination, Payment and Release*].

15

Suspension and Termination by Contractor

15.1

Contractor's Entitlement
to Suspend Work

If the Employer fails to comply with Sub-Clause 14.7 [*Timing of Payments*], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the reasonable evidence or payment, as the case may be and as described in the notice.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [*Delayed Payment*] and to termination under Sub-Clause 16.2 [*Termination by Contractor*].

If the Contractor subsequently receives such evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, 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 give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus reasonable profit, which shall be added to the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

15.2

Termination by
Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*] in respect of a failure to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*],
- (b) the Contractor does not receive the amount due within 42 days after the expiry of the time stated in Sub-Clause 14.7 [*Timing of Payments*] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [*Employer's Claims*]),
- (c) the Employer substantially fails to perform his obligations under the Contract (including but not limited to Sub-Clause 1.5.1 of the Particular Conditions);
- (d) the Employer fails to comply with Sub-Clause 1.7 [*Assignment*],
- (e) a prolonged suspension affects the whole of the Works as described in



- (f) Sub-Clause 8.11 [*Prolonged Suspension*], or the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of subparagraph (e) or (f), the Contractor may by notice terminate the Contract immediately.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

15.3

Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 [*Employer's Entitlement to Termination*], Sub-Clause 16.2 [*Termination by Contractor*] or Sub-Clause 19.6 [*Optional Termination, Payment and Release*] has taken effect, 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,
- (b) hand over 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.

15.4

Payment on Termination

After a notice of termination under Sub-Clause 16.2 [*Termination by Contractor*] has taken effect, the Employer shall within 15 days:

- (a) return the Performance Security to the Contractor,
- (b) pay the Contractor in accordance with Sub-Clause 19.6 [*Optional Termination, Payment and Release*], and
- (c) pay to the Contractor the amount of any loss of profit or other loss or damage sustained by the Contractor as a result of this termination.

16

Risk and Responsibility

16.1

Indemnities

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

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any defects, 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 design, execution and completion of the Works and the remedying of any defects, and
 - (ii) is not attributable to any negligence, wilful act



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or breach of the Contract by the Employer, the Employer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, 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 (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [*Insurance Against Injury to Persons and Damage to Property*].

16.2
Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [*Taking Over of the Works and Sections*]) for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section of the Works, responsibility for the care of the Section shall then pass to the Employer.

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 stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [*Employer's Risks*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable for a period until the date of the Performance Certificate.

16.3
Employer's Risks

The risks referred to in Sub-Clause 17.4 below are:

- (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, within the Country,
- (c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and,
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

16.4
Consequences of Employer's Risks

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Employer and shall rectify this loss or damage to the extent required by the Employer.

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If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be added to the Contract Price.

After receiving this further notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

16.5
Intellectual and
Industrial Property
Rights

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other Rights intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, 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 alleging an infringement which is or was:

- (a) an unavoidable result of the Contractor's compliance with the Employer's Requirements, 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 prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the Contractor's design, manufacture, construction or execution of the Works, (ii) the use of Contractor's Equipment, or (iii) the proper use of the Works.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and 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 its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

16.6
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 Sub-Clause 16.4 [*Payment on Termination*] and Sub-Clause 17.1 [*Indemnities*].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [*Electricity, Water and Gas*], Sub-Clause 4.20 [*Employer's Equipment and Free-Issue Material*], Sub-Clause 17.1 [*Indemnities*] and Sub-Clause 17.5 [*Intellectual and Industrial Property Rights*], shall not exceed the sum stated in the Particular Conditions 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, deliberate default or reckless misconduct by the defaulting Party.

17 Insurance

17.1 General Requirements for Insurance

In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before they signed the Contract Agreement. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Employer is the insuring Party, each insurance shall be effected with insurers and in terms consistent with the details annexed to the Particular Conditions.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer shall act for Employer's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods stated in the Particular Conditions (calculated from the Commencement Date), submit to the other Party:

- (a) evidence that the insurances described in this Clause have been effected, and
- (b) copies of the policies for the insurances described in Sub-Clause 18.2 [*Insurance of Works and Contractor's Equipment*] and Sub-Clause 18.3 [*Insurance against Injury to Persons and Damage to Property*].

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these



premiums to the other Party, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [*Employer's Claims*] or Sub-Clause 20.1 [*Contractor's Claims*], as applicable.

17.2

Insurance for Works and Contractor's Equipment

The insuring Party shall insure the Works, Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 18.1 [*General Requirements for Insurances*], until the date of issue of the Taking-Over Certificate for the Works.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor or Subcontractors in the course of any other operations (including those under Clause 11 [*Defects Liability*]).

The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.

Unless otherwise stated in the Particular Conditions, insurances under this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party,
- (b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated between the Parties for the sole purpose of rectifying the loss or damage,
- (c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [*Employer's Risks*],
- (d) shall also cover loss or damage from the risks listed in sub-paragraph (c) of Sub-Clause 17.3 [*Employer's Risks*], with deductibles per occurrence of not more than the amount stated in the Particular Conditions (if an amount is not so stated, this sub-paragraph (d) shall not apply), and
- (e) may however exclude loss of, damage to, and reinstatement of:
 - (i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
 - (ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,



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- (iii) a part of the Works which has been taken over by the Employer, except to the extent that the Contractor is liable for the loss or damage, and
- (iv) Goods while they are not in the Country, subject to Sub-Clause 14.5 [*Plant and Materials intended for the Works*].

If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Employer, with supporting particulars. The Employer shall then (i) be entitled subject to Sub-Clause 2.5 [*Employer's Claims*] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 17.1 [*General Requirements for Insurances*].

**17.3
Insurance against Injury
to Persons and Damage
to Property**

The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 17.2 [*Insurance for Works and Contractor's Equipment*]) or to any person (except persons insured under Sub-Clause 17.4 [*Insurance for Contractor's Personnel*]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Particular Conditions, with no limit on the number of occurrences. If an amount is not stated in the Contract, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party,
- (b) shall be in the joint names of the Parties,
- (c) shall be extended to cover liability for all loss and damage to the Employer's property (except things insured under Sub-Clause 17.2) arising out of the Contractor's performance of the Contract, and
- (d) may however exclude liability to the extent that it arises from:
 - (i) the Employer's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,
 - (ii) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects, and
 - (iii) a cause listed in Sub-Clause 17.3 [*Employer's Risks*], except to the extent that cover is available at commercially reasonable terms.

**17.4
Insurance for
Contractor's Personnel**

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's 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.



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The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

17.5
Third Party
Liability Insurance

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from Third Party claims.

18 Force Majeure

18.1
Definition of Force
Majeure

In this Clause, "Force Majeure" means an exceptional event or circumstance:

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

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Sub-contractors,
- (iv) 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, and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

18.2
Notice of Force Majeure

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

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 Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

18.4
Consequences of Force
Majeure

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [*Notice of Force Majeure*], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [*Definition of Force Majeure*] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

18.5
Force Majeure Affecting
Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

18.6
Optional Termination,
Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [*Notice of Force Majeure*], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*].

Upon such termination, the Employer shall pay to the Contractor:

- (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;
- (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 or other goods which the Employer has not paid for to the Contractor under this Contract from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost);
- (e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination; and
- (f) the Contractor shall be entitled to dispose any goods that the Employer has not paid for to the Contractor under this Contract and such disposal shall be at the costs of the Employer.



18.7
Release from
Performance under the
Law

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [*Optional Termination, Payment and Release*] if the Contract had been terminated under Sub-Clause 19.6.

19

Claims, Disputes and Arbitration

19.1
Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Employer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Employer. Without admitting liability, the Employer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Employer to inspect all these records, and shall (if instructed) submit copies to the Employer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Employer, the Contractor shall send to the Employer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Employer may reasonably require; and
- (c) the Contractor shall send a final 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 Contractor and approved by the Employer.



Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer and approved by the Contractor, the Employer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each milestone payment shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

19.2
Appointment of the
Dispute Adjudication
Board

Disputes shall be adjudicated by a DAB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*]. The Parties shall jointly appoint a DAB by the date 28 days after a Party gives notice to the other Party of its intention to refer a dispute to a DAB in accordance with Sub-Clause 20.4.

The DAB shall comprise, as stated in the Particular Conditions, either one or three suitably qualified persons ("the members"). If the number is not so stated and the Parties do not agree otherwise, the DAB shall comprise three persons.

If the DAB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as chairman.

However, if a list of potential members is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DAB.

The agreement between the Parties and either the sole member ("adjudicator") or each of the three members shall incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. 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 DAB. Unless the Parties agree otherwise, the appointment will come into effect if a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment. The replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, 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 appointment of the DAB (including each member) shall expire when the DAB has given its decision on the dispute referred to it under Sub-Clause 20.4, [*Obtaining Dispute Adjudication Board Decision*], unless other disputes have been referred to the DAB by that time under Sub-Clause 20.4, in which event the relevant date shall be when the DAB has also given decisions on those disputes.

19.3

Failure to Agree Dispute Adjudication Board

If any of the following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the DAB by the date stated in the first paragraph of Sub-Clause 20.2,
- (b) either Party fails to nominate a member (for approval by the other Party) of a DAB of three persons by such date,
- (c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DAB by such date, or
- (d) the Parties fail to agree upon the appointment of a replacement person 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, disability, resignation or termination of appointment,

then the appointing entity or official named in the Particular Conditions shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DAB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

19.4

Obtaining Dispute Adjudication Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Employer, then after a DAB has been appointed pursuant to Sub-Clauses 20.2 [*Appointment of the Dispute Adjudication Board*] and 20.3 [*Failure to Agree Dispute Adjudication Board*], either Party may refer the dispute in writing to the DAB for its decision, with a copy to the other Party. Such reference shall state that it is given under this Sub-Clause.

For a DAB of three persons, the DAB shall be deemed to have received such reference on the date when it is received by the chairman of the DAB.

Both Parties shall promptly make available to the DAB all information, access to the Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on such dispute. The DAB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or the advance payment referred to in Clause 6 of the Appendix - General Conditions of Dispute Adjudication Agreement, whichever date is later, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. However, if neither of the Parties has paid in full the invoices submitted by each member pursuant to Clause 6 of the Appendix, the DAB shall not be obliged to give its decision until such invoices have been paid in full. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.



19.7
Failure to Comply with
Dispute Adjudication
Board's Decision

- (a) neither Party has given notice of dissatisfaction within the period stated in Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision],
- (b) the DAB's related decision (if any) has become final and binding, and
- (c) a Party fails to comply with this decision,

In the event that:

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties and the DAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DAB shall be admissible in evidence in the arbitration.

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of (or on behalf of) the Employer, and any decision of the DAB, relevant to the dispute.

The arbitration shall be conducted according to the Rules of Arbitration of the International Chamber of Commerce (the "Rules") and submitted to the London Court of International Arbitration in London, or another mutually agreeable location. The dispute shall be settled by three arbitrators appointed in accordance with these Rules and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

Unless settled amicably, any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled by international arbitration.

19.6
Arbitration

Where notice of dissatisfaction has been given under Sub-Clause 20.4 above, 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 fifty-sixth day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

19.5
Amicable Settlement

If the DAB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DAB's decision, then the decision shall become final and binding upon both Parties.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [Failure to Comply with Dispute Adjudication Board's Decision] and Sub-Clause 20.8 [Expiry of Dispute Adjudication Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If either Party is dissatisfied with the DAB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference or such payment, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction.



then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [Arbitration]. Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply to this reference.

19.8

Expiry of Dispute
Adjudication Board's
Appointment

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 DAB in place, whether by reason of the expiry of the DAB's appointment or otherwise:

- (a) Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply, and
- (b) the dispute may be referred directly to arbitration under Sub-Clause 20.6 [Arbitration].

Part 3 Particular Conditions of the Contract

Unless otherwise required in the context, the terms and expressions used herein shall have the same meaning as they are defined in the General Conditions.

1 General

1.1 Form, Scope and Content of EPC for the Project

1.1.1 EPC (including survey, design, procurement and construction)

The Project shall be implemented by the Contractor by way of EPC, including the survey, design, procurement and execution thereof. Under the guidance and supervision of the Employer, the Contractor shall fully complete all EPC Works Scope required Project as herein stipulated, including survey, design, procurement, construction, commissioning, trial run, performance testing, acceptance and warranty liability within the Defects Notification Period.

1.1.2 Scope and Content of EPC for the Project

1.1.2.1 EPC Works Scope

The EPC Works Scope shall be as follows:

- (a) Construction of the hydraulic main body of the quay, including 3 container berths of 50000DWT and 1ro-ro berth of 50000GT(with due consideration given to bulk cargo berth of 50000DWT);
 - (b) Harbor basin, berths and channel dredging;
 - (c) Necessary navigation and navaid facilities;
 - (d) Formation of back land area corresponding to berths, foundation treatment and surface layer;
 - (e) Purchase, installation and commissioning of equipment within the construction scope of this project;
 - (f) Ancillary and auxiliary works, including water supply, drainage, fire control, electricity and lighting;
- and
- (g) Training of the Employer's personnel in the operation and repair of port equipment in accordance with Appendix G..

For the avoidance of doubt, the EPC for the Project shall consist of the Units of Works in accordance with Appendix B.



1.1.2.2 Partial Commissioning Test

The Contractor shall organize the partial commissioning test for the Project starting from the power-receiving points within 50m of the construction red line to the beginning of non-loaded combined commissioning, including the single unit commissioning and system-specific commissioning, whereby the single unit commissioning shall mean the commissioning of individual machine and the system-specific commissioning shall mean the non-loaded commissioning for all the equipment in the power, electric and heat control systems.

1.1.2.3 Full Start-up Commissioning Test

The full start-up commissioning test for the Project shall include three stages: "non-loaded combined commissioning", "heavy-loaded combined commissioning" and "full-loaded combined commissioning". The non-loaded combined commissioning shall be organized and completed by the Contractor in accordance with Clause 7.4 and Clause 9 of the General Conditions. After completion of the non-loaded combined commissioning (which shall mean the Project has passed the Tests on Completion), the Contractor shall assist the Employer in conducting the "heavy-loaded combined commissioning" and "full-loaded combined commissioning", both of which shall be organized by the Employer at its own cost.

1.1.2.4 Reliability trial operation and performance tests

The Contractor shall take part in the reliability trial operation of the entire Project for , the duration of which shall last no less than 30 days and shall not exceed 90 days, including uninterrupted full-loaded trial operation for at least 96 consecutive hours. The Employer shall organize and complete the performance tests of the equipment supplied hereunder and the Contractor shall cooperate with such performance tests. The Employer shall be responsible for all costs incurred in connection with the reliability trial operation test and the performance tests.

1.1.2.5 The Contractor will not provide any vehicles, boats or other facilities required for port operation before or for the Test on Completion.

THE FINAL DESIGN WILL BE AGREED UNTIL BEFORE 15.12.2017

1.2 Construction Period and Quality

1.2.1 The scheduled completion date ("**Scheduled Completion Date**") for the Project shall be the date which is 48 months after the Commencement Date.

1.2.2 The Milestone schedule and payment schedule for the EPC Works Scope shall be as set forth in Appendix 4.

1.2.3 Bonus for early completion

If the Project achieves Completion before the Scheduled Completion Date, then the Employer shall pay a bonus of US\$2,000 per day to the Contractor for the number of days starting on the actual Completion Date and ending on the Scheduled Completion Date.

If the Completion Date occurs more than 90 days earlier than the Scheduled Completion Date, then the Employer shall pay to the Contractor a bonus of (i) US\$2,000 per day for the number of days starting on the 1st day before the Scheduled Completion Date and ending on the Scheduled Operation Date, and (ii) US\$5000 per day for the number of days starting on the actual Completion Date to the 60th day before the Scheduled Completion Date.

Notwithstanding anything to the contrary, the total amount of the bonuses to be paid by the Employer to the Contractor for early Completion shall not exceed 0.5% of the total Contract Price (i.e., US\$3,541,475.5).



1.3 Requirements for Survey and Design

1.3.1 Employer

1.3.1.1 Offices

If so requested by the Contractor, the Employer shall provide office spaces as well as meals and accommodations, communications facilities, transportation and other conveniences to the survey and design personnel of the Contractor performing onsite services, provided that the costs arising therefrom shall be borne by the Contractor.

1.3.1.2 Confidentiality

At all time until ten (10) years after expiration hereof, without the prior written consent of the Contractor, the Employer shall not and shall ensure that its Personnel shall not publish, permit to be published, disclose any particulars of the Works in any trade or technical paper or elsewhere, disclose any information related to this Project, the services contemplated hereby, this Contract or the business activities of the Contractor for any purpose other than that stipulated herein.

1.3.2 Contractor

1.3.2.1 General

The Contractor shall carry out the survey and design of the Project according to the technical standard and specifications set forth in Appendix X and the principles for design and selection of equipment herein stipulated.

1.3.2.2 Survey and design documents

The survey and design documents provided by the Contractor for the Employer in connection with the Project shall be in both Chinese and English.

1.3.2.3 Design personnel

The Contractor shall assign qualified survey and design personnel to carry out the survey and design of the Project in accordance with this Contract.

1.3.2.4 Adjustment and supplementation of design documents

After delivering the design documents, the Contractor shall participate in the design review organized by the Employer according to the specific review plan separately agreed upon by the Parties and shall, according to the conclusion of the review, make necessary adjustment and supplement to the design documents which are consistent with the Contract.

1.3.2.5 Confidentiality

At all times until ten (10) years after expiration hereof, without the prior written consent of the Employer (which consent shall not be unreasonably withheld), the Contractor shall not and shall ensure that its Personnel shall not publish, permit to be published, disclose any particulars of the Works in any trade or technical paper or elsewhere, disclose any information related to this Project, the services contemplated hereby, this Contract or the business activities of the Employer for any purpose other than that stipulated herein.

1.3.3 Delivery of Survey and Design Documents

The Contractor shall deliver the relevant survey and design documents together with the electronic files thereof (design documents including product drawings) to the Employer in the number of copies and at the time stipulated in Appendix 5 hereto. The timing of the delivery of the relevant survey and design documents shall follow the milestones schedule for the overall progress of the Project. The Contractor shall agree with any request made by the Employer for early delivery thereof before the milestone schedule, provided that such request by the Employer does not substantially deviate from a reasonable design cycle.



1.4 Contractor's Liability for Default

1.4.1 Liquidated damages for late completion

Unless otherwise provided in this Contract, if the Completion of the Project does not occur on or before the Scheduled Completion Date and such delay is less than 60 days after the Scheduled Completion Date, the Contractor hereby agrees to pay to the Employer, as agreed liquidated damages and not as a penalty and as part of the consideration for awarding the contract, an amount equal to US\$2,000 for each calendar day by which the Completion occurs later than the Scheduled Completion Date.

If the Completion of the Project does not occur on or before the Scheduled Completion Date and such delay is more than 60 days after the Scheduled Completion Date, the Contractor hereby agrees to pay to the Employer, as agreed liquidated damages and not as a penalty and as part of the consideration for awarding the contract, (i) an amount equal to US\$2,000 per calendar day for the number of days starting on the Scheduled Completion Date and ending on the 59th day thereafter, and (ii) an amount equal to US\$5,000 per calendar day for the number of days starting on the on the 60th day after the Scheduled Commercial Date and ending on the actual Completion.

Notwithstanding anything to the contrary, in no event shall the Contractor's liability under this Sub-Clause 1.4.1 exceed 1% of the total Contract Price (i.e., US\$7,082,295).

1.4.2 Liquidated damages reasonable

The Employer and the Contractor hereby acknowledge and agree that the terms, conditions and amount fixed pursuant to Sub-Clause 1.4.1 the late completion of the Project are reasonable, considering the reduction in value of the Project and the increased costs that it is anticipated the Employer will sustain in the event of the Contractor's failure to achieve Completion by the Scheduled Completion Date. The amount of the liquidated damages is agreed upon and fixed hereunder by the Parties because of the difficulty of ascertaining on the date hereof the exact amount of reduction in value of the Project and increased costs that will be actually sustained by the Employer in such event and are a genuine estimate of such reduction in value and increased costs, and the Parties hereby agree that the liquidated damages specified herein shall be applicable regardless of the amount of such reduction in value actually occurring and/or such increased costs actually sustained by the Employer. These liquidated damages shall be the only damages due from the Contractor for the Contractor's failure to achieve Completion by the Scheduled Completion Date and the Employer's sole and exclusive remedy for such default, other than in the event of termination under Sub-Clause 15.2 [*Termination by Employer*] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Services, or from any other duties, obligations or responsibilities which it may have under this Agreement.

1.5 Employer's Liability for Default

1.5.1 Except where it is otherwise provided in the other clauses hereof, the Employer shall be in default upon the occurrence of any one or more of the following events, acts or conditions:

- (a) the Employer provides inaccurate information and instructions to the Contractor as a result of which, the Contractor suffers delay in Completion and/or additional costs, and
- (b) the Employer fails to obtain the approvals and/or consent in accordance with Sub-Clause 2.2.1 of the Particular Conditions, as a result of which, the Contractor suffers delay in Completion and/or additional costs.

1.5.2 In the event that the Employer is in default of its obligations hereunder pursuant to Sub-Clause 1.5.1 of the Particular Conditions, the Contractor shall, upon notice to the Employer, be entitled to any or all of the following rights and remedies (in addition to any other rights and remedies that may be available to the Contractor hereunder or at law or in equity) in accordance with the provisions of Sub-Clause 20.1 [*Contractor's Claim*] of the General Conditions:

- (a) with regard to Sub-Clause 1.5.1(a), (i) where the completion has been or will be delayed, an extension will be granted in respect of such delay in accordance with the provisions of Sub-Clause 8.4 [*Extension of Time for Completion*] of the General Conditions; and (ii) any such cost and reasonable profit shall be paid by the Employer. In addition, where the Contractor has to rework due to the inaccuracy of



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information and instructions submitted by the Employer, the Employer shall also pay for the rework costs for the additional workload by the Contractor resulting therefrom, the calculation of which shall be subject to the standards to be determined by the Parties through consultation; and

- (b) with regard to Sub-Clause 1.5.1(b), (i) where the Completion has been or will be delayed, an extension for such delay will be granted in accordance with the provisions of Sub-Clause 8.4 [*Extension of Time for Completion*] of the General Conditions; and (ii) any such cost and reasonable profit shall be paid by the Employer to the Contractor accordingly.

1.6 Contract Price and Payment

1.6.1 Total Contract Price

As full consideration to the Contractor for the full and complete performance of the Works and all costs and expenses incurred in connection therewith, the Employer shall pay, and the Contractor shall accept, the sum of US\$708,295,101 (Say: United States Dollars Seven Hundred and Eight Million Two Hundred Ninety-Five Thousand One Hundred and One) as the total Contract Price for the EPC Works Scope hereunder. The total Contract Price shall be exclusive of all local taxes (including any value added taxes, withholding taxes, import duties and sales tax).

1.6.2 Composition of Total Contract Price:

1.6.2.1 Items of expenses and costs included in the total Contract Price

The total Contract Price shall include the expenses and costs incurred by the survey, design, purchase of equipment and materials, construction and project management undertaken by the Contractor within the scope of the survey, design, procurement, construction and technical services for the Project.

1.6.2.2 Items of expenses and costs not included in the total Contract Price

The total Contract Price shall exclude the following:

- (a) All taxes incurred for any imports into the location of the Project, including import duties, income tax, GST and other taxes;
- (b) Costs of the local security guards or army engaged to protect the safety of the Site and the Works (for the avoidance of doubt, the Contractor shall bear its own security expenses); and
- (c) Costs of the vessels and raw materials necessary for commissioning and testing.

1.6.3 Adjustment of Contract Price

1.6.3.1 The Contract for the Project shall be calculated on the basis of the sum of the total Contract Price plus the result of any price adjustment in accordance with this Contract;

1.6.3.2 If the Contract already contains the price applicable to a Variation made to the Works, such price shall apply when making adjustment to the Contract Price;

1.6.3.3 If the Contract already contains the price for work items similar to the Variation, the Contract Price may be changed by making reference to such similar price;

1.6.3.4 If the Contract contains no such applicable or similar price, the Contractor may propose an appropriate price for such Variation to the Employer for confirmation before implementation;

1.6.3.5 When the actual quantity of a certain part of the Works changes by more than 1% from the bill of quantities or the quantity indicated in other statements, or any change in quantity directly causes the unit costs of such part of the Works to change by more than 1%, the comprehensive unit price and the corresponding measures fee (if any) shall be adjusted accordingly pursuant to the following: (a) the Contractor shall propose a new comprehensive unit price and measures fee for the increased quantity or the quantity remaining after deduction, and



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then (ii) within 5 days after the Contractor submits its proposal, the Employer or Employer's representative shall confirm in writing before the adjustment can be made to the Contract Price and the proposed price be included into the Contract Price of the Project.

1.6.3.6 The quantity of the Works actually completed shall be measured as described below:

(i) The quantity shall be calculated on the basis of the as-built drawings or, if there is no as-built drawing, the actual working drawings;

(ii) If there are both drawings and the detailed list of materials, the drawings shall prevail in measuring the quantity of the Works; and

(iii) In case of considerable difference between the detailed list of materials and the materials actually shown on the site, the latter shall prevail in measuring the quantity of the Works.

In case of any price adjustment caused by any change in laws and regulations after the Base Date, by the fluctuation of commodity prices or devaluation of foreign exchange rate between United States Dollars and the actual currency used for the procurement of the materials/equipment to be supplied by the Contractor under this Contract, the Contractor may propose a Variation in accordance with Clause 13 of the General Conditions to the Employer for the Employer's confirmation.

1.6.3.7 When the price of any major materials (as detailed in Sub-Clause 1.6.3.8 of the Particular Conditions) to be supplied or used for the EPC of this Project changes by more than $\pm 5\%$ from the base prices, the price shall be adjusted and taxes shall be listed for the part in excess of $\pm 5\%$.

1.6.3.8 Major materials shall include steels, cement, diesel, sand, stones and block stones.

1.6.3.9 Base prices of major materials: The prices confirmed by the Parties jointly 28 days before execution of this Contract.

1.6.4 Performance Security

The Contractor shall, in accordance with the provisions of Sub-Clause 4.2 of the General Conditions hereof, provide the Employer with a Performance Security in an amount equal to 5% of the total Contract Price (i.e. US\$35,414,755).

1.6.5 Defects Notification Period Bond

Within seven (7) days after receiving the Taking-Over Certificate for the last Section, the Contractor shall provide the Employer with Defects Notification Period Bond in an amount equal to 2% of the total Contract Price i.e., US\$14,165,902, which shall be provided by an entity in the country (or other jurisdiction) approved by the Employer, and shall be in the format attached to the Particular Conditions or other formats approved by the Employer.

The Contractor shall ensure the Defects Notification Period Bond remain valid and enforceable until any defect is remedied. Where an expiry date is provided in the clause of the Defects Notification Period Bond, yet the Contractor still has no right to get the Performance Certificate within 28 days prior to the expiry date of the Defects Notification Period Bond, the Contractor shall extend the validity period of the Defects Notification Period Bond until any defect is remedied. Within 3 days after the Contractor receives the Performance Certificate issued by the Employer for a Section, the Employer shall return to the Contractor the Warranty Bond for such Section.

The Employer shall be entitled to make drawings of all or a portion of the amount available under the Warranty Bond in respect of any Section from time to time during the Defects Notification Period if the Contractor fails to perform in accordance with the Contract, including to pay for amounts for which the Employer is entitled to recover from Contractor pursuant to Sub-Clause 11.4 of the General Conditions. For the avoidance of doubt, each Defects Notification Period Bond may be drawn in any order elected by the Employer in respect of such failure by



the Contractor.

1.6.6 Settlement Currency and Invoice

This Contract is denominated and paid in US Dollars. The Contractor shall provide the invoice as required by the Employer in the format as set forth in Appendix X.

1.6.7 Advancement Payment for the Works

Within 15 days after this Contract takes effect, the Employer shall pay a lump sum equal to 7.5% of the total Contract Price (i.e., US\$53,122,132.5) to the Contractor as initial advance payment (the "Initial Advance Payment").

The Employer undertakes that another 7.5% of the total Contract Price (i.e., US\$53,122,132.5) as the second advance payment (the "Second Advance Payment", together with the Initial Advance Payment, the "Advance Payment") shall be paid to the Contractor by it within twelve (12) months after the date of payment of the Initial Advance Payment paid.

At the time of making each Milestone Payment, the Employer shall deduct an amount equal to 15% of such Milestone Payment to repay the Advance Payment, until the Advance Payment is repaid by the Contractor to the Employer in full.

Where the Advance Payment has not been repaid in full before the Taking-Over Certificate for the last Section is issued, or prior to termination in accordance with Clause 15 [*Termination by Employer*], Clause 16 [*Suspension and Termination by Contractor*] or Clause 19 [*Force Majeure*] (as the case may be), then the remaining balance shall immediately become an amount due and payable by the Contractor to the Employer.

1.6.8 Confirmation of Milestone Progress

1.6.8.1 Upon receipt of the Milestone Progress Report prepared by the Contractor according to Sub-Clause 4.2] of the General Conditions, the Employer shall check the completed Milestone Progress Node as reflected in the progress report, and shall, within 7 working days after receiving such Milestone Progress Report: (a) confirm with the Contractor in writing that the Milestone Progress Node has been completed; or (b) refuse in writing to confirm that the Milestone Progress Node has been completed, explain the reasons and point out the work that the Contractor needs to do. The Contractor shall complete such work before issuing the application notice once again under this clause.

1.6.8.2 Where the Employer neither confirms in writing nor refuses to confirm that the Milestone Progress Node has been completed within 7 working days, the Milestone Progress Node shall be deemed to have been completed upon the expiration of said 7 working days of the conformation period. To avoid any doubt, the confirmation of the Milestone Progress Node does not equal to the conformation of Completion stipulated herein. The Completion of the Works and Sections shall be confirmed in accordance with Sub-Clause 10.1 of the General Conditions and other provisions hereof.

1.6.9 Milestone Payments

The Employer shall, according to the Milestone Schedule and Payment Schedule specified in Appendix 4 as well as Milestone Progress Nodes, pay the corresponding Contract Price to the Contractor.

1.7 Defect Remedying

1.7.1 Defects Notification Period:

The Defects Notification Period with respect of each Section shall be 1095 days starting from the day when the Employer issues the Taking-Over Certificate for such Section in accordance with Clause 10 of the General Conditions.

1.7.2 The Contractor shall send its personnel to make repair within 28 days after receipt of any repair notice



within the Defects Notification Period.

1.7.3 For any accident necessitating emergency repair (e.g. leakage of oil, gas or water in the pipeline), the Contractor shall immediately send its personnel to the scene after receipt of the notice of accident from the Employer.

1.8 Customs Clearance Responsibility

The Contractor shall be responsible for customs clearance within the territory of PRC, the cost of which shall be borne by the Contractor. The Employer shall be responsible for customs clearance (customs duty and GST) outside of PRC which shall process the clearance as required by the Contractor and at the cost of the Employer.

1.9 Delivery

After the Contractor submits the application for the commissioning or tests, the Employer shall arrange all necessary conditions within twelve (30) days, including power supply, communications and automatic control. If the commissioning/test fails to take place within twelve (30) days due to Employer's reasons, the Employer shall be deemed as having accepted the commissioning/test. If the Employer rearranges a commissioning/test, it shall bear all the costs so increased.

2 The Employer

2.1.1 The Employer shall coordinate with local governmental agency, obtain visas and handle the relevant documents for all the staff members of the Contractor.

2.1.2 The Employer shall provide to the Contractor the basic data for design except survey, measurement and hydrology, and shall be responsible for the accuracy and correctness of such data.

2.1.3 The Employer shall provide the energy media for construction, commissioning and production for the Completion of the Project.

2.1.4 The Employer shall coordinate with the relevant governmental departments for the convenient and unobstructed traffic of the roads leading to the Site.

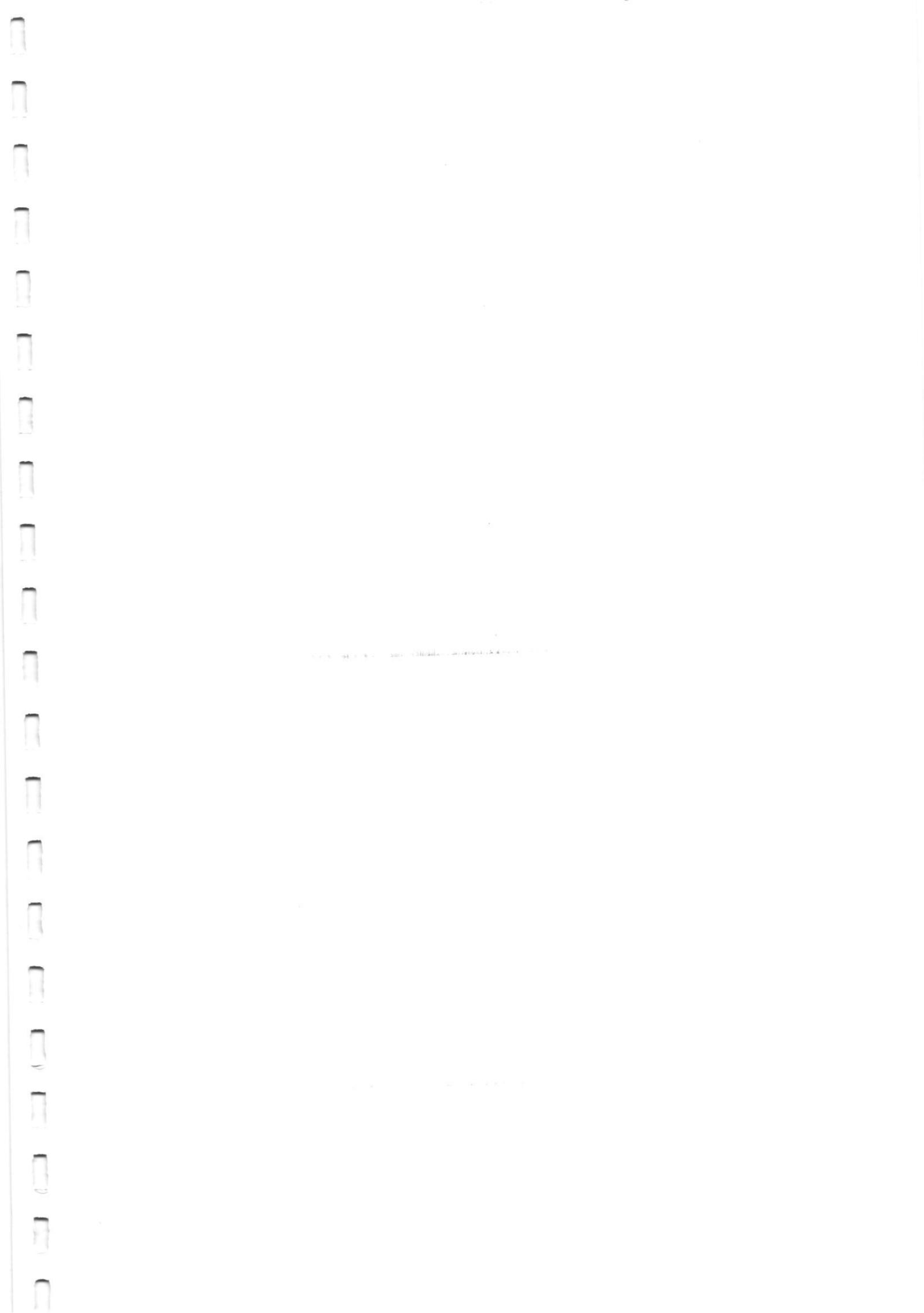
2.1.5 All taxes for imports made to the Project location, including import tariff, income tax and goods and services tax, shall be borne by the Employer, with the exception of all Port Levy fees. Since all the tax exemptions are subject to the approval by the Ministry of Finance and Economic Development ("MoFED") of the Republic of Sierra Leone, before they are exempted or approved by MoFED, if the Employer fails to pay the taxes mentioned in this paragraph and such taxes are actually paid by the Contractor, the Employer shall reimburse such taxes paid by the Contractor in full every three months, until they are fully reimbursed. When requesting reimbursement from the Employer for such taxes, the Contractor shall submit to the Employer the documentary evidence and explanations for paying such taxes, and the Employer shall, within 30 days after receiving such documents and explanations, make payment to the Contractor.

2.1.6 After the notice for Commencement of Works is issued by the Employer, if the Contractor finds that further permits or approvals are necessary for the implementation of this Project in addition to those as set forth in Sub-Clause 2.2.2 of the Particular Conditions, the Employer shall provide assistance and ensure that the Contractor is able to obtain such permits or approvals in a timely manner. Where the Contractor suffers any delay and/or additional costs as a result of the Employer's failure to timely obtain the aforesaid permits or approvals, the Contractor shall render a notice to the Employer and, in accordance with the provisions of Sub-Clause 20.1 [Contractor's Claim], have the right to demand the following:

(a) where the Completion has been or will be delayed, an extension will be granted in respect of such delay in accordance with Sub-Clause 8.4 [Extension of Time for Completion] of the General Conditions;

2.2 Permits, Licenses or Approvals

2.2.1 Before the notice for Commencement of Works is issued by the Employer:



(i) The Employer shall obtain the relevant construction permit, notice to mariners and other necessary certificates or approvals for construction as well as approval documents for temporary land use, as detailed in the list set forth in Appendix 9. Where the Works are obstructed due to incomplete construction formalities, the construction period shall be extended accordingly and the Employer shall indemnify the Contractor for costs and expenses arising therefrom.

(ii) The Employer shall, at its own costs and expenses, obtain the relevant certificates of rights and complete the relevant formalities, which shall be processed in the name of the Employer, for land expropriation, demolition and construction permit. The contractor will reimburse all the cost above to the Employer.

2.2.2 The Employer shall coordinate and handle the protection work of underground pipelines around the construction site, adjacent buildings and structures (including the buildings of historic preservation) as well as ancient and famous trees.

3 Waiver of Sovereign Immunity

The Employer unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this agreement constitutes private and commercial acts rather than public or governmental acts;

(b) agrees that, should any proceedings be brought or any expert determination be sought against it or its assets other than assets protected by the diplomatic and consular privileges in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets;

(c) waives any requirement under the State Proceedings Act, 2000 to give prior notice before bringing a claim against the government;

(d) consents generally in respect of the enforcement of any expert determination or arbitral award (whether by judgment or otherwise) against it in any such proceedings in any jurisdiction and to the giving of any relief or the issue of any process in connection with such determination or proceedings (including the making, enforcement or execution against or in respect of any property whatsoever irrespective of its use or intended use;

(e) consents generally to the jurisdiction, with respect to itself and any and all of its assets and property that it now has or may hereafter acquire, of any court of competent jurisdiction for any action filed by the Company to enforce any arbitral award or decision made pursuant to arbitration conducted pursuant to this Agreement;

(f) waives any objection that it may now or hereafter have to the venue of any action or proceeding brought as consented to in this Agreement and specifically waives any objection that any such action or proceeding has been brought in an inconvenient forum and agrees not to plead or claim the same;

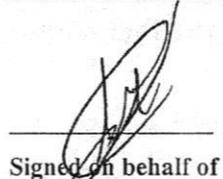
(g) agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court, or in the manner permitted under this Agreement; and

(h) waives any and all rights it may have to enforce any expert determination, judgment or claim in the courts of any jurisdiction.



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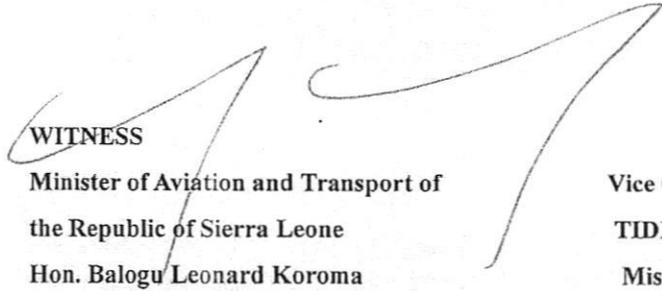
IN WITNESS WHEREOF the parties hereto have hereunto set their respective hands and caused their Common
Seals to be hereunto affixed the day and year first above written.



Signed on behalf of
National Port Development (SL) Ltd
Chairman
Mr. David Ben Lulu



Signed on behalf of
TIDFORE HEAVY EQUIPMENT GROUP CO., LTD
Chairman
Mr. Zhang Yong



WITNESS
Minister of Aviation and Transport of
the Republic of Sierra Leone
Hon. Balogu Leonard Koroma



Vice General Manger of
TIDFORE HEAVY EQUIPMENT GROUP CO., LTD
Miss Zhang Qinwen



APPENDIX A

Employer's Requirements for Port Elizabeth II Expansion Project of the Republic of Sierra Leone

In order to catch up with the pace of foreign trade and ensure development of hinterland economy, the government of Sierra Leone plans to upgrade Port Elizabeth II of Port of Freetown which is the only port in the country. Deep-water container and Ro-Ro terminals are going to be constructed. The government also endeavors to forge it into a container transit port of West Africa.

I. Construction Needs

As follows:

- i. Main construction of three new-built 50000DWT container berths and one new-built 50000DWT (cum 50000DWT bulk berth) Ro-Ro berth with a total quay length of 1280m;
- ii. Dredging of the harbor basin, berths and channels;
- iii. Construction of necessary navigation facilities;
- iv. Land formation, foundation and surface treatment for the back land area which are associated with the berths with a total area of 49.5 hectare.
- v. Handling equipment within the construction scope;
- vi. Water supply and drainage, fire control, electronic lighting and other auxiliary facilities;
- vii. Equipment for port operation and key staff training;
- viii. Construction of main port office managements building as the design submits by SLPA.

Of which:

(I). Port Hydraulic Construction Work

- i. Main construction of three new-built 50000DWT container berths and one new-built 50000DWT (cum 50000DWT bulk berth) Ro-Ro berth with a total quay length of 1280m;
- ii. Dredging works of auxiliary harbor basin, berths and channels;
- iii. Necessary navigation facilities for the new-built harbor basin, berths and channels;
- iv. Main port office (management building) according to design supplied by SLPA.

(II). Land Formation Engineering

- i. Land filling (reclamation) and foundation treatment for the back land area which are associated with the four new-built berths with a total area of 44.5 hectare.
- ii. Bank revetment work of both sides of back land area which are associated with the four new-built berths with a total length of 320m.
- iii. Container yard surface layer and in-port road construction engineering corresponding to the four new-built berths with a total area of 49.5 hectare.

(III). Construction and Erection of Handling Equipment and Other Auxiliary Facilities

- i. Procurement, installation and test of handling equipment to be purchased for the four new-built berths.

Models of equipment to be purchased:

No.	Equipment	Specification	Unit	Q'ty
	Ro-Ro (cum bulk) berth			
1	Portal crane	25t-37m	Set	3
2	Single bucket loader	5m ³	Set	8



3	Single bucket loader	1.5m ³	Set	1
4	Dump truck	40t	Set	5
5	Mobile belt conveyor	V=2.5m/s, B=1.6m	Set	8
6	Traction trolley	SG73-5	Set	3
7	Wheel crane	25t	Set	3
8	Forklift	16t	Set	3
9	Platform weigher	120t	Set	2
二	Container berth			
1	Ship to Shore container crane	41t	Set	6
2	Multi-purpose portal crane	40t	Set	2
3	Gantry container crane	Span: 23.47m, capacity: 45t	Set	10
4	Reach stacker	45t, max pile 5 layers	Set	2
5	Forklift	1~3t	Set	12
6	Container traction chassis		Set	12
7	No-load case stacker	8t	Set	3
8	Inside forklift	3t	Set	3
9	Platform weigher	120t	Set	2

ii. Construction, procurement, installation and test of water supply and drainage, fire control, power supply, lighting and telecommunication for the four new-built berths

II. Time for Completion

Work within this contract should be completed within 48 months.

III. Design and Other Technical Standards

Design, construction, equipment procurement and installation of this project should as per the following design specifications and standards:

1. *General Rules on Waterway Engineering (JTS141-2011)*
2. *Formulation Methods for Pre-feasibility-study Report and Project Feasibility Study Report of Port Construction Project*
3. *Compilation Regulations on Port and Waterway Engineering Construction Drawings (JTS 110-7-2013)*
4. *General Design Standards of Port (JTS165-2013)*
5. *Code for Port Hydrology (JTS145-2-2013)*
6. *Code for Design and Construction of Gravity Quay (JTS167-2-2009)*
7. *Code for Design and Construction of Long Piled Wharf (JTS167-1-2010)*
8. *Design Specifications of Ro-Ro Terminals (JTS165-6-2008)*
9. *Code for Loads in Port Engineering (JTS144-1-2010)*
10. *Code for Foundations in Port Engineering (JTS147-1-2010)*
11. *Code for Design and Construction of Revetment Works of Port and Waterway (JTJ 300-2000)*



1. Design rules for cranes (GB3811)
2. The harbour portal crane (GBT 17495)
3. Safety rules for lifting appliances (GB6067)
4. Lifting appliances-safety devices against overloading(GB12602)
5. Resistance wind safety requirements for the port large size handling machines (JT399)
6. Harbour crane-Technical characteristics and acceptance documents (GB/T 18440)
7. Harbour crane-Acceptance test rule (GB/T 18438)
8. Harbour crane - Technical characteristics and acceptance documents (GB/T 18441)
9. Cranes—Test code and procedures (GB5905)
10. Steel wire ropes for important purposes (GB 8918)
11. Grab basic type and parameter series for the harbour grab (JT7403)
12. Dimensional and capacity series for freight container spreader (GB/T 3220)
13. Criteria for quality inspection and assessment of port engineering installation works (JTJ244)
14. Code for construction and acceptance of electric device of crane electrical equipment installation engineering (GB50256)
15. Code for acceptance of construction quality of steel structures (GB50205)
16. Specifications for construction and acceptance of electrical apparatus installation work (GBJ232)
17. Basic forms and sizes of weld grooves for gas welding manual arc welding and gas-shielded arc welding (GB985)

Design, construction, installation, inspection and test of the crane should as per the following design specifications and standards:

12. Code for Design and Construction of Breakwater (JTS151-1-2011)
13. Code for Seismic Design of Port and Water Engineering (JTS146-2012)
14. Code for Pile Foundations in Port Engineering (JTS167-4-2013)
15. Design Specifications of Concrete Structures in Port and Waterway Engineering (JTS151-2011)
16. Technical Specifications of Wharf Auxiliary Facilities (JTJ297-2001)
17. Design Specifications of Dredging and Reclamation (JTS181-5-2012)
18. Quality Standards of Port and Waterway Engineering (JTS 257-2008)
19. Code for Survey of Port and Waterway Engineering (JTS 131-2012)
20. Quality Standards for Dredging and Land Reclamation (JTS324-2006)
21. Standards of Surveying Quality of Port and Waterway Engineering (JTS258-2008)
22. Concrete Quality Control Standards of Port and Waterway Engineering (JTS202-2-2011)
23. Applied Technical Code for Geosynthetics of Port and Waterway Engineering (JTJ239-2005)
24. Code for Dredging (JTJ319)
25. Hot Rolled Reinforced Bar for Concrete (GB1499)
26. Specification for Welding and Acceptance of Reinforcing Steel Bars (JGJ18-2012)
27. Code for Utility Technical of Concrete Admixture (GB50119-2013)
28. Technical Code for Application of Geotextile in Port and Waterway Engineering (JTJ239-2005)



- v Environmental Impact Assessment Report
- iv Project Feasibility Report
- iii As-built Drawing
- ii Operation & Maintenance Manual
- i Survey & Design Information

IV. Technical Files to be submitted by the Contractor

- 42. International Electro technical Commission IEC standards
- 41. International Standard Organization ISO standards
- 40. Structure Welding Code—Steel—AWS, USA
- 39. Sveriges Mekans for bunds Standard central—SIS, Sweden
- 38. F.E.M. Rules for the design of Hoisting Appliances
- 37. Quality of electric energy supply—Harmonics in public supply network (GB/T14549)
- 36. Indoor AC high voltage switchgear panel (DL/T404)
- 35. Crane electric control equipment (JB4315)
- 34. Rotating electrical machines—Rating and performance (GB755)
- 33. Standard directions of movement for actuators which control the operation of electrical apparatus (GB4205)
- 32. Degrees of protection provided by enclosure (IE529)
- 31. Degrees of protection provided by enclosures for low-voltage apparatus (GB4942.2)
- 30. Colours of indicator lights and push-buttons used in electrical assembly devices (GB 2682)
- 29. General requirements for the file formation of scientific and technological archives (GBT11822-2008)
- 28. Low-voltage switchgear and control gear assemblies (GB 7251.1)
- 27. Basic testing method of low-voltage switchgear assembly (GB9466)
- 26. Code for construction and acceptance of cable levels electric equipment installation engineering (GB50168)
- 25. Low-voltage switchgear assembly (GB7251)
- 24. Rust grades and preparation grades of steel surfaces before application of paints and related products (GB8923)
- 23. Specification of anti-corrosive coating for port machinery steel structure (JT7733)
- 22. Methods of test for measurement of dry film thickness of paints (GB1764)
- 21. Method for manual ultrasonic testing and classification of testing results for ferritic steel welds (GB11345)
- 20. Methods for radiographic inspection and classification of radiographs for fusion welded butt joints in steel (GB3323)
- 19. Quality assurance of welding Requirement for fusion welding joint of steel and classification for imperfection (GB/T12469)
- 18. Basic forms and sizes of weld grooves (GB986)

APPENDIX B

Sheet of Subdivision Work of Elizabeth II Quay of Freetown Expansion Project of the Republic of Sierra Leone

No	Construction Unit	Construction Parts	Subdivisional Work
1	Main construction of the Quay	Foundation	Dredging
			Riprapping
			Punning
			Levelling
			Front riprapping
		Wall	Caisson precasting
			Caisson installation
			Backfilling inside caisson
			C30 concrete cover-plate for caisson top
		Upper structure	Site cast breast wall
			Settlement joint
		Docking and protection facilities	Bollard
			Boat fender
			Threshold
		Rail beam and rail installation	Cast-in-place concrete pile
			Cast-in-site rail beam
			Rail installation
			Bumper & anchorage block
		Backfill and surface course	Riprap mound
			Rear wharf gravel filter layer
			Rear wharf rubble filter layer
			Rear wharf geotextile filter layer
			Backfilled sand vibroflotation
			Cement stabilized soil base course
Sand cushion			
C50 strong concrete interlocking block layer			
2	Bank-protection work	Embankment	10-100kg core
			60-100kg toe layer rubble
			60-100kg rock mattress
			Revetment inner side gravel filter layer
			Revetment inner side rubble filter layer
			Revetment inner side geotextile filter layer
		Paving	1.2T rock block cover
		Upper structure	Broken-stone course
			Concrete wave wall
			Settlement joint of wave wall

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3	Ro-Ro cargo handling equipment	Portal crane
		Single-bucket loader
		Dump truck
		Mobile belt conveyor
		Traction trolley
		Wheel crane
4	Container handling equipment	Quayside container bridge
		Multi-purpose portal crane
		RTG
		Forklift
		Container traction chassis
		Empty-load case stacker
		In-box forklift
		Ground weigher
5	Electrical engineering equipment	Transformer
		HV/LV cabinet
		Power distribution box
		Lighting and earthing
		Cable bridge
6	Communication control equipment	Belt conveyor surveillance system
		Industrial television monitoring system
		Cabling system
		Substation automation system
		Container computer management system
		Wire telephone
		VHF
		Interphone



APPENDIX C

**Overall Schedule of the Expansion Project of Elizabeth II Quay of Port of
Freetown of the Republic of Sierra Leone**



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APPENDIX D

Milestone Plan and Payment Schedule of Expansion Project of Elizabeth II Quay of the Port of Freetown of the Republic of Sierra Leona

No	Milestone	Payable project funds (Ten thousand dollars)	Actual amounts of payable project funds (Deduct 15% of advance payment each installment) (Ten thousand dollars)	Total project funds (Ten thousand dollars)	Remarks
1	Advance payment after signing of contract	10619.94			
2	Submit reconnaissance report	1200.00	1020.00	1200.00	
3	Submit design documents	1600.00	1360.00	1600.00	
4	Assign project insurer	338.27	287.53	338.27	
5	Assign project supervisor	1594.57	1355.38	1594.57	
6	Provide equipment purchasing list (Start equipment processing)	6302.66	5357.26	14774.66	4 berth in total
	Complete equipment installation and commissioning for each berth	2118.00	1800.30		
7	Complete temporary works	3000.00	2550.00	3000.00	
8	Complete every six caissons pre-casting	327.08	278.02	5233.27	96 pcs in total
9	Complete every six caissons installation	766.51	651.53	12264.14	96 pcs in total
10	Complete every 70m breast wall casting	266.87	226.84	4879.90	1280m in total
11	Complete installation of boat fender, bollard and steel rail	1049.00	891.65	1049.00	
12	Complete acceptance of wharf construction unit	1171.32	995.62	1171.32	
13	Complete reclamation of harbor basin and berth	499.29	424.40	499.29	
14	Complete acceptance of reclamation of harbor basin and berth	24.96	21.22	24.96	

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15	Complete construction of revetment work of container berth	616.64	524.14	616.64	
16	Complete acceptance of revetment work of container berth	30.83	26.21	30.83	
17	Complete construction of revetment work of Ro-Ro berth	367.38	312.27	367.38	
18	Complete acceptance of revetment work of Ro-Ro berth	18.37	15.61	18.37	
19	Backfill 1/8 area	927.30	788.20	7418.36	
20	Complete acceptance of backfilling works	370.92	315.28	370.92	
21	Foundation treatment 1/8 area	499.23	424.35	3993.86	
22	Complete acceptance of foundation works	199.69	169.74	199.69	
23	Surface course 1/8 area	690.29	586.75	5522.35	
24	Complete acceptance of surface course works	276.12	234.70	276.12	
25	Complete construction of subsidiary buildings	1071.00	910.35	1071.00	
26	Complete acceptance of subsidiary buildings	53.55	45.52	53.55	
27	Complete acceptance of installation of handling equipment	2928.20	2488.97	2928.20	
28	Complete acceptance of water supply and drainage and fire protection works	67.91	57.72	67.91	
29	Complete acceptance of environmental protection works	39.81	33.84	39.81	
30	Complete acceptance of power supply and lighting works	277.16	235.59	277.16	
31	Complete acceptance of communication control works	570.53	484.95	570.53	
Total		70829.51	56663.61	70829.51	



APPENDIX E

Technical Standards and Quality Assurance System

1. Technical Standards

Design, construction, equipment procurement and installation of this project should as per the following design specifications and standards:

1. General Rules on Waterway Engineering (JTS141-2011)
2. Formulation Methods for Pre-feasibility-study Report and Project Feasibility Study Report of Port Construction Project
3. Compilation Regulations on Port and Waterway Engineering Construction Drawings (JTS 110-7-2013)
4. General Design Standards of Port (JTS165-2013)
5. Code for Port Hydrology (JTS145-2-2013)
6. Code for Design and Construction of Gravity Quay (JTS167-2-2009)
7. Code for Design and Construction of Long Piled Wharf (JTS167-1-2010)
8. Design Specifications of Ro-Ro Terminals (JTS165-6-2008)
9. Code for Loads in Port Engineering (JTS144-1-2010)
10. Code for Foundations in Port Engineering (JTS147-1-2010)
11. Code for Design and Construction of Revetment Works of Port and Waterway (JTJ 300-2000)
12. Code for Design and Construction of Breakwater (JTS151-1-2011)
13. Code for Seismic Design of Port and Water Engineering (JTS146-2012)
14. Code for Pile Foundations in Port Engineering (JTS167-4-2012)
15. Design Specifications of Concrete Structures in Port and Waterway Engineering (JTS151-2011)
16. Technical Specifications of Wharf Auxiliary Facilities (JTJ297-2001)
17. Design Specifications of Dredging and Reclamation (JTS181-5-2012)
18. Quality Standards of Port and Waterway Engineering (JTS 257-2008)
19. Code for Survey of Port and Waterway Engineering (JTS 131-2012)
20. Quality Standards for Dredging and Land Reclamation (JTS324-2006)
21. Standards of Surveying Quality of Port and Waterway Engineering (JTS258-2008)
22. Concrete Quality Control Standards of Port and Waterway Engineering (JTS202-2-2011)
23. Applied Technical Code for Geosynthetics of Port and Waterway Engineering (JTJ239-2005)
24. Code for Dredging (JTJ319)
25. Hot Rolled Reinforced Bar for Concrete (GB1499)
26. Specification for Welding and Acceptance of Reinforcing Steel Bars (JGJ18-2012)
27. Code for Utility Technical of Concrete Admixture (GB50119-2013)
28. Technical Code for Application of Geotextile in Port and Waterway Engineering (JTJ239-2005)

And the design, construction, installation, inspection and test of the cranes should as per the following design specifications and standards:



1. Design rules for cranes (GB3811)
2. The harbour portal crane (GBT 17495)
3. Safety rules for lifting appliances (GB6067)
4. Lifting appliances-safety devices against overloading(GB12602)
5. Resistance wind safety requirements for the port large size handling machines (JT399)
6. Harbour crane-Technical characteristics and acceptance documents (GB/T 18440)
7. Harbour crane-Acceptance test rule (GB/T 18438)
8. Harbour crane - Technical characteristics and acceptance documents (GB/T 18441)
9. Cranes-Test code and procedures (GB5905)
10. Steel wire ropes for important purposes (GB 8918)
11. Grab basic type and parameter series for the harbour grab (JT403)
12. Dimensional and capacity series for freight container spreader (GB/T 3220)
13. Criteria for quality inspection and assessment of port engineering installation works (JT244)
14. Code for construction and acceptance of electric device of crane electrical equipment installation engineering (GB50256)
15. Code for acceptance of construction quality of steel structures (GB50205)
16. Specifications for construction and acceptance of electrical apparatus installation work (GBJ232)
17. Basic forms and sizes of weld grooves for gas welding manual arc welding and gas-shielded arc welding (GB985)
18. Basic forms and sizes of weld grooves (GB986)
19. Quality assurance of welding Requirement for fusion welding joint of steel and classification for imperfection (GB/T12469)
20. Methods for radiographic inspection and classification of radiographs for fusion welded butt joints in steel (GB3323)
21. Method for manual ultrasonic testing and classification of testing results for ferritic steel welds (GB11345)
22. Methods of test for measurement of dry film thickness of paints (GB1764)
23. Specification of anti-corrosive coating for port machinery steel structure (JT733)
24. Rust grades and preparation grades of steel surfaces before application of paints and related products (GB8923)
25. Low-voltage switchgear assembly (GB7251)
26. Code for construction and acceptance of cable levels electric equipment installation engineering (GB50168)
27. Basic testing method of low-voltage switchgear assembly (GB9466)
28. Low-voltage switchgear and control gear assemblies(GB 7251.1)
29. General requirements for the file formation of scientific and technological archives (GBT11822-2008)
30. Colours of indicator lights and push-bulbions used in electrical assembly devices(GB 2682)
31. Degrees of protection provided by enclosures for low-voltage apparatus (GB4942.2)
32. Degrees of protection provided by enclosure (IE529)
33. Standard directions of movement for actuators which control the operation of electrical apparatus (GB4205)



34. *Rotating electrical machines--Rating and performance (GB755)*
35. *Crane electric control equipment (JB4315)*
36. *Indoor AC high voltage switchgear panel (DL/T404)*
37. *Quality of electric energy supply—Harmonics in public supply network (GB/T14549)*
38. *F.E.M. Rules for the design of Hoisting Appliances*
- 39.

II. Quality Assurance System

1. Construction Quality Objective

Implement national engineering quality acceptance standards currently in effective and reach qualified standards.

2. Quality Management Rules

Project manager is directly responsible for quality management. Quality engineer is in charge of control, inspection, information feedback and quality problem solving and at the same time he is under supervision of supervisors and delegates sent by the Owner. Responsibilities of project quality jobs are as follows:

2.1 Project Manager

2.1.1 Chief responsible person of the project and be fully responsible for project quality on behalf of the company.

2.1.2 Take the initiative to implement national norms and standards on project quality. Implement lifelong liability of construction quality. Improve personnel quality and law awareness.

2.1.3 Responsible for the Owner. Implement quality documents formulated by design and supervising engineer in time. Organize learning of such documents and practice effective utilization.

2.1.4 In charge of implementation of quality management responsibility system, contract management, assessment of sub-contractors and checking of work of chief engineer, project vice-manager and each department.

2.2 Project Vice-manager

2.2.1 In charge of implementation of project quality policies and objectives;

2.2.2 In charge of coordination of construction of unit projects and sub-divisional works;

2.2.3 In charge of formulation and implementation of annual, quarterly and monthly construction schedule;

2.2.4 In charge of assessment of construction organization and design, organization of typical construction of key projects, checking other departments work.

2.3 Project Chief Engineer



2.3.1 In charge of project quality management under the guidance of project manager;

2.3.2 In charge of implementation of ISO9002 and effective execution of quality management system;

2.3.3 In charge of establishment and improvement of quality assurance system, organization of construction as per Construction Organization Plan approved and assurance of project quality.

2.3.4 In charge of formulation of project quality assurance plan and solutions for key technical issues;

2.3.5 In charge of organization of implementation of inspection and testing, control of measurement and testing equipment as well as accounting of technical factors;

2.3.6 In charge of formulation and implementation of corrective and preventive measures.

2.4 Responsibility of Engineering Department

2.4.1 In charge of implementation of project quality plan under the guidance of chief engineer;

2.4.2 In charge of compilation of construction organization plan and technical disclosure;

2.4.3 In charge of formulation of construction production plans and issuing of such plans to each construction team;

2.4.4 In charge of on-site quality issues and settlement of such issues, and making amendments and supplements to current design documents and construction measures on condition that project quality can not be guaranteed, as well as supervision and implementation of such amendments and supplements.

2.4.5 In charge of compilation of operator instructions and specific technical quality standards.

2.5 Safety and Quality Assurance Department

2.5.1 In charge of establishment and operation of quality assurance system and formulation of quality objectives of manager department;

2.5.2 In charge of compilation and implementation management procedures and implementing regulations of quality assurance system and supervision of each department in compilation and implementation of its own quality management procedures and implementing regulations.

2.5.3 In charge of supervision and examination of effective implementation of quality assurance measures;

2.5.4 In charge of organization of compilation and amendment of project quality assurance plan;

2.5.5 Attendance at qualification appraisal of suppliers;



2.5.6 In charge of interface management of quality assurance system and quality inspection;

2.5.7 In charge of implementation of quality plan, acceptance of control point and hold point of construction and quality; formulation of non-conformance report and assessment of solutions proposed by technical departments as well as implementation of such solutions;

2.5.8 Take actions against non-conformance services including construction suspension and making reports to project manager;

2.5.9 Report quality conditions to department in charge and project manager and assist project manager with reviewing and assessment of effectiveness of quality system;

2.5.10 In charge of implementation of "Three Checks" which include self-check, mutual check and random check by quality team, acceptance of such checks according to scope of examination and project schedule, as well as filling of construction inspection reports.

2.6 Ship Materials Department

2.6.1 In charge of investigation and assessment of suppliers of main raw materials, components and equipment, selection of such suppliers and submitting such recommendations to project manager for approval;

2.6.2 In charge of sampling inspection of incoming materials (including customer property), collaboration with attesting officers, and delivering such samples to field laboratory or other qualified local inspection authorities;

2.6.3 In charge of field material identification and setting up of accounting book for tracking and control;

2.6.4 In charge of storage and accumulation of incoming materials to guarantee effectiveness of material quality;

2.6.5 Ensure sound performance of on-site equipment and accuracy and reliability of instruments. In charge of maintenance, repair and management of construction ships and vessels and mechanical equipment. Ensure their normal operation. In charge of supply of fuel, material and freshwater for ships, vessels and mechanical equipment. In charge of procurement of spare parts of ships, vessels and mechanical equipment.

3、 Quality Management System

3.1 Quality Liability System

Implement ISO9002 quality system documents. Establish quality liability system for each post with clear division of work and individual responsibility.

Implement three-class management and economic responsibility contract system managed by project department, construction department and construction teams. Clear division of responsibility, rights and interests among project department, construction department and construction teams should be made and incentive and punishment measures should be established. Production plan will be sent to construction department at the beginning of each month by project department. Head of the construction department will need to sign on it in that this is directly linked to economic benefits. Inspection and assessment on project quality will be taken by relevant departments which are functional departments of project department.



3.2 Quality Training

3.2.1 Project managers should raise employees' awareness of quality. They should be informed that quality constitutes the life of an enterprise and quality is benefit. All employees should attach great importance on working quality as well as product. They should put quality in their first priority.

3.2.2 Enhance training for operators, especially for newly employed migrant workers. They can only work on their posts after qualified training. Construction personnel should have a clear understanding about operation tips and quality requirements.

3.3 Joint Trial System of Drawings

Organize technicians and other relevant personnel learn how to review drawings. Problems concerning design drawings should be solved together with design units in time. Joint trial record should be filled out and ask the Owner, designer and supervisor to write comments and sign their names on it.

3.4 Quality Planning

Field inspection should be conducted by relevant personnel prior to construction to get a basic knowledge about construction conditions. Construction features of this project should be analysed and discussed by technicians and construction management personnel under the guidance of project leaders. Plans selected should meet such requirements as project schedule, quality, safety, environmental protection and low construction cost. Designs, objectives and specific assurance measures should be formulated on this basis.

3.5 Technical Disclosure System

Prior to construction, technicians, quality controllers and safety officers should complete technical disclosure in writing to construction personnel.

3.6 Typical Construction System

Typical construction should be taken for newly started projects. Construction features of this project can be known through typical construction. Feasibility of given technologies and quality assurance ability should be inspected and summarized. Improving measures should be taken to perfect construction process and ensure normal performance of the next process.

3.7 Quality Management Point

Quality management points should be set up for key and difficult processes. Solution activities should be held by means of brainstorming. Specific pre-control measures should be formulated and implemented. Implementation results can be testified through examination. Improve project quality by means of PDCA.

3.8 Construction Baseline Acceptance and Observation System

Plane coordinates and benchmarks given by the Owner should be rechecked carefully. Feedback of issues should be submitted to supervisor in time. Construction plane control network and vertical control network should be established on this basis. Measuring and calculation results should be submitted to supervisor in writing. They can be put into use only after they are testified to be qualified by a third party. Observation points for buildings displacement and subsidence should be set up according to regulations. Observation should be conducted regularly and relevant documents should be organized.

3.9 Process Acceptance System

Acceptance of processes should be conducted in time by relevant personnel. For concealment construction, concealment construction receiving reports should be filled out and submitted to supervisory engineer. The subsequent process can not be conducted if the last one has not be accepted or is unqualified.



3.10 Test and Measurement

Strengthen management of test and measurement, measurement inspection, concrete strength test and other indicators tests. Control of such indicators as concrete strength should be accurate and be calculated, analyzed and summarized in time. Inspection and calibration of testing and measuring tools should be conducted regularly. Unqualified ones can not be put into use.

3.11 Raw Material Control

Strengthen control of raw materials. Incoming raw materials must have product certificate and acceptance certificate. Re-examination should be taken for incoming materials based on regulated batches. Unqualified materials are not allowed to put into use.

3.12 Technical Innovations

During construction, new techniques, new materials, new technologies should be introduced and applied so as to increase economic returns and ensure quality. Quality seminars and field dispatching meetings should be held regularly to solve key issues in construction.

4、 Quality Assurance Technical Measures

4.1 Preparation prior to Construction

4.1.1 Organize relevant personnel for field inspection to get familiar with natural and construction conditions of the project.

4.1.2 Organize learning of drawings for technicians and other relevant personnel. Solve problems concerning drawings in time. Fill in record of joint check up in the drawing and ask the Owner and supervisor to write comments and sign their names on it.

4.2 Technical Management during Construction

4.2.1 Prior to construction, technicians, quality controllers and safety officers should complete technical disclosure in writing to construction personnel and listen to suggestions. Clear division of responsibilities should be made and technical disclosure should be complete.

4.2.2 Typical construction should be carried out first for key projects prior to normal construction.

4.2.3 Formulate project quality measures plan and establish quality management point for milestone operations.

4.2.4 Organization and acceptance of construction baseline, calculation sheet, concealment engineering checks and completion documents. Visas should be prepared in time with complete procedures.

4.2.5 During construction, new techniques, new materials, new technologies should be introduced and applied so as to increase economic returns and shorten construction period.

4.2.6 Quality seminars and field dispatching meetings should be held regularly to solve key issues in construction.

4.2.7 Strengthen management of tests and measurement. Incoming raw materials must have product certificate and acceptance certificate. Only qualified measuring tools can be used.



4.2.8 Improve qualities and skills of staff. Professional training should be conducted for newly employed migrant workers regularly. They can only work on their posts after qualified training.

4.2.9 Strengthen inspections on raw materials. Re-examination should be taken for incoming materials. Unqualified materials are not allowed to put into use.

4.2.10 Chief technicians should do their job carefully and properly. Construction sketches and technical disclosures should be reviewed and signed. Records of instructions, design alteration and work amount should be in detail.

4.2.11 Inspection of raw materials should be conducted carefully and properly by the laboratory so as to improve work quality and technical level.



APPENDIX F

List of Technical Documents to be Submitted for the Elizabeth II Quay Expansion Project of the Republic of Sierra Leona

No	Item	Specs	Q'ty	Remarks
1	Feasibility Study Report of the Elizabeth II Quay Expansion Project of the Republic of Sierra Leona	Printed	10	
		Electronic	1	
2	Construction Design of the Elizabeth II Quay Expansion Project of the Republic of Sierra Leona	Printed	8	
		Electronic	1	
3	As-built Drawings of the Elizabeth II Quay Expansion Project of the Republic of Sierra Leona	Printed	8	
		Electronic	1	
4	Reconnaissance Report of the Elizabeth II Quay Expansion Project of the Republic of Sierra Leona	Printed	8	
		Electronic	1	
5	Hydrologic Survey Report of the Elizabeth II Quay Expansion Project of the Republic of Sierra Leon	Printed	8	
		Electronic	1	
6	Wave Mathematical Model Test Report of the Elizabeth II Quay Expansion Project of the Republic of Sierra Leon	Printed	8	
		Electronic	1	
7	Bathymetric Chart of the Elizabeth II Quay Expansion Project of the Republic of Sierra Leon	Printed	8	
		Electronic	1	
8	Environmental and Social Impact Assessment Report of the Elizabeth II Quay Expansion Project of the Republic of Sierra Leon	Printed	8	
		Electronic	1	



APPENDIX G

Training Arrangement

I. Technical Training in Factory

- 1 In order to help the Buyer master usage of contract equipment as soon as possible and ensure reasonable usage, maintenance and operation of equipment after delivery, the Seller should invite 2-4 technicians (mainly technical managers) from the buyer for a two-week technical training (principally electrical technology) in the seller's factory. (In two groups, each 1-2 persons).
- 2 Training of electrical technology is divided into three parts which are PLC, speed regulation device and surveillance management.
- 3 PLC: Programming language, operation methods of programmers, modification and debugging of procedures and data on off-line/on-line condition.
- 4 Speed regulation device: Main structures, location of key components, definition of wire jumpers, interfaces, on-lines and methods for setting, calculation and debugging of parameters.
- 5 Surveillance management system: Application of software, etc.
- 6 Training approach: Combination of theoretical lectures and practical operation.

II. On-site Technical Training

The Seller shall provide a two-phase on-site training course for operators, maintenance and repair personnel (the first phase for operators which lasts two weeks; the second phase for maintenance and repair personnel which lasts one week). Approximately six people can participate each phase's training course. This training course can come between installation and commissioning courses. Through such training, operators should master operation and maintenance methods of portal cranes, and maintenance and repair personnel should be proficient at debugging via application of instruments as well as performing complicated maintenance and repair. The Seller should ensure training quality and have assessments for trainees.



APPENDIX H

General Conditions of Dispute Adjudication Agreement

- 1
Definitions
- Each "Dispute Adjudication Agreement" is a tripartite agreement by and between:
- (a) the "Employer";
 - (b) the "Contractor"; and
 - (c) the "Member" who is defined in the Dispute Adjudication Agreement as being:
 - (i) the sole member of the "DAB" (or "adjudicator") and, where this is the case, all references to the "Other Members" do not apply,
- or
- (ii) one of the three persons who are jointly called the "DAB" (or "dispute adjudication board") and, where this is the case, the other two persons are called the "Other Members".
- The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Adjudication Agreement, which incorporates this Appendix. In the Dispute Adjudication Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.
- 2
General Provisions
- The Dispute Adjudication Agreement shall take effect when the Employer, the Contractor and each of the Members (or Member) have respectively each signed a dispute adjudication agreement.
- When the Dispute Adjudication Agreement has taken effect, the Employer and the Contractor shall each give notice to the Member accordingly. If the Member does not receive either notice within six months after entering into the Dispute Adjudication Agreement, it shall be void and ineffective.
- This employment of the Member is a personal appointment. No assignment or subcontracting of the Dispute Adjudication Agreement is permitted without the prior written agreement of all the parties to it and of the Other Members (if any).
- 3
Warranties
- The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Employer's Representative. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.
- When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:
- (a) experienced in the work which the Contractor is to carry out under the Contract,
 - (b) experienced in the interpretation of contract documentation, and
 - (c) fluent in the language for communications defined in the Contract.
- 4
General Obligations of the Member
- The Member shall:
- (a) have no interest financial or otherwise in the Employer or the Contractor, nor any financial interest in the Contract except for payment under the Dispute Adjudication Agreement;



- (b) not previously have been employed as a consultant or otherwise by the Employer or the Contractor, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Adjudication Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Adjudication Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer or the Contractor, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Adjudication Agreement, be employed as a consultant or otherwise by the Employer or the Contractor, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer or the Contractor regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Adjudication Agreement;
- (h) ensure his/her availability for any site visit and hearings as are necessary; and
- (i) treat the details of the Contract and all the DAB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any).

5

General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contractor otherwise than in the normal course of the DAB's activities under the Contract and the Dispute Adjudication Agreement, and except to the extent that prior agreement is given by the Employer, the Contractor and the Other Members (if any). The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

- (a) be appointed as an arbitrator in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for 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 Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he/she is relieved from liability under the preceding paragraph.

6

Payment

The Member shall be paid as follows, in the currency named in the Dispute Adjudication Agreement:

- (a) a daily fee which shall be considered as payment in full for:
 - (i) each working day spent reading submissions, attending hearings (if any), preparing decisions, or making site visits (if any); and



- (ii) each day or part of a day up to maximum of two days travel time in each direction for the journey (if any) between the Member's home and site or another location of a meeting with Other Members (if any) and/or the Employer and the Contractor;
- (b) all reasonable expenses incurred in connection with the Member's duties, including the cost of secretarial services, telephone calls, courier charges, faxes and telexes, travel expenses, hotel and subsistence costs; a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (a) of this Clause; and
- (c) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The daily fee shall be as specified in the Dispute Adjudication Agreement.

Immediately after the Dispute Adjudication Agreement takes effect, the Member shall, before engaging in any activities under the Dispute Adjudication Agreement, submit to the Contractor, with a copy to the Employer, an invoice for (a) an advance of twenty-five (25) percent of the estimated total amount of daily fees to which he/she will be entitled and (b) an advance equal to the estimated total expenses that he/she shall incur in connection with his/her duties. Payment of such invoice shall be made by the Contractor upon his receipt of the invoice. The Member shall not be obliged to engage in activities under the Dispute Adjudication Agreement until each of the Members has been paid in full for invoices submitted under this paragraph.

Thereafter the Member shall submit to the Contractor, with a copy to the Employer, invoices for the balance of his/her daily fees and expenses, less the amounts advanced. The DAB shall not be obliged to render its decision until invoices for all daily fees and expenses of each Member for making a decision shall have been paid in full.

Unless paid earlier in accordance with the above, the Contractor shall pay each of the Member's invoices in full within 28 calendar days after receiving each invoice and 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.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Adjudication Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DAB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.8 of the Conditions of Contract.

If the Member does not receive payment of the amount due within 28 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice to the Employer and the Contractor. The notice shall take effect when received by them both. Any such notice shall be final and binding on the Employer, the Contractor and the Member.

7
Default of the Member

If the Member fails to comply with any obligation under Clause 4, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DAB which are rendered void or ineffective.



8

Default of the Member

Any dispute or claim arising out of or in connection with this Dispute Adjudication Agreement, or the breach, termination or invalidity thereof, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.



Annex PROCEDURAL RULES

- 1 The Employer and the Contractor shall furnish to the DAB one copy of all documents which the DAB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the matter in dispute. All communications between the DAB and the Employer or the Contractor shall be copied to the other Party. If the DAB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
- 2 The DAB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DAB shall:
 - (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
 - (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
- 3 The DAB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
- 4 Except as otherwise agreed in writing by the Employer and the Contractor, the DAB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer and the Contractor, and to proceed in the absence of any party who the DAB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.
- 5 The Employer and the Contractor empower the DAB, among other things, to:
 - (a) establish the procedure to be applied in deciding a dispute,
 - (b) decide upon the DAB's own jurisdiction, and as to the scope of any dispute referred to it,
 - (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules,
 - (d) take the initiative in ascertaining the facts and matters required for a decision,
 - (e) make use of its own specialist knowledge, if any,
 - (f) decide upon the payment of financing charges in accordance with the Contract,
 - (g) decide upon any provisional relief such as interim or conservatory measures, and
 - (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Employer, relevant to the dispute.
- 6 The DAB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DAB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Employer and the Contractor in writing. If the DAB comprises three persons:
 - (a) it shall convene in private after a hearing, if any, in order to have discussions and prepare its decision;
 - (b) it shall endeavour to reach a unanimous decision: if this proves impossible, the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and



- (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
 - (i) either the Employer or Contractor does not agree that they do so,
 - (ii) or the absent Member is the chairman, and he/she instructs the other Members to not make a decision.

