

ASIAN INTERNATIONAL ARBITRATION CENTRE

STANDARD FORM OF DESIGN AND BUILD CONTRACT (2018 EDN.)

THE STANDARD FORM OF DESIGN AND BUILD CONTRACT (2018 EDN.)

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ARTICLES OF AGREEMENT

THIS AGREEMENT is made on the _____ day of _____
20____.

BETWEEN

1. _____ (Company No. _____) of (or whose
business/registered office is situated at) _____
(called "*the Employer*") of the first part.

AND

2. _____ (Company No. _____) of (or whose
business/registered office or business is situated at) _____
(called "*the Contractor*") of the second part.

WHEREAS

A. The Employer is desirous of
.....
(called the "*Works*") at.....
(called the "*Site*").

B. The Employer has issued to the Contractor its requirements (called the "*Employer's Requirements*") and thereupon requested the Contractor to submit proposals including the design, drawings, specifications and pricing for the undertaking of the Works.

- C. The Contractor has examined the Site, the Employer's Requirements and the Invitation To Tender Documents and has submitted its Tender including the design, drawings, specifications and pricing for the carrying out of the Works (called the "*Contractor's Proposals*").
- D. The Contractor in furtherance of the above and as part of its Contractor's Proposals has submitted a sum of money which it will require for the undertaking of the complete Works in accordance with the Employer's Requirements and the Conditions of Contract (called the "*Contract Sum*") and has submitted a breakdown of the said Sum (called the "*Contract Sum Analysis*").
- E. The Employer has examined the Contractor's Tender including the Contractor's Proposals, the Contract Sum Analysis and other relevant documents and has accepted the said Tender for the undertaking and completion of the Works in accordance with the Contract.
- F. The Employer has appointed..... to act as the "*Employer's Representative*" (in short, the "*E.R.*") for the purposes of the Contract.

Signed by the authorized representative)
of the Employer in the presence of)

Name: _____ Name: _____
I.C. No: _____ I.C. No: _____

Signed by the authorized representative)
of the Contractor in the presence of)

Name: _____ Name: _____
I.C. No: _____ I.C. No: _____

CONDITIONS OF CONTRACT

PART I: DEFINITIONS AND GENERAL PROVISIONS

1.0 Definitions and Interpretation

1.1 Definitions

Unless the context otherwise requires, the Contract, or an item, or entry in the Appendices specifically otherwise provides, the following words and phrases in the Contract and the Appendices shall have the meaning given below, or ascribed in the clauses, or Appendix item to which reference is made:

- | | | |
|-----|---|--|
| (a) | “AIAC” | means the Asian International Arbitration Centre (or its legal successor); |
| (b) | “Appropriate Authority, or Authorities” | means any statutory authority or authorities having jurisdiction over the Works; |
| (c) | “Articles” | means the articles in the Articles of Agreement; |
| (d) | “As-built drawings” | means the plans of the completed Permanent Works designed, constructed/installed and handed over by the Contractor and any other as-built drawings required to be provided as specified in the Contract Documents; |
| (e) | “Certificate” | means a formal certificate issued by the E.R. and/or any other authorized person under the particular provision of the Contract; |
| (f) | “CIPAA” | means the Construction Industry Payment and Adjudication Act 2012 (Act 746); |
| (g) | “Clause” | means the whole or any part of these Conditions of Contract; |

- (h) "Completion Date" means the date (s) for completion of the Works stated in the Appendix I under Clause 2.0 or the last extended date granted under Clause 31.0;
- (i) "Completion Costs" means the total costs referred to in Clause 43.0;
- (j) "Conditions" or "Conditions of Contract" means these Conditions of Contract, including all the revisions, amendments and/or amplifications as may be agreed by the Parties and thereupon incorporated as part of these Conditions of Contract;
- (k) "Contingency Sum" means the sum as defined and referred to in sub-clause 27.1(b)(i);
- (l) "Contract" means the agreement between the Employer and the Contractor as represented by the Contract Documents;
- (m) "Contract Documents" means the Contract between the Employer and the Contractor for the design and execution of the Works incorporating the documents listed in Clause 5.0;
- (n) "Contract Sum" means the sum stated in the Letter of Acceptance, the Articles of Agreement and Clause 3.0 as payable to the Contractor for the design and execution of the Works or such other sum as shall become payable at the times and in the manner prescribed by the Contract;
- (o) "Contractor" means the Party named in the second part of the Articles of Agreement and includes the Contractor's personal representatives, heirs, successors, executors, administrators, servants and agents or any other person on whom the rights and obligations under the Contract have been transferred with the express agreement of the Employer;

- (p) "Contractor's Equipment" means any mechanical and/or electrical items, machinery, apparatus and other things required for the design and execution of the Works under the Contract but shall exclude the Temporary Works, Employer's Equipment (if any), Plant, Materials and Goods any other things intended to form part of the Permanent Works;
- (q) "Contract Period" means the time frame stipulated in Clause 2.0;
- (r) "Contractor's Personnel" means the Contractor's Representative ("C.R.") and all personnel whom the Contractor utilizes for the purposes of the design and execution of the Works, be this on-site or off-site, who may include the Contractor and each Subcontractor, and any other personnel assisting the Contractor in the design and execution of the Works;
- (s) "Contractor's Plant" means all appliances, machinery, vehicles or things of whatever nature required for the purposes of the design and execution of the Works but do not include Contractor's Equipment;
- (t) "Contractor's Proposals" means the document entitled Contractor's Proposals as defined in the Articles of Agreement and Clause 5.9 submitted with the Letter/Form of Tender, and as included in the Contract comprising but not limited to all drawings, specifications, design, schedules and pricing submitted by the Contractor for the carrying out of the Works;
- (u) "C.R." means the Contractor's Representative and is the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Clause 16.0 who acts for and on behalf of the Contractor for the purposes of the Contract;

- (v) "Contract Schedule of Rates" means the rates as stipulated in Appendix V to be used for the valuation of Variations comprising primarily the Schedule of Unit Rates and the Schedule of Dayworks Rates;
- (w) "Contract Sum Analysis" means the sum stated in the Appendix IV and Clause 37.0 which is proposed by the Contractor as the amount which it will require for the carrying out of all that is necessary for undertaking all the Works in accordance with the Contract. It shall constitute an analysis/breakdown of the Contract Sum provided by the Contractor in accordance with the Employer's Requirements;
- (x) "Date of Commencement" means the date(s) fixed and stated in Appendix I and Clause 2.0;
- (y) "Date for Completion" means the date fixed and stated in Appendix I, or any other date as provided for in Clause 32.0;
- (z) "Date for Possession" means the date stated in the Letter of Acceptance and/or in Clause 2.0 and Appendix I;
- (aa) "Date of Practical Completion" means the date stated in the Certificate of Practical Completion issued pursuant to Clause 32.0;
- (ab) "Date of Tender" means the date of closing of the Tender or the date of the Contractor's latest amendment or revision of the Tender prior to the date of Letter of Acceptance, whichever is the later;
- (ac) "Day" means a calendar day according to the Gregorian calendar including the day of rest but excluding gazetted holidays applicable to the Site where the Work is physically carried out (and not off-Site works);
- (ad) "Dayworks" means Works (usually Variations) carried out and paid for on a day-work basis, namely on a cost-plus basis, where the

work cannot be measured and valued by reference to the Contract Schedule of Unit Rates;

- (ae) "Defects" means any defect or defects as defined in sub-clause 36.1;
- (af) "Defects Liability Period" means the period as stipulated in sub-clause 36.3;
- (ag) "Employer" means the Party named in the first part of the Articles of Agreement and includes the Employer's legal successors or personal representatives and any person to whom the rights of the Employer have been assigned or transferred under agreement in writing of the Contractor under Clause 17.0;
- (ah) "Employer's Requirements" means the document entitled the Employer's Requirements as defined in the Articles of Agreement and Clause 5.9 and 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;
- (ai) "E.R." means the Employer's Representative as stated in Appendix I and/or its successors in office and is the person appointed by the Employer to act as its representative for the purposes of the Contract; being designated as such in the Articles of Agreement and in the Appendix I;
- (aj) "E.R.'s Assistants" means any person, or persons delegated, or authorized in writing by the E.R. to perform any of the duties of the E.R. as may be from time to time notified in writing to the Contractor by the E.R. pursuant to sub-clause 6.3(a) of the Contract. Also called the E.R.A.s;
- (ak) "Equipment" means any mechanical and/or electrical equipment, machinery, apparatus, or items to be provided under the

Contract intended to form or forming part of the Works but shall not include the Contractor's Plant and Contractor's Equipment;

- (al) "EOT" means extension of time;
- (am) "Exceptionally Inclement Weather" means the weather conditions giving rise to an EOT as defined in Clause 31.0;
- (an) "Final Account" means the documents showing the adjustment of the Contract Sum issued under Clause 43.0;
- (ao) "Final Certificate" means the document issued by the E.R. under Clause 43.0;
- (ap) "Final Design" means the design of the Works for execution in accordance with Clause 14.0;
- (aq) "Float" means in the context of the programme, the time available for an activity in addition to its planned duration and includes both free float and total float;
- (ar) "Force Majeure" means an exceptional event or circumstance as defined in Clause 56.0;
- (as) "Goods" means composite and/or manufactured items or products for incorporation into the Permanent Works;
- (at) "Interim Certificate" means any one of the progress payments certificates issued by the E.R. under Clause 41.0;
- (au) "Laws" means all federal (and state) legislation, statutes, ordinances, and other laws and regulations and by-laws of every legally constituted public authority;
- (av) "Letter of

Acceptance”	means the letter of formal acceptance by the Employer of the Contractor’s final offer incorporating any adjustments, modifications, revisions to the Contractor’s Tender agreed between the Employer and the Contractor as contained in Clause 5.0;
(aw) “Liquidated Damages”	means the damages payable by the Contractor for late completion of the Works as defined in Clause 35.0 and Appendix I;
(ax) “Limit of Liquidated Damages”	means the amount as stated in the Appendix I under Clause 35.0;
(ay) “Limit of Retention Monies”	means the amount as stated in the Appendix I under Clause 41.9;
(az) “Lump Sum Fixed Price”	means the Lump Sum Fixed Price (that is not subject to price fluctuations) the Contractor has submitted for undertaking the design and execution of the Works under the Contract; which sum is not subject to re-measurement/re-calculation for adjustments unless as expressly permitted under the Contract for Provisional Sums, Contingency Sums, Variations and other adjustments;
(ba) “Maintenance Period”	means the servicing and maintenance period stated in the Appendix I commencing on the day following the Date for Completion or handing over of the whole or any Section of the Works per Clause 36.0;
(bb) “Materials”	means things of all kinds (other than Plant and Goods) 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;
(bc) “Method Statement”	means a written description of the Contractor’s proposed manner of safely carrying out the Works (including the

Temporary Works) or parts thereof, setting out assumptions underlying the chosen method and the reasoning behind the approach to the various phase of construction/installation including details of key resources encompassing labour, Contractor's Personnel, Contractor's Plant and Contractor's Equipment;

- (bd) "Month"

means a calendar month according to the Gregorian calendar;
- (be) "On-Cost Charges"

means any cost and expenses reasonably incurred by the Employer;
- (bf) "Officer Named"

means the person empowered and/or authorized to take action on behalf of the Employer pertaining to specific Clauses in the Contract;
- (bg) "Party" or "Parties"

means the Employer and/or the Contractor, as the Contract requires;
- (bh) "Payment Schedule"

means the schedule of payment (if any) included in the Contract pursuant to Clauses 37.0 and 41.0;
- (bi) "Penultimate Certificate"

means the payment certificate issued by the E.R. under Clause 43.0;
- (bj) "Performance Bond"

means the bond required to be provided by the Contractor as a security for due performance of the Contract under Clause 13.0;
- (bk) "Performance Security"
or "Performance Security
Deposit"

means the security deposit to be provided by the Contractor to the Employer in accordance with Clause 13.0;
- (bl) "Period of Honouring
Certificates"

means the period for honouring payment certificates stated in Appendix I under Clause 41.0;
- (bm) "Permanent Works"

means the permanent works other than the Temporary Works to be executed by the Contractor under the Contract;

(bn) "Person"	means an individual (natural person), sole proprietorship, firm (partnership), or body corporate;
(bo) "Plant"	means the apparatus, machinery and/or appliances intended to form or forming part of the Permanent Works;
(bp) "Provisional Sum"	means the sum as defined and referred to in sub-clause 27.1(b)(ii);
(bq) "Public Holiday"	means every Sunday or any day which is a public holiday by virtue of any enactment of the government or a state government in which State the Site is located;
(br) "Records"	means all documents required by the Contract to be maintained by the Contractor and all other documentary evidence reflecting properly all transactions and matters under or in connection with the Contract;
(bs) "Retention Monies"	means the sum of the amount retained in accordance with sub-clause 41.9;
(bt) "Retention Percentage"	means the percentage stated in the Appendix I under reference to sub-clause 41.9;
(bu) "Section"	means a part of the Works referred to in sub-clause 29.4(a);
(bv) "Sectional Completion"	means completion of a Section per Clause 33.1;
(bw) "Site"	means the land and other places as stipulated in sub-clause 29.1;
(bx) "Specialist"	means any Sub-contractor providing specialist services, for design (including consultants) and/or other specialist Works under, and for the purposes of the Contract and who may be either the Contractor's domestic Sub-contractor, or novated Sub-contractor;
(by) "Sub-contractor"	means any Sub-Contractor including novated sub-contractor, novated supplier and other domestic Sub-Contractor and

supplier employed by the Contractor for the purposes of the Works;

- (bz) "Suspension" means the temporary cessation of the Contract, or the work under the Contract (as the case may be) before the Contract is completed;
- (ca) "Tender" means the Contractor's official signed and priced offer to the Employer for the design, execution and completion of the complete Works and all other documents which the Contractor submitted therewith in response to the Employer's Invitation to Tender/Employer's Requirements;
- (cb) "Temporary Works" means all such works of every kind (other than the Contractor's Equipment and Contractor's Plant) required on Site for the execution and completion of the Permanent Works and the remedying of any Defects;
- (cc) "Variation" means any change to the Works as described under Clause 39.1;
- (cd) "Week" means a period of 7 consecutive days;
- (ce) "Works" means the works specified in the Contract Documents and shall include Temporary Works and Permanent Works and any changes made to these works in accordance with the Contract;
- (cf) "Year" means 365 consecutive days and 366 consecutive days for a Leap Year;

1.2 Interpretation

In the interpretation of the Contract, unless the context requires otherwise:

- (a) The terms "approved, or approval" and "directed, or direction" wherever used in the Contract shall be in writing;

- (b) “Written” or “in writing” shall mean any handwritten, type-written, or printed communication including facsimile transmission, and any other electronic transmission reduced to a printed form;
- (c) Words importing the singular include the plural and vice versa where the context requires;
- (d) Any gender includes every gender;
- (e) “Shall” or “must” wherever used means that the requirement, or condition specified is mandatory;
- (f) “May” or “will” wherever used means that the requirement, or condition is discretionary;
- (g) The headings are for convenience of reference only and shall not be deemed to be part of the Contract, or be taken into consideration in the interpretation or construction of the Contract;
- (h) Unless otherwise specifically stated, a reference in the Contract and the Appendices to any Clause means that Clause in the Contract;
- (i) All references to provisions of statutes, regulations, by-laws or any written law include such provisions as amended, modified, rectified or re-enacted;
- (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Contract, or any part of it;
- (k) Where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning; and
- (l) The Contract and the Appendices (i.e. Appendix I to V) are to be read as whole and the effect, or operation of any Clause in the Contract, or item in, or entry in the Appendices shall, unless otherwise specifically stated, be read subject to any relevant qualification, or modification in any other Clauses in the Contract or item in or entry in the Appendices.

2.0 CONTRACT PERIOD

2.1 Contract Period

The Contract Period shall be a period as stipulated in Appendix I.

2.2 Date of Commencement and Ending

Further to sub-clause 2.1, the date of commencement and ending of the Contract Period shall be as stated in Appendix I.

3.0 CONTRACT SUM

The Employer hereby covenants to pay the Contractor in consideration for the complete design, construction and execution of the entire Works as stated in this Contract and/or implied for the same and making good of any Defects whatsoever to the Works, a Lump Sum Fixed Price of:

.....

(.....) or, such other sum as shall become payable under and at the times and in the manner specified in the Contract.

4.0 SCOPE OF CONTRACT

4.1 Scope of Contract

The Contractor shall upon and subject to the provisions of this Contract:

- (a) Design, construct, test and commission, complete, hand-over and maintain the Works during the Maintenance Period including the making good of Defects during the Defects Liability Period as shown in the Employer's Requirements and the Contractor's Proposals and or in the various constituent parts of this Contract and/or implied therefrom in compliance therewith to the reasonable satisfaction and/or approval of the E.R.
- (b) Without derogating from the generality of the above, provide all design services, labour, Materials, Goods, Plant, Equipment and workmanship of the quality and standards therein specified and/or inferred therefrom to ensure that the finished Works are fit for the purpose(s) as stipulated in this Contract and to the reasonable satisfaction and/or approval of the E.R.

- (c) Strictly comply with any of the Employer's planning, coordination and scheduling requirements as set out in this Contract and/or as issued to the Contractor by the E.R. from time to time during the currency of the Contract.
- (d) Organize, plan, schedule and coordinate the execution of the Works including the Works of third parties engaged by the Employer (if any), any governmental/statutory authorities, public/private utilities providers, the E.R. and their authorized servants, agents and/or representatives.
- (e) Liaise with all relevant planning authorities/bodies, governmental/statutory authorities and public/private utilities providers and their authorized servants, agents and/or representatives for the purpose of the execution of the Works under this Contract.

4.2 Consequential/Incidental Work

- (a) Since the Contractor bears "single point responsibility" for all aspects of the Works, it must also undertake any consequential/incidental work of whatsoever nature and scope in relation to the construction and completion of Works, be these off-site or on the site i.e. removal/diversion of public sewer, water mains, electrical mains, gas mains and telephone mains and the installation of permanent connections thereto;
- (b) This shall also include all necessary temporary connections required for the purposes of the Works under the Contract;
- (c) All costs and time provisions involved for such work as stated in sub-clauses 4.2(a) and (b) above, shall be included in the Contract Sum (unless these are separately stipulated to be part of the Provisional Sum (if any)) and Contract Period.

4.3 Scope during Defects Liability and Maintenance Period

The Contractor shall also make good any Defects which may appear during the Defects Liability Period and service and maintain the completed Works during the Maintenance Period in accordance with Clause 36.0 hereof.

5.0 CONTRACT DOCUMENTS

5.1 Copies of the Contract Documents

- (a) The Contract shall be prepared in two original copies by the Contractor (unless otherwise agreed to by the Parties); the price of the same shall be included as a separate item in the Contract Sum Analysis and/or deemed to be included in the Contract Sum.
- (b) Unless mutually agreed to the contrary, the Parties shall execute the Contract within 30 Days of the receipt by the Contractor of the Letter of Acceptance from the Employer. The costs of executing the Contract Documents inclusive of any stamp duties and/or other incidental charges shall be borne by the Contractor and unless separately priced in the Contract Sum Analysis, shall be deemed to be included in the Contract Sum.
- (c) Immediately after execution of the Contract, the Contractor shall give the Employer, an original copy of the Contract Documents; with its copy being retained in its custody.
- (d) Such number of certified true copies of the original Contract Documents as directed by the E.R. shall be prepared by the Contractor and handed over to the E.R not later than 14 Days after the due execution of the Contract.

5.2 Further Documents

- (a) The Contractor shall, in addition to the original copy of the Contract Document referred to in sub-clause 5.1 above, provide to the E.R. without any charge (unless the E.R. has been previously furnished) with an electronic (soft) copy in an agreed format of the following documents(as amended/revised/agreed following any tender clarifications/negotiations):
 - (i) The Contractor's Tender; and
 - (ii) The Contractor's Proposals; and
 - (iii) The Contract Sum Analysis; and
 - (iv) The Contract Schedule of Rates (including the Schedule of Daywork Rates); and
 - (v) Any other document(s) as mutually agreed to by the Parties.
- (b) The further documents stipulated in sub-clause 5.2(a) shall be provided by the Contractor to the E.R. within 14 Days of the Date of Possession, or date of commencement of the Contract Period (whichever is earlier).

- (c) The Employer/E.R. may obtain from the Contractor at its own cost any further copies of the said documents required by it thereafter.
- (d) The Contractor, may if and when necessary, furnish to the Employer/E.R. without charge, such further drawings, details and/or documents as are reasonably necessary either to:
 - (i) explain and amplify the Contract Documents and/or the deliverables required under the same; or
 - (ii) enable the E.R. to undertake its obligations including auditing, the granting of approvals, consents and certifications in accordance with the Contract.
- (e) Sub-clause 5.3(d) is subject to the proviso that nothing contained in the above drawings and details shall impose any obligation on the Contractor beyond that imposed by the Contract Documents.

5.3 Documents to be kept on Site

- (a) The Contractor shall keep one set of the documents stated in sub-clause 5.1(d) above and a set of working or construction drawings on the site.
- (b) The said documents shall at all reasonable times be available for inspection and use by the E.R., the E.R.'s Assistants and any other person, or persons authorized by the E.R. in writing.

5.4 Confidentiality and limitation of use of Documents

- (a) Further to Clause 65.0, the Contractor shall treat the Contract and everything contained in it as private and confidential.
- (b) None of the Contract Documents mentioned in the Contract and in particular in sub-clause 1.1(m) shall be used by the Contractor for any purpose other than that for the Contract.
- (c) In particular, the Contractor shall not divulge (unless otherwise required at law and/or as stipulated in sub-sub-clause 65.1(a)) any information, drawing or photograph concerning the Works and shall not use the Works or the Site for the purpose of

advertisement except with the written consent of the E.R. and subject to such conditions as the E.R. may prescribe.

- (d) Upon final payment being made pursuant to the issuance of the Final Account and Final Certificate under Clause 43.0, the Contractor, if so requested to in writing by the E.R., return to the Employer within 21 Days of receipt of such request, all such documents pertaining to the Contract as are stated by the E.R. in its said request.

5.5 Contents and Sufficiency of Contract Documents

- (a) The following documents shall be deemed to form, and be read and construed as part of the Contract Documents:
 - (i) The Letter of Acceptance;
 - (ii) The Articles of Agreement;
 - (iii) The Conditions of Contract and the Appendix I ;
 - (iv) The Employer's Requirements (Appendix II);
 - (v) The Form of Tender;
 - (vi) The Contractor's Proposals (Appendix III);
 - (vii) The Contract Sum Analysis (Appendix IV);
 - (viii) The Contract Schedule of Rates (Appendix V);
 - (ix); and
 - (x) Any other documents incorporated in the Contract Documents unless expressly stated to be excluded in any of the provisions of the Contract.
- (b) The Contract Documents are to be read/taken as mutually explanatory of one another. In the event of any conflict or inconsistency between any of the above-mentioned documents, the priority in the interpretation of such documents shall be in the descending order as listed above. The Contractor shall provide everything necessary for the proper design and execution of the Works until its completion according to the true intent and meaning of the Contract Documents taken together whether the true intent and meaning may or may not be particularly shown or described provided that it can be reasonably inferred therefrom.
- (c) The Contractor is deemed to have examined each and every document which together comprise the Contract Document as listed above and is satisfied that there are no ambiguities, discrepancies, inconsistencies, divergences, design or construction

impracticalities or omissions from, within or between such documents and that such documents are sufficient in all respects for the purposes of its undertaking and completing the design and execution of the Works as stipulated in the Contract.

- (d) If the Contractor shall find any discrepancy in, or divergence between any two, or more of the Contract Documents including a discrepancy, or divergence between parts of any one of them, it shall immediately give to the E.R. a written notice specifying the discrepancy or divergence and the proposed means of resolving the same for the latter's consent. This shall be subject to the proviso that such discrepancy, or divergence shall not vitiate the Contract and that the Contractor shall not be entitled to any time and costs incurred in undertaking/implementing the said proposal.

5.6 Employer's Requirements and Contractor's Proposals

- (a) The Employer's Requirements and Contractor's Proposals are contained in Appendices II & III respectively.
- (b) In the event of any conflict between any provisions contained in the Employer's Requirements and the Contractor's Proposals, the former shall prevail unless confirmed otherwise in writing by the E.R.; subject to the proviso that the Contractor shall not be entitled to any additional costs and/or time incurred therefrom.
- (c) Where specific lists or alternative makes or brands of equipment, materials and goods are stipulated by the Contractor in the Contractor's Proposals and/or incorporated into the Contract, it shall have the right of election provided the same comply with the Employer's Requirements and/or the relevant provisions of the Contract without any price and/or time adjustment to the Contract.

PART II: THE E.R. AND E.R.'S ASSISTANTS

6.0 THE E.R. AND E.R.'S ASSISTANTS

6.1 E.R.'s Duties and Authority

- (a) The duties and authority of the E.R. shall be those stated in or necessarily implied from the Contract. However, unless as stated expressly to the contrary in the Contract, the E.R. shall have no authority to relieve the Contractor of any of the latter's duties and/or obligations under the Contract;

- (b) Without derogating from the generality of the above sub-clause, the E.R. shall be responsible for the overall administration of the Contract including the direction of the design and the execution of the Works, for and on behalf of the Employer;
- (c) In undertaking its said obligations, the E.R. is only responsible for auditing the Contractor's design and other obligations for compliance with the Contract insofar as the E.R.'s approval/acceptance obligations under the Contract are concerned. In undertaking the said role, the E.R. shall at no time, be liable to the Contractor and/or the Employer either primarily, or on a joint and several basis; and
- (d) Unless otherwise stipulated, all matters regarding the Works shall be dealt with by the Contractor solely with the E.R.
- (e) The Employer may replace the E.R. with a suitable person of its choice at any time during the currency of the Contract by giving the Contractor a written notice of the same not less than 7 Days before the intended date of replacement.
- (f) The E.R.'s duties and obligations under the Contract shall cease and it shall become *functus officio* following the issuance of the Final Certificate under Clause 43.4.

6.2 E.R.'s Assistants

- (a) The Employer or the E.R. may from time to time appoint such number of E.R.'s Assistants as it deems fit;
- (b) The E.R.'s Assistants shall be responsible to the E.R. and shall carry out such duties and exercise such authority as may be delegated to them by the E.R. under sub-clause 6.3;
- (c) References to the E.R. in the Contract shall include references to the E.R.'s Assistants duly appointed pursuant to this clause.

6.3 E.R.'s Authority to Delegate

- (a) The E.R. may from time to time delegate to the E.R.'s Assistants any of the powers, duties or authority vested in the E.R.;

- (b) The E.R. may also at any time revoke all or part of such delegation as is deemed necessary in its opinion;
- (c) Any such delegation or revocation as mentioned in the above sub-clauses shall be in writing and shall not take effect until a copy of such delegation or revocation has been formally delivered to the Contractor;
- (d) The delegation under this Clause shall not preclude the E.R. from itself exercising or performing at any time any of the delegated powers, duties and authority;
- (e) Any act done, or instruction or approval given by the E.R.'s Assistants to the Contractor within the terms of such delegation shall have the same effect as though it had been effected by the E.R.;
- (f) Sub-clause 6.3(e) above shall be subject to the following provisos:
 - (i) any failure of the E.R.'s Assistants to disprove any work, or Material or Goods or Plant or Equipment shall not prejudice the power and authority of the E.R. thereafter to disprove, or issue instructions for the rectification of such work or items; and
 - (ii) if the Contractor disputes any act, decision, or instruction of the E.R.'s Assistants, the Contractor shall refer the matter within D days to the E.R. who shall either confirm, reverse, or vary (as the case may be) the act, decision or instruction of the E.R.'s Assistants accordingly; and
 - (iii) if the Contractor does not formally dispute such act, decision or instruction of the E.R.'s Assistants within 7 Days of its occurrence or official communication to it, then the Contractor shall be deemed to have accepted the same.

6.4 Appointment of Further Assistants

- (a) The E.R. or the E.R.'s Assistant may appoint such number of persons to assist the E.R.'s Assistant in carrying out such duties and exercise such authority (if any) as it deems fit;
- (b) Such persons shall have no authority to issue any instructions to the Contractor except for such instructions as may be necessary to enable them to carry out their duties and to verify that the quality and workmanship of the Works are in accordance with the provisions of the Contract.

6.5 No Waiver of Employer's Rights

The Contractor agrees that no act, omission, verification, approval, monitoring or supervision by the E.R., the E.R. Assistants and/or any further persons (as stipulated in sub-clauses 6.4(a) and (b) above) shall relieve the Contractor from any or all of its obligations and responsibilities under the Contract unless expressly provided otherwise in the Contract.

6.6 No Duty of Care

- (a) Neither the E.R. nor the E.R's Assistants shall owe a duty of care to the Contractor.
- (b) Further and in addition to the foregoing, they shall not be obliged to notify the Contractor of any default and/or omission on the latter's part in executing the Works under the Contract or otherwise provide any advice in respect of the same.

7.0 E.R.'S RIGHT TO TAKE ACTION

7.1 E.R.'s right to take action

Notwithstanding any provision in the Contract to the contrary, it is hereby agreed that:

- (a) the right to act on behalf of the Employer in respect of any matter which arises out of the provisions of Clauses 35.0, 51.0, 52.0, 53.0, 54.0, 56.0 or 58.0, where appropriate, is expressly reserved to the Officer Named in Appendix I;
- (b) the power of the E.R. to issue instruction requiring a variation under Clause 39.0 shall be subject to the financial limits as set out in Appendix I hereto. If the instruction for a variation under Clause 39.0 is more than the financial limits as set out in Appendix I, the E.R. shall obtain the prior written approval of the Employer.

7.2 No entitlement to Contractor

The Contractor shall not be entitled to an extension of time, or any extra cost, or expense or whatsoever arising from compliance with this Clause 7.0.

8.0 E.R.'S INSTRUCTIONS

8.1 Scope of E.R.'S Instructions

The E.R. may from time to time issue further directions and/or instructions (all of which are hereafter collectively referred to as "E.R.'s instructions") regarding:

- (a) the Variation as referred to in Clause 39.0 and 66.0 hereof;
- (b) any discrepancy in or between the Contract Documents as referred to in sub-clause 5.8 (d) hereof;
- (c) the removal from the Site of any Materials or Goods or Plant or Equipment brought thereon by the Contractor and the substitution of any other Materials or Goods or Plant or Equipment therefor;
- (d) the removal and/or re-execution of any Works executed by the Contractor;
- (e) the dismissal from the Works of any person mentioned in sub-clause 15.10 hereof employed thereupon;
- (f) the opening up for inspection of any work covered up;
- (g) the rectification and making good of any Defects whatsoever under Clause 36.0;
- (h) the expenditure of any Contingency Sum and/or Provisional Sum pursuant to sub-clause 27.2(a);
- (i) any matter which is necessary and incidental to the carrying out and completion of the Works under the Contract; and
- (j) any matter in respect of which the E.R. is expressly empowered by the Contract to issue instructions.

8.2 Instructions to be in Writing

- (a) All instructions issued by the E.R. shall be in writing;
- (b) If such instruction is given other than in writing, i.e. orally, it shall have no contractual effect until it is reduced to in writing by the E.R. The date of the instruction shall be then the date when the oral instruction is reduced to in writing by the E.R. and formally issued to the Contractor;
- (c) If an instruction issued by the E.R. is not in writing and is not confirmed by it as aforesaid, but the Contractor nevertheless does comply with the same, then the E.R. may confirm the same in writing with an E.R.'s instruction at any time prior to the issuance of the Final Account under Clause 43.0, and the said instruction shall be

deemed to have taken effect on the date when it was first communicated to the Contractor otherwise than in writing by the E.R;

- (d) All instructions issued by the E.R. shall clearly stipulate a reasonable period (as determined by the E.R.) for the Contractor to comply with the said instruction. Such period shall commence on the date of the official receipt of the relevant instruction by the Contractor.

8.3 Compliance with the E.R.'s Instructions

- (a) Subject to sub-clause 6.3(f)(ii) above, upon receipt of the E.R.'s Instruction, the Contractor shall immediately comply with it;
- (b) If by its nature and extent, an E.R.'s Instruction is reasonably capable of being implemented within the period stipulated in the instruction, the Contractor shall immediately proceed to complete the said instruction within that time period;
- (c) Should by its nature and extent the Contractor considers that an E.R.'s Instruction is not capable of being implemented within the period stipulated in the instruction, it shall:
 - (i) immediately commence with the implementation of the instruction and shall proceed expeditiously to give effect to it; and
 - (ii) immediately, but not later than 2 Days after official receipt of the instruction (unless it is an urgent instruction having a period of compliance of less than 2 Days in which case the Contractor shall act within 6 hours) officially request the E.R. in writing, to be granted an extension to the stipulated period which the Contractor considers to be reasonable. In the application for such an extension, the Contractor shall disclose all material facts and details to enable the E.R. to make a considered decision on the necessary time extension to be given; and
 - (iii) within 2 Days of receipt of the Contractor's application for extension (unless the total stipulated period of the instruction is shorter) the E.R. shall either approve or reject with reasons, the Contractor's application. Such a decision shall be in writing. If the extension is granted, the new period for the Contractor to comply shall be clearly identified and communicated to the latter. If the E.R. fails and/or neglects to respond either way, after the lapse of the 2 Days period, it shall be deemed that the E.R. has no objections to the Contractor's application.

8.4 Effect of Non-Compliance

(a) If the Contractor does not comply with an E.R.'s Instruction within the:

- (i) time stipulated in the instruction; or
- (ii) within any time extended by virtue of sub-clause 8.3(c) above.

then the Employer may, without prejudice to any other rights or remedies which it may possess under the Contract, be entitled to the remedies as stipulated in sub-clause 8.4(b) below.

(b) The Employer may:

- (i) undertake the work itself; or
- (ii) pay another Contractor, or any other person to execute any work which may be necessary to give effect to such instruction; or
- (iii) take any other action it deems necessary to remedy the Contractor's default of non-compliance.

(c) The Employer shall be entitled to deduct all costs and expenses incurred as a consequence of taking an action or actions as stated in sub-clause 8.4(b) above (including On-Cost Charges) from:

- (i) any money due or to become due to the Contractor under the Contract; and
- (ii) failing which such deductions shall be recovered from the Performance Security, or
- (iii) as a debt due from the Contractor.

The Contractor shall be solely and wholly responsible for all such costs and expenses arising out of its non-compliance.

8.5 Urgent Repairs

(a) Notwithstanding sub-clause 8.1, if by reason of any accident, or failure, or other events occurring to, or in connection with the Works, either:

- (i) during the execution of the Works; or
- (ii) during the Defects Liability Period and/or the Maintenance Period.

any remedial, or other work which is in the opinion of the E.R. necessary, and the Contractor is either unable, or unwilling immediately upon being notified to do such remedial or other work, the E.R. may instruct any other competent third party of its choice to carry out such remedial or other work and the Contractor shall abide by such decision.

- (c) If the remedial or other work so instructed by the E.R. is work which in the E.R.'s opinion the Contractor was liable to do or for which it is otherwise responsible under the Contract, the amount of any cost, loss and expense or damage incurred (inclusive of On-Cost Charges) in carrying out the same shall be recoverable by the Employer from the Contractor pursuant to sub-clause 8.4(c) above.

9.0 EFFECT OF E.R.'S CERTIFICATES

9.1 No Certificate is Conclusive

No certificate of the E.R. under any provision of the Contract shall:

- (a) be considered as conclusive evidence as to the sufficiency of any work, Materials, Goods, Plant and/or Equipment to which it relates and the designs (as applicable); or
- (b) relieve the Contractor from its liability to amend, rectify and make good all Defects; or
- (c) relieve the Contractor from its liability for any other duty and/or obligations under the Contract.

9.2 No Certificate is Final and Binding

Further to and in amplification of sub-clause 9.1, no Certificate of the E.R. shall be final and binding in any dispute between the Employer and the Contractor if the dispute is brought, whether before an adjudicator, arbitrator or in the Courts (as applicable).

10.0 ACCESS FOR WORKS, ETC.

10.1 Access for the E.R.

- (a) The E.R., the E.R.A.s, and any person expressly authorized by the E.R. shall at all reasonable times have full and unrestricted access to:
 - (i) all parts of the Site;
 - (ii) all parts of the Works;
 - (iii) all places from which natural materials are obtained; and
 - (iv) all factories, workshops or other places of the Contractor, or of any Sub-contractor where any Materials, Goods, Plant, Equipment or work are being designed, manufactured, fabricated, assembled, prepared, tested or stored for the Contract.
- (b) Without derogating from the generality of sub-clause 10.1(a), the E.R., the E.R.A.s and the E.R.'s authorized representatives shall at all reasonable times during the production, manufacture and construction (at the Site or elsewhere) be entitled:
 - (i) to check the progress of manufacture and/or production of Materials, Goods, Plant and Equipment; and
 - (ii) to examine, inspect, measure and test the Materials, Goods, Plant, Equipment and the workmanship; and

The Contractor shall give the E.R., the E.R.A.'s and the E.R.'s authorized representatives full opportunity to undertake these activities, including providing unrestricted access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility under the Contract.

10.2 Notification

- (a) For the avoidance of doubt, the E.R. shall give reasonable written notice to the Contractor before invoking the provisions of sub-clause 10.1 for applications that are "off-site".
- (b) The Contractor shall give a written notice to the E.R. whenever any work is:
 - (i) ready, and before it is covered up; or
 - (ii) put out of sight; or
 - (iii) packaged for storage, or transport

- (c) Upon receipt of the Contractor's notice under sub-clause 10.2(b), the E.R. shall then either:
 - (i) carry out the necessary examination, inspection, measurement, or testing without unreasonable delay; or
 - (ii) promptly give notice to the Contractor that the E.R. does not require to do so.
- (d) If the Contractor fails to give the notice, the Contractor shall, if and when required by the E.R., uncover the work and thereafter reinstate and make good, all at the Contractor's cost and time.

10.3 Facilities for and Coordination/Interfacing with Others

- (a) The Contractor acknowledges that the Employer will have other Works including works on Site, or adjacent thereto, carried out concurrently with the Works under this Contract by:
 - (i) other Contractors employed by the Employer; or
 - (ii) any governmental, or statutory authority, or utilities providers; or
 - (iii) the authorized servants or agents of i) and ii) above.
- (b) The Contractor further acknowledges that it is of paramount importance that all Works thereon are fully and completely coordinated, interfaced and integrated in view of their concurrent and/or sequential nature.
- (c) Accordingly, the Contractor shall:
 - (i) take all necessary steps to ensure that the design and the Works are coordinated, interfaced and integrated with the design and construction of such other Works, and shall in particular (but without limitation) consult, liaise and co-operate fully with those responsible for carrying out such other Works, including the preparation of joint schedules, Method Statements, coordination drawings and specifications (as applicable); and
 - (ii) not impede, but shall afford all reasonable facilities, access and/or services to the Employer, the E.R., any public or private utilities provider, any governmental or statutory authority, their authorized servants or agents and others who may

be engaged on Site, or adjacent thereto (whether employed by the Employer or not), who are, or may carry out work thereon.

10.4 Investigation in case of Accident, etc.

(a) Where there is any accident, failure, or other event which has occurred to, in, or in connection with the Works, or any part thereof and where any particular body or person has been appointed or authorized:

- (i) by the Employer; and/or
- (ii) by any governmental, or statutory authority; and/or
- (iii) under any other applicable law

for the purpose of determining the cause or reason for the said accident, failure or event, the provisions of sub-clause 10.4(b) shall apply.

(b) Further to sub-clause 10.4(a), the Contractor shall, at no additional cost and time to the Contract:

- (i) render all such necessary assistance and facilities as may be required by the appointed or authorized body or person; and
- (ii) give the appointed, or authorized body or person full and unrestricted access, at no additional costs, to all documents such as designs, records, Method Statements and all other information as required or deemed necessary by the former.

10.5 Application to Sub-contractors

(a) The Contractor shall by a suitable term or terms in its various Sub-contracts (domestic and/or novated), secure the provision of similar access and notification for the E.R. and its authorized representatives as under sub-clauses 10.1 to 10.3, from the relevant Sub-contractors.

(b) The Contractor shall also take reasonable steps required of it by the E.R. to enforce or assist in enforcing such rights.

PART III: THE CONTRACTOR – OBLIGATIONS AND LIABILITIES

11.0 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS OF THE CONTRACTOR

11.1 Representations and Warranties

The Contractor hereby represents and warrants to the Employer that -

- (a) it is a corporation validly existing under the governing laws of the land governing the Contract;
- (b) it has obtained a valid registration with the relevant bodies/authorities having jurisdiction over the Works;
- (c) it has the corporate power to enter into and perform its obligations under the Contract and to carry out the transactions and to carry on its business as contemplated by the Contract (if applicable);
- (d) it has taken all necessary corporate actions to authorize the entry into and performance of the Contract and to carry out the transactions contemplated by the Contract (if applicable);
- (e) as at the execution date of the Contract, neither the execution nor performance by it of the Contract nor any transactions contemplated by the Contract will violate in any respect any provision (as applicable) of-
 - (i) its Memorandum and Articles of Association; or
 - (ii) any other document or agreement which is binding upon it or its asset.
- (f) no litigation, arbitration, statutory adjudication, tax claim, dispute or administrative proceeding is presently current, or pending or, to its knowledge, threatened, which is likely to have a materially adverse effect upon it, or its ability to perform its financial, or other obligations under the Contract;
- (g) the Contract constitutes a legal, valid and binding obligation of the Contractor and is enforceable in accordance with its terms and conditions;
- (h) it has the necessary financial and technical capability to undertake the Works;
- (i) It has employed an adequate number of able and competent, professional and skilled personnel and Specialists to undertake the design and execution of the Works.

and, the Contractor acknowledges that the Employer has entered into the Contract in reliance on its representations and warranties as aforesaid.

11.2 Undertakings of the Contractor

The Contractor undertakes that -

- (a) it shall comply with all requirements, statutory or otherwise, regulating or relating to the conduct, trade, business or profession of a reasonably competent Contractor, and that it shall be fully and solely liable for all costs incurred and time expended thereby;
- (b) it shall pay all taxes including those that may be imposed on the profits made in respect of the Contract in accordance with the applicable laws; and
- (c) it shall ensure that all its employees, including non-resident/citizens, comply with all relevant laws to which they are subject to, including payment of income tax, which in respect thereto the Contractor shall make such deductions from the salaries of its employees as may be lawfully imposed by the relevant authority including any withholding tax.

11.3 Contractor's Design Warranty

The Contractor unequivocally and unreservedly warrants that it has satisfied itself as to, and to adopt and accept responsibility for the design and/or the design intent as contained in, and reflected by the Employer's Requirements and the Contract Documents as though it has itself undertaken the same. Without derogating from the generality of the foregoing, the Contractor further warrants that:

- (a) the said design is in all respects adequate, accurate and sufficient for the purposes of this Contract;
- (b) the said design when undertaken and/or further developed by it, will meet in all respects the requirements of the Contract and be fit for the purposes stipulated therein, or as reasonably to be inferred therefrom; and
- (c) there are no ambiguities, inaccuracies or inconsistencies within or between the various documents forming the Contract.

12.0 OBLIGATIONS OF THE CONTRACTOR

12.1 Contractor's General Obligations

The Contractor shall, in addition to any other obligations stipulated in this Clause and/or the Contract:

- (i) design, construct, complete, test and commission, service and maintain the Works in accordance with the Contract;
- (ii) perform the Works in a proper manner and in accordance with good management practice and to the best advantage of the Employer;
- (iii) take all appropriate measures expected of a Contractor providing similar works to ensure that the Works comply with all the requirements of the Contract;
- (iv) perform the Works and discharge its obligations as contained in the Contract by exercising professional judgment and practice, requisite skill, care and diligence. In performing the Works, the Contractor shall provide well-outlined procedures in the form and content agreed to by the Employer for reporting, coordination, and interfacing purposes.
- (v) at all times perform the Works in such manner as will always safeguard and protect the Employer's interest in relation to the Works and take all necessary and proper steps to prevent abuse, or uneconomical use of facilities, if any, made available by the Employer to the Contractor;
- (vi) where any part of the Works has been designed by or on behalf of the Employer and the design has been included in the Employer's Requirements and/or the Contract Documents, the Contractor shall, at no additional costs and/or time to the Contract, check the design and accept responsibility for it and shall ensure that such design shall be suitable, functional, safe and compatible with the design and requirements of the Works; having first obtained the approval of the E.R. for any modification which the Contractor considers necessary.
- (vii) the Contractor shall have, in respect of any defect, inadequacy and insufficiency in the design, the like liability to the Employer, whether under statute or otherwise, as would an Architect, Engineer, or as the case may be, other appropriate professional designer holding itself as competent to take on work for such design, who, acting under a separate contract with the Employer, had supplied the design for, or in connection of the Works to be carried out and completed by a competent Contractor not being the supplier of the design.
- (viii) inform the Employer immediately in writing of the occurrence of any factor or event, which is likely to affect the Works and/or the Employer's legal position.

Such notification shall not be construed as a discharge of any of the Contractor's obligations under the Contract;

- (ix) provide and maintain throughout the Contract Period such number, categories of qualified, skilled and competent workmen and personnel necessary to perform the Works;
- (x) provide and maintain at its own cost and expense all Materials, Goods, Plant and Equipment necessary for the proper and effective performance of the Works;
- (xi) instruct and supervise its staff and Sub-contractors in carrying out the Works, repairs, maintenance and other work in relation to the Works;
- (xii) coordinate with the relevant authorities and utilities providers and comply with all requirements statutory or otherwise, regulating or relating to the conduct, trade, business or profession of a reasonably competent Contractor of the same calling and the Contractor shall be solely and fully liable for all costs and/or time incurred.
- (xiii) coordinate, interface and integrate with others as stipulated in Clause 10.3;
- (xiv) make good any Defect, which may appear during the Defects Liability Period;
- (xv) undertake the maintenance obligations during the Maintenance Period; and
- (xvi) carry out any other obligations and responsibilities as expressly stipulated and implied under the Contract.

12.2 Site Operations and Methods of Construction

- (a) The Contractor shall take full responsibility for the adequacy, stability and safety of all operations and methods of construction. Except as otherwise stated in the Contract and/or agreed to by the Parties, the Contractor shall also be responsible for the design of such works that are within its scope inclusive of the design of any Temporary Works prepared by the Contractor, or by its Sub-contractors, (whether novated or otherwise).
- (b) Where the Contract has expressly provided for the Works to be designed by the Contractor, for the avoidance of doubt, the Contractor shall nevertheless be fully responsible for the Works, notwithstanding any acceptance, consent or approval by the E.R.

12.3 Cleaning Up

- (a) In accordance with this Clause, the Contractor shall:
 - (i) keep the Site and the Works clean and tidy;
 - (ii) in areas where work under the Contract is being undertaken, regularly, but in any event no less frequently than once a week, remove rubbish and surplus material;
 - (iii) ensure that all Temporary Works, Contractor's Plant and Contractor's Equipment are removed within 14 days of the certification of completion under Clauses 32.0, 33.0 or 34.0 as applicable, or within such time as expressly instructed by the E.R.
 - (iv) ensure that on, or before the relevant Completion Date under Clauses 32.0, 33.0 or 34.0 respectively, the Site and any other land used by the Contractor in carrying out the Works under the Contract is cleaned and rehabilitated to restore the Site and such other land to no worse a condition than the condition prevailing at the Date of Possession.
- (b) Upon the written application of the Contractor, the E.R. may extend the time by a reasonable period for the removal of Temporary Works, or Contractor's Plant and/or Contractor's Equipment necessary to enable the Contractor to perform the remaining obligations.
- (c) Notwithstanding the provisions of any other Clause under the Contract, if the Contractor fails to comply with the obligation imposed on the Contractor by this sub-clause 12.3, the E.R. may, after it has given reasonable notice in writing to the Contractor, have the work of cleaning up carried out by other persons and all costs incurred thereby (including On-Cost Charges) shall be recovered by the Employer either in the form of an omission under Clauses 39.0 and 40.0, or as a debt due from the Contractor to the Employer. The rights given by this sub-clause are in addition to any other right that the Employer may have under the Contract or the law.

12.4 Contractor's Responsibility for Sub-contractors, and Specialists

Unless the Contract otherwise expressly provides, the Contractor shall make good any damage, loss or injury suffered by the Employer by reason of any breach of contract, repudiation, default or failure on the part of its Sub-contractors, and/or Specialists (whether novated or directly engaged by the Contractor) and shall indemnify the Employer against all and any loss, expense, costs, damages, liability or claim arising from such breach of contract, repudiation, default or failure.

12.5 Sufficiency of Contract Sum

The Contractor shall be deemed to have satisfied itself that the Contract Sum under Clause 3.0 covers all its obligations under the Contract and all matters and things necessary for the proper design, execution and completion of the Works, the remedying of Defects and maintenance of the Works.

13.0 PERFORMANCE SECURITY

13.1 Purpose

The Performance Security shall be to ensure the Contractor's due performance of its obligations under the Contract.

13.2 Form of Security

(a) Unless stipulated to the contrary in the Contract, the Performance Security shall be in the form of:

- (i) Letter of Credit (L.C.); or
- (ii) Banker's draft; or
- (iii) Performance bond; and/or
- (iv) Parent Company Performance Guarantee (where applicable).

The form of the Performance Security shall be as stated in Appendix I.

(b) The Performance bond if used, shall be:

- (i) an irrevocable and unconditional, on-demand bond; and
- (ii) substantially in the form provided by the Employer; and
- (iii) issued by an 'Employer-approved' licenced bank, or financial institution in favour of the Employer.

(c) The Parent Company Performance Guarantee (called "the Performance Guarantee") shall be:

- (i) substantially in the form provided by the Employer; and
- (ii) issued by the parent and/or principal company of the Contractor

13.3 Value of Performance Security

Unless otherwise stated in Appendix I, the Performance Security shall be for an amount equivalent to 5% of the Original Contract Sum.

13.4 Validity of the Performance Bond and Guarantee

- (a) Unless otherwise stated in Appendix I, the Performance bond and Performance Guarantee shall remain valid and effective for a period until 12 months after:

- (i) the expiry of the Defects Liability Period; or
- (ii) the date of the issuance of the Certificate of Completion of Making Good of Defects,

whichever is the later.

- (b) The Contractor shall be obliged to keep the Performance bond and Performance Guarantee specified in sub-clause 13.2 valid, in full force, effectively renewed and extended for the duration as stipulated above. The Contractor shall submit all such renewals and extensions to the E.R. not later than 1 month before its expiry.
- (c) If the Contractor shall fail to keep the Performance bond or Performance Guarantee valid, in full force and effectively renewed and extended, then without prejudice to any other rights and remedies the Employer may possess, the Employer shall be entitled to withhold an amount equal to the amount of the Performance bond stated in the Appendix I from any payment due or becoming due to the Contractor under the Contract until the Contractor ensures that such bond and/or guarantee is made valid, is in full force or is effectively renewed or extended.

13.5 Time for Lodgment of Security

- (a) The Performance Security shall be deposited with the Employer:
 - (i) within 14 days of the issue of the Letter of Acceptance; or
 - (ii) as otherwise agreed between the parties
- (b) Notwithstanding the stipulations of sub-clause 13.5(a), the Performance Security shall, in any event, be submitted before the commencement of Works under the Contract.

13.6 Default in submitting Performance Security

- (a) If the Performance Security is not provided by the Contractor either in the stipulated form (sub-clause 13.2) and/or within the time stated (sub-clause 13.5), the Employer shall, without prejudice to any other rights or remedies that it may possess be:
 - (i) entitled to determine the Contractor's employment under the Contract pursuant to Clause 51.0; or
 - (ii) may at its discretion, be entitled to withhold an amount equal to the amount of the Performance Security stated in Appendix I from any payment due or becoming due to the Contractor under the Contract until the Contractor submits such bond and/or guarantee.
- (b) For the purposes of the Contract, the requirement of the Performance Security shall be agreed to be a condition and not a warranty.

13.7 Costs Incurred

All costs whatsoever and howsoever related to, or arising out of, or in connection with the obtaining, preparing, extending, renewal and stamping of any Performance Security instrument i.e. the bond and guarantee specified under this Clause 13.0 shall be borne solely by the Contractor and shall be deemed to be included in the Contract Sum.

13.8 Recourse to Performance Security

- (a) Notwithstanding anything contained in the Contract, the Employer shall be entitled at any time to call upon the Performance Security, wholly or partially, in the event that the Contractor fails to perform or fulfill its obligations under the Contract and such failure is not remedied in accordance with the Contract.
- (b) In addition to the above, the Employer is entitled to call upon any other Performance Security inclusive of but not limited to the Performance Guarantee (where applicable) in order to satisfy any entitlement that the Employer may have to seek or claim compensation from the Contractor.
- (c) If the Employer calls upon any Performance Security and if payment is made to the Employer pursuant to such a claim, the Employer may, by notice in writing directed to the Contractor, require the Contractor to provide to the Employer further Performance

Security. The total aggregate Performance Security that the Contractor may be required to provide shall be for an amount not less than the amount so paid to the Employer on or prior to the date of such payment so that the total sum of the Performance Security shall be maintained at all times at the value specified in sub-clause 13.3.

- (d) Upon being served with a written notice under sub-clause 13.8(d), the Contractor shall within 7 Days provide the further Performance Security. Should the Contractor fail to comply with the written notice within the stated time period, the provisions of sub-clause 13.6 shall apply *mutatis mutandis*.
- (e) Notwithstanding the above, in the event the Contractor's employment under the Contract is determined under Clause 51.0 hereof, the Performance Security or any balance thereof shall be forfeited.

13.9 Release of the Performance Security

- (a) Any Performance Security provided by the Contractor shall be released in accordance with the Contract.
- (b) Subject to the prior consent of the Employer, the Performance Security (or any balance thereof remaining for the credit of the Contractor) may be released or refunded to the Contractor at the earliest:
 - (i) on the completion of making good of all Defects; and
 - (ii) upon the issue to the Contractor of the Certificate of Completion and Making Good Defects for the whole of the works under Clause 36.0.

14.0 WORKS DESIGNED BY THE CONTRACTOR

14.1 Scope of the Clause

Any references to the design which the Contractor has prepared, or shall prepare or issue for the Works shall include a reference to any design which the Contractor has caused or shall cause to be prepared or issued by others.

14.2 Design Obligations and Liability

- (a) Insofar as the Contractor is responsible for the design of the Works, it shall ensure that the design shall be suitable, functional, safe, fit for purpose and fully compliant with the Employer's Requirements and the Contract Documents and that it shall be undertaken, approved and endorsed by competent and registered professionals employed by the Contractor.
- (b) The Contractor shall be fully responsible for the design, execution and maintenance of the Works for which its design has been reviewed/audited by the Employer/E.R.
- (c) The Contractor shall absolutely guarantee the Employer independent of fault, that the design, Materials, Goods, Plant, Equipment, and workmanship for the Works are suitable for its intended purpose and functional, safe, fit for purpose and fully compliant with the Employer's Requirements and the Contract Documents
- (d) Further to sub-clause 14.7, any review/audit by the E.R. under this Clause shall not relieve the Contractor of any of its responsibilities under the Contract.

14.3 Design Guarantee Bond

- (a) The Contractor shall provide a Design Guarantee Bond for the Works issued by an Employer approved licensed bank or financial institution amounting to the value as stated in Appendix I, substantially in the form provided by the Employer.
- (b) The Design Guarantee Bond shall be submitted to the Employer within 14 Days of the issuance of the particular Certificate of Practical Completion of the relevant Works under Clauses 32.0 or 33.0 or 34.0 (as applicable).
- (c) Such Design Guarantee Bond shall remain valid for a period of 5 years from the Date of Practical Completion of the relevant Works as stated in the particular Certificate of Practical Completion under Clauses 32.0 or 33.0 or 34.0 (as applicable).
- (d) If the Contractor fails and/or neglects to deposit within 14 Days of the issue of the relevant Certificate of Practical Completion, the said Design Guarantee Bond with the Employer as stipulated in sub-clauses 14.3(a) to (c) above, the Employer shall have a right to claim the total value of the said amount:
 - (i) from any money due or to become due to the Contractor; or
 - (ii) from the Performance Security; or

- (iii) as a claim for a debt due to the Employer.
- (e) If any Defects or damage shall occur to that particular Works or part(s) of the Works as a result of any Defects, fault, insufficiency or inadequacy in the design including Workmanship, Materials, Goods, Plant or Equipment which have become defective arising directly or indirectly from the design fault or omission, then a written demand will be made by the Employer to the bank or institution that has issued the Design Guarantee Bond.
- (i) Upon the making of the demand by the Employer, the said issuer of the Design Guarantee Bond shall pay and indemnify the Employer notwithstanding any objection by the Contractor or any third party, equal to the value as stated in sub-clause 14.3(a) above.

14.4 Employer's Obligations

- (a) In respect of the Work to be designed by the Contractor, the Employer shall clearly set out the requirements for which the design is intended. For the purposes of this clause and in amplification of Clause 5.9 above, such requirements shall be called the "Employer's Requirements" and shall include, inter alia, such matters as the design criteria, performance specifications, etc.
- (b) The Contractor shall be deemed to have scrutinized, prior to the submission of its tender bid, the Employer's Requirements. The Contractor shall be responsible for the design of the Works stipulated and for the accuracy of such Employer's Requirements except as otherwise provided for in the Contract, or as mutually agreed to by the Parties.
- (c) 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 otherwise provided for in the Contract.
- (d) Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from its responsibility and liability for the design and execution of the Works.
- (e) The Employer shall, however, be responsible for the correctness of the following portions of the Employer's Requirements and the following data and information provided by or on behalf of the Employer:

- (i) portions of the Employer's Requirements, data and information which are stated in the Contract as being imitable or the responsibility of the Employer;
 - (ii) definitions of the intended purposes of the Works or any parts thereof;
 - (iii) criteria for the testing and performance of the Works (if any); and
 - (iv) portions of the Employer's Requirements, data and information that cannot be reasonably verified by a reasonably competent Contractor, except as otherwise stated in the Contract.
- (f) For audit purposes, the E.R. shall review and comment on the Contractor's Documents as submitted in accordance with the process set out in sub-clause 14.7 below. Any such review, acceptance or approval by the E.R. of the Contractor's Documents shall not relieve the Contractor of any of its obligations or liabilities under the Contract.

14.5 Contractor's Documents

- (a) The Contractor's documents for the purposes of this Clause shall comprise the following:
- (i) all the technical documents specified in the Employer's Requirements; and
 - (ii) all the relevant documents in the Contractor's Proposals and
 - (ii) all such documents required to satisfy all statutory requirements inclusive of, but not limited to health and safety; and
 - (iii) all as-built documents and operation and maintenance manuals; and
 - (iv) all other documents necessary for the fulfillment of the Contractor's obligations under this clause and the Contract.
- (b) The Contractor shall prepare all the Contractor's documents and also:
- (i) any other documents necessary to instruct the Contractor's personnel; and/or
 - (ii) any additional documents, or information in relation to the Contractor's documents as may be reasonably required by the E.R. in order to facilitate design review and the auditing process.

14.6 The Design Development Process

- (a) In respect of the Work designed by the Contractor, the Contractor shall proceed with the design to meet the Employer's Requirements and the Contract.
- (b) Unless expressly instructed to the contrary by the E.R., the Contractor shall prepare, develop and submit the Contractor's documents in accordance with the procedure as set out in this clause. In particular, the Contractor shall prepare and progressively submit to the E.R.
 - (i) the design concept;
 - (ii) the preliminary design; and
 - (iii) the final design.

in accordance with the requirements of this Clause and the Contract Documents.

- (c) The Contractor's documents shall be submitted with a notice as described in sub-clause 14.7 (c) to the E.R. for review.
- (d) For each part of the Works, and except to the extent that the Parties otherwise agree, execution of such part of the Works shall not commence unless and until either:
 - (i) the E.R. has reviewed the relevant Contractor's Documents in accordance to sub-clause 14.7; or
 - (ii) the default provision of sub-clause 14.7 (g) applies.

14.7 The Review Procedure

- (a) All the Contractor's documents shall be submitted to the E.R. for review prior to any work being commenced.
- (b) The purpose of the review is to enable the E.R. to audit the submitted documents for conformance with the Employer's Requirements and the particular provisions of the Contract. It shall in no way relieve or limit the obligations and/or liabilities of the Contractor under the Contract.
- (c) The Contractor shall submit its documents to the E.R. for review with a notice (the "Contractor's notice"). This notice shall state that:

- (i) the document is considered ready, both for review in accordance with this Clause and for use; and
 - (ii) the document complies with the Contract, or
 - (iii) the extent to which it does not comply; and
 - (iv) the scheduled date of work for that document is to commence.
- (d) The E.R. shall review the Contractor's document submitted within a mutually agreed period (the "review period"); such period being not more than 21 Days from the date of receipt of the Contractor's document and notice.
- (e) Within, or upon the expiry of the review period, the E.R. shall notify the Contractor in writing that:
 - (i) the Contractor's document has passed the review wholly and/or conditionally passed the review subject to the Contractor compliance with the comments made by the E.R.; or
 - (ii) the Contractor's document has failed (to the extent stated) to comply with the Contract.
- (f) If a Contractor's document so fails to comply with the Contract, it shall be rectified, resubmitted and reviewed in accordance with this sub-clause, at the Contractor's expense, both cost-wise and time-wise.
- (g) If the E.R. fails to give the relevant notice upon the expiry of the review period, the Contractor's document so submitted shall be deemed to comply with the Contract.
- (h) For each part of the Works, and except to the extent that the Parties otherwise agree, the execution of such part of the Works shall be in accordance with these Contractor's documents, as submitted and reviewed.

14.8 Amendment to, or Modification of Reviewed Documents

- (a) If the Contractor wishes to amend or modify any design or document which has been previously submitted for review, the Contractor shall:

- (i) immediately give notice of the same to the E.R., stipulating the reason/reasons for such amendment or modification and its impact on the work progress and costs; and
 - (ii) submit revised documents to the E.R. in accordance with the above procedure.
- (b) If the E.R. wishes to amend or modify any design or document which has been previously reviewed and passed by it, then:
 - (i) the E.R. shall instruct the Contractor accordingly with full details of the amendments or modifications required;
 - (ii) the Contractor shall prepare and submit for the E.R.'s review, the amended or modified documents in accordance with the above procedure;
 - (iii) the Contractor shall also submit the likely cost and/or time impact of the E.R.'s Instruction.
- (c) Provided that pursuant to sub-clauses 14.8(a) and (b) above if such amendment or modification involves a Variation, the following provisions shall apply:
 - (i) if it is due to any default and/or omission on the Contractor's part, any extra cost shall be borne by the Contractor, and any savings resulting from such variation shall accrue to the Employer unless the parties mutually agree to otherwise; and
 - (ii) if it is caused by the Employer/E.R and provided it falls within the ambit of Sub-clause 14.8 (b) above and Clause 39.0, then the provisions of Clauses 31.0, 39.0 and 40.0 shall apply, as relevant.
- (d) If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's documents, these and the related Works shall be corrected at the Contractor's expense both cost-wise and time-wise, notwithstanding any review, consent or approval by the E.R. under this Clause.

15.0 EMPLOYMENT OF WORKMEN AND PERSONNEL

15.1 Employment of Local Citizens

Subject to Clause 15.2(a) below, the Contractor shall employ, in the execution of the Contract, only local citizens as workmen and Contractor's Personnel.

15.2 Employment of Non-Local Citizens

- (a) If in any particular trade or skill required to complete the Works, the Contractor can show to the satisfaction of the E.R. that local citizens are not available for reasons beyond its control, then the Contractor may employ non-local citizens to the extent permitted by the applicable law and/or the E.R.
- (b) In case such workmen and/or personnel are engaged, the Contractor shall be responsible:
 - (i) to obtain their work permits in compliance with the relevant laws and regulations; and
 - (ii) for their remuneration, housing, welfare, transport, insurance cover, and all other incidental costs.
- (c) For the avoidance of doubt, the employment of illegal foreign workmen and/or personnel is strictly prohibited.

15.3 Particulars of Workmen and Personnel

The Contractor shall, upon the commencement of the Works, if required by the governing authorities or as directed by the E.R. (as applicable), furnish to the latter in writing, all particulars connected with the Contract and such returns as may be called for from time to time in respect of workmen and personnel employed by the Contractor for the execution of the Contract, in accordance with the requirements of the applicable laws; and/or

15.4 Register of Workmen and Personnel

The Contractor shall maintain on the Site at all times during the performance of the Works an up-to-date register containing particulars of all workmen and personnel employed by it.

15.5 Obligations of Sub-Contractors

The Contractor shall cause all its Sub-contractors (including "labour only" Sub-contractors) to comply with the provisions of this Clause 15.0.

15.6 Compliance with the Law

- (a) In the employment of workmen and personnel for the execution of the Contract, the Contractor shall comply and shall cause its Sub-contractors (including "labour only" Sub-contractors) to comply with all the relevant requirements of the governing/applicable law relating to the employment of workmen.
- (b) The Contractor shall not be entitled to any claim for additional time and/or costs and payments whatsoever in respect of its compliance with this Clause.

15.7 Days and Hours of Working

- (a) Subject to the E.R.'s written permission to the contrary, no work shall be undertaken by the Contractor under the Contract on:
 - (i) the weekly day of rest;
 - (ii) any public holiday which is recognized in the country where the works under the Contract are being carried out; or
 - (iii) between the hours of six in the evening and six in the following morning.
- (b) If the Contractor's written application to work as otherwise provided for in sub-clause 15.7(a) is approved by the E.R., the Contractor shall comply fully with all the requirements of the relevant laws in regard thereto.
- (c) Notwithstanding the grant by the E.R. of any permission pursuant to the Contractor's application of sub-clause 15.7(b), the Contractor shall fully bear:
 - (i) any costs incurred by the Contractor for compliance; and
 - (ii) any extra costs incurred by the Employer in connection with the supervision of the Works.

15.8 Wages Books and Time Sheets

- (a) The Contractor shall keep and shall cause its Sub-contractors (including "labour only" Sub-contractors) to keep proper wages books and time sheets showing:
 - (i) wages paid to; and

- (ii) the time worked

by all workmen employed by the Contractor and its Sub-contractors as aforesaid in and for the performance of the Contract.

- (b) The Contractor shall produce such wages books and time sheets on demand for inspection by any person or persons duly authorized by the E.R. and/or under the law.
- (c) The Contractor shall furnish to the E.R. or the E.R.'s Assistants such information relating to the wages and conditions of employment of such workmen and/or personnel as the E.R. may from time to time require.
- (d) In any event, the Contractor shall provide to the E.R. a daily record (pursuant to sub-clause 20.5) of the number of workmen and personnel employed on the Site, broken down in accordance with the E.R.'s requirements.

15.9 Default in Payment of Wages

- (a) In the event of default in the payment of:
 - (i) any money in respect of wages; and/or
 - (ii) payment in respect of contributions statutorily required in respect of the employment of the workers and personnel including pension funds and/or social welfare contributions, of any workmen and/or personnel employed by the Contractor or its Sub-contractors (including "labour only" Sub-contractors), in and for the performance of the Contract, for which a claim has been filed with the relevant authorities, then the E.R. shall make payment to the said authorities, as the case may be, out of:
 - 1. any monies at any time due to the Contractor under the Contract; and/or
 - 2. the Performance Security.
- (b) Such payment made pursuant to sub-clause 15.9(a) shall be deemed to be a payment made to the Contractor by the Employer under, and by virtue of the Contract.

15.10 Discharge of Workmen and Personnel

- (a) The Contractor shall only employ such workmen and personnel on the Works as are of good character, experienced and thoroughly efficient in their various vocations and trades.
- (b) If in the opinion of the E.R., any person employed by the Contractor:
 - (i) is culpable of misconduct; and/or
 - (ii) is incompetent; and/or
 - (iii) is negligent; and/or
 - (iv) has intentionally caused inordinate delays

the E.R. shall be at liberty to object to, and require the Contractor in writing to remove from Site such person.
- (c) The person so removed at the direction of the E.R. pursuant to sub-clause 15.10(b) shall not again be employed upon the Works, whether by the Contractor or any of its Sub-contractors without the prior written permission of the E.R.
- (d) Any person so removed from the Works shall be replaced without undue delay with a competent substitute approved by the E.R.
- (e) The Contractor shall not be entitled to any claim for:
 - (i) any extension of time; and/or
 - (ii) any expense incurred whatsoever

incurred by the Contractor in respect of any direction given by the E.R. under this Clause.

16.0 CONTRACTOR'S REPRESENTATIVES

16.1 Contractor's Representative Appointment

- (a) The Contractor shall appoint, as a condition precedent to commencement of any work under the Contract (including any design work), a competent person who shall be referred to as the “Contractor’s Representative” (or C.R.).
- (b) For the avoidance of any doubt, the competency of such a person shall be determined by the E.R. and shall be based on the following minimum criteria:
 - (i) technical and/or professional qualifications as stipulated in Appendix I;
 - (ii) language competency as stipulated in Appendix I;
 - (iii) previous experience of at least 10 years in similar works; and
 - (iv) express authority necessary to act on the Contractor’s behalf under the Contract.
- (c) Unless the Contractor’s Representative is named in the Contract, the Contractor shall within 7 Days of the receipt and acknowledgement of the Letter of Acceptance, submit to the E.R. for its consent:
 - (i) the name; and
 - (ii) full particulars, inclusive of those stipulated in sub-clause 16.1(b).

of the person the Contractor proposes to appoint as the Contractor’s Representative.
- (d) The E.R. shall, within 7 Days of receipt of the Contractor’s proposal of sub-clause 16.1(c):
 - (i) consent to the said appointment; or
 - (ii) request for further particulars; or
 - (iii) withhold consent with reasons
- (e) In the event that option ii) in sub-clause 16.1(d) is adopted, the Contractor must respond to the E.R.’s request within a further 7 Days.
- (f) Should the E.R. withhold consent pursuant to sub-clause 16.1(d)(iii), the Contractor must act within a further 7 Days by submitting the name and particulars of another suitable person for such appointment.

16.2 Default in Appointment

- (a) Should the Contractor fail to:
 - (i) name the C.R. in the Contract; or
 - (ii) propose a suitable candidate pursuant to sub-clauses 16.1(c), (e) and (f); or
 - (iii) get the E.R.'s consent for the proposed candidate.

then the provisions of sub-clause 16.2(b) shall apply.

- (b) Pursuant to the default of the Contractor as specified in sub-clause 16.2(a), the following sanctions shall apply:
 - (i) the Contractor shall not be allowed to commence with any work under the Contract (including design work) without any liability on the Employer's part; and
 - (ii) if such default should continue for 30 Days after the Date of Commencement, the Employer may suspend the Contract under Clause 50.0 and claim all losses/damages due from the Contractor.

16.3 Duties and Powers of the C.R.

- (a) The C.R. shall be constantly on the Works i.e. during the design development stage and at the Site during the Contractor's normal working hours and shall give its whole time to the planning, coordination, supervision and administration of the Contract including the remedying of the Defects during the Defects Liability Period and the maintenance of the completed Works during the Maintenance Period.
- (b) For the purposes of the Contract, notwithstanding the provision of sub-clause 16.1(b)(iv), the C.R. shall be deemed to be the Contractor's authorized agent. In furtherance to the above:
 - (i) any directions, explanations, instructions or notices given to the C.R. by the E.R. shall be deemed to have been given to the Contractor under the Contract; and
 - (ii) any explanations, notices, undertakings and/or representations made by the C.R. to the E.R. and/or the Employer shall be deemed to be given by the Contractor.

16.4 Delegation by C.R.

- (a) The C.R. may delegate any powers, functions and authority to any competent person and may at any time revoke the delegation.
- (b) Any such delegation or revocation shall not take effect until the E.R. has received and consented to a prior notice signed by the C.R.:
 - (i) naming the person or persons; and
 - (ii) specifying the specific powers, functions and authority being delegated or revoked.
- (c) The competent person stipulated in sub-clauses 16.4(a) and (b) shall be referred to as the C.R.'s Assistant (the 'C.R.A.').

16.5 Revocation/Replacement of the C.R.

- (a) The Contractor shall not, without the prior written consent of the E.R., either:
 - (i) revoke the appointment of the C.R.; or
 - (ii) appoint a replacement
- (b) In the event the C.R. is to be replaced, the Contractor must satisfy the requirements and procedure of sub-clause 16.1.

16.6 Default in C.R.'s Performance of Duties

- (a) Further to sub-clause 16.3(a), should the C.R. be temporarily absent from the Works/Site, the E.R. may designate the C.R.A. to act for, and on its behalf. The C.R. shall accordingly inform the E.R. in writing prior to such designation:
 - (i) the duration for which the E.R. would be absent from Works/Site;
 - (ii) the reason(s) for such absence;
 - (iii) the anticipated date and/or time for resumption of duties; and
 - (iv) any other relevant information.

- (b) For the avoidance of doubt, the phrase “temporary absence” shall mean a continuous period of more than 7 Days unless the Parties mutually agree to otherwise.
- (c) In the event, the C.R. does not comply with sub-clause 16.6(a) and is continuously absent from the Works/Site for more than 7 Days, the E.R. may:
 - (i) issue a notice to the Contractor to suspend all work on the Works/Site pursuant to Clause 50.0; and/or
 - (ii) deduct an amount of money as stipulated in Appendix I for the period of time the C.R. is absent from the Works/Site.
- (d) Should the C.R.’s absence from the Works/Site continue for more than 30 Days, the Employer may either:
 - (i) extend the suspension order and continue the deduction of monies stipulated in sub-clause 16.6(c), or
 - (ii) appoint a competent third party for and on behalf of the Contractor and all costs arising therefrom inclusive of the third party’s salary/fees, etc. shall be chargeable to the Contractor under the Contract.

16.7 Removal of C.R. and/or other Personnel

- (a) The E.R. may at any time expressly object to and:
 - (i) withdraw its consent to the C.R. and/or the C.R.A; or
 - (ii) require the Contractor to immediately remove from the Works/Site any person employed by the Contractor in or about the execution of the Works.
- (b) The E.R. shall not exercise its discretion unreasonably or vexatiously but shall only do so if in its considered opinion, such person is:
 - (i) culpable of misconduct; and/or
 - (ii) is negligent; and/or
 - (iii) is incompetent in the proper performance of its duties; and/or

- (iv) whose continued presence is undesirable or unacceptable for the purposes of the Contract.
- (c) Pursuant to sub-clause 16.7(a), the Contractor shall, upon receiving the notice in writing from the E.R., immediately (but not later than 7 Days):
 - (i) remove the said person from the Works/Site and shall not without the E.R.'s consent thereafter employ it again in connection with the Works in any capacity; and
 - (ii) replace it by another person with proper competence and experience who shall be consented to by the E.R.
- (d) The Contractor shall not be entitled to any claim for extension of time and/or costs whatsoever incurred by it in respect of any direction, notice or instruction given to it by the E.R. under this sub-clause 16.7.

17.0 ASSIGNMENT AND NOVATION

17.1 Assignment by Contractor

- (a) The Contractor shall not, without the prior written consent of the Employer (which consent shall be at the sole discretion of the Employer), assign the whole or any part of the Contract, or any benefit or interest in, or under the Contract, otherwise than by:
 - (i) a security in favour of the Contractor's bankers or any financial institution, or corporation of any payment due, or to become due under the Contract, or
 - (ii) assignment to the Contractor's insurance cover operators (in cases where the insurance cover operators have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief from any other party liable.
- (b) The Contractor shall, within 14 Days following the written request by the Employer, or any third party execute those documents necessary to effect such assignment pursuant to sub-clause 17.1(a).

17.2 Consequences of Default

If the Contractor defaults, in that it assigns the whole or any part of the Contract without prior written consent of the Employer in contravention of Clause 17.1, the consequences as stipulated in Clause 28.3b) shall apply.

17.3 Assignment and/or Novation by Employer

(a) The Employer may at any time:

- (i) assign; and/or
- (ii) novate

to any third party in whole, or in part, the Works under the Contract.

(b) The Contractor irrevocably consents to such assignment and/or novation and undertakes to execute within a reasonable time following written demand by the Employer or any such third party, all documents necessary to effect such assignment and/or novation.

18.0 INSPECTION OF SITE

18.1 Site Information/Data

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied itself before submitting its tender as to all relevant matters, including (without limitation):

- (a) the topography, form and nature of the Site;
- (b) the nature of the ground, surface and sub-surface conditions including latent conditions;
- (c) the hydrological and climatic conditions;
- (d) the existing services and utilities;
- (e) the extent and nature of the work, Materials, Goods, Plant and Equipment necessary for the completion of the Works, the remedying of any Defects and the maintenance of the completed Works;
- (f) the means of communication with, and access to the Site;

- (g) the Contractor's requirement for accommodation, facilities, workmen, personnel, power, transport, water and other services; and
- (h) in general to have obtained for itself all necessary information as to the risks, contingencies and all circumstances influencing and affecting its tender.

18.2 Information or Documents Given by Employer/E.R.

Any information or document given or forwarded by the Employer/E.R. to the Contractor as part of the Employer's Requirement and/or under any Clause of the Contract shall not relieve the Contractor of its obligations under the provisions of the Contract unless the Contractor can show that the same was materially erroneous in nature and content and/or was given or forwarded to it either negligently or fraudulently by the Employer/E.R.

18.3 Non-entitlement to Claims

- (a) Subject to the proviso in Clause 18.2, no claim by the Contractor, be it for additional payment and/or extension of time, or for any other contractual or legal remedy shall be allowed on the ground of:
 - (i) any misunderstanding or misinterpretation in respect of the matters referred to in Clauses 18.1 and/or 18.2; or
 - (iii) that insufficient information was given to the Contractor by any person acting for or on behalf of the Employer or the E.R.
- (b) In addition, the Contractor shall not be relieved from any risk or obligation imposed or undertaken by it under the Contract on any such ground or on the ground that it did not or could not reasonably foresee any matter which may in fact affect or has affected the design and execution of the Works.

19.0 SETTING OUT

19.1 Responsibility for Setting Out

The Contractor shall be responsible for the true and proper setting out of the Works and for the correctness of the positions, levels, dimensions and alignments of all parts of the Works and the provisions of all necessary instruments, appliances and labour in connection therewith.

19.2 Errors in Setting Out

- (a) If at any time during the progress of the Works any error in the positions, levels, dimensions or alignments of any part of the Works is discovered, the Contractor shall at its own time and expense, rectify such error.
- (b) If at any time during the progress of the Works any error shall appear or arise in the setting-out required to construct the Works or in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required to do so by the E.R., shall at its own time and expense, rectify such error to the satisfaction of the E.R. The checking of any setting out, or of any line, or level by the E.R. shall not in any way relieve the Contractor of its responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all things used in the setting-out required for the construction of the Works until the E.R. agrees that the said things may be abandoned.

19.3 Furnishing of Information

The Contractor shall give to the E.R. without charge such information as may be required by the E.R. to enable the latter to check the setting out required for the construction of the Works including interpreting any marks made by the Contractor for the purpose of setting out.

20.0 CONTRACTOR'S SUBMITTALS

20.1 Scope

- (a) Further and in addition to the submittals as specified elsewhere in the Contract, the Contractor shall, as part of its obligations under Contract, undertake the following submittals:
 - (i) Supply of drawings;
 - (ii) Cash flow estimates;
 - (iii) Methods of construction and Temporary Works;
 - (iv) Contractor's records;

- (v) Progress reports;
 - (vi) As-built records; and
 - (vii) any other document, or submittal deemed reasonably necessary by the E.R. for the purposes of the Contract.
- (b) The above submittals shall not preclude the E.R. from requesting any other information, or details which it considers reasonably necessary for the purposes of the Contractor meeting its obligations under the Contract.

20.2 Supply of Drawings by the Contractor

- (a) Unless otherwise stipulated elsewhere in the Contract Documents or directed by the E.R., the Contractor shall supply to the E.R., 6 copies of all drawings (other than as-built drawings under sub-clause 20.7) including design drawings and/or construction drawings, shop/fabrication drawings detailing any work, specifications and other documents necessary for the completion of the Works.
- (b) The form, content, timing for submission and acceptance of such drawings shall be to the E.R.'s directions.
- (c) The Contractor shall supply at the Employer's cost any further copies of such drawings, specifications and other documents as the E.R. may request in writing.

20.3 Cash Flow Estimates

- (a) Within 30 Days of the issue of the Letter of Acceptance, or such other time as may be specified in the Contract, the Contractor shall submit to the E.R. for its information, a detailed cash flow estimate, in such periods or intervals as determined by the E.R., of all payments to which the Contractor considers it will be entitled to under the Contract. These cash flow estimates shall be in conformance with the Payment Schedule included in the Contract.
- (b) If required by the E.R., the Contractor shall subsequently submit such revised cash flow estimates at such periods or intervals as determined by the E.R. based on the updated programme.

20.4 Methods of Construction and Temporary Works

- (a) At the same time as the Contractor submits the programme in Clause 30.0 or such other time as may be specified in the Contract, the Contractor shall submit to the E.R. for its acceptance Method Statements. The Contractor shall also submit from time, as and when necessary/required, further Method Statements for proprietary items of the Works and/or where “dangerous”/“unsafe” works/activities are to be undertaken.
- (b) Each Method Statement shall be fully cross-referenced to the corresponding activities in the programme.
- (c) The Contractor shall submit to the E.R. sufficient information as may be considered reasonably necessary by the E.R. to interpret, evaluate and give acceptance to the Method Statement.
- (d) The Contractor shall, whenever required in writing by the E.R., furnish for the latter’s information further detailed particulars of the Method Statement.
- (e) Should the Contractor wish to change a Method Statement or should the E.R. subsequently consider changing a Method Statement to which acceptance has previously been given, then the Contractor shall submit within the stipulated time, a revised Method Statement to the E.R. for the latter’s acceptance.
- (f) Acceptance by the E.R. of the Contractor’s Method Statement shall not make the Method Statement a contract document, nor mandate that the Works shall be constructed strictly in accordance with the Method Statement. The Contractor shall nevertheless at all times remain responsible for the execution of the Works in accordance with Clause 12.0, and other relevant provisions of the Contract.

20.5 Contractor’s Records

- (a) In addition to sub-clause 57.4, the Contractor shall maintain and submit contemporary records of activities, including the work of Sub-contractors.
- (b) The records shall be in a form as agreed between the E.R. and the Contractor and shall include (but be not limited) to the following:
 - (i) identification of the Contractor’s and Sub-contractors’ working activities, and their respective areas of responsibility;

- (ii) Contractor's Equipment and Contractor's Plant on Site with the hours worked, idle hours, or downtime for repair and/or maintenance;
 - (iii) work performed to date giving the location, description and by whom, cross-referenced to the contract programme;
 - (iv) test results and references to Contract particulars/requirements, list of deficiencies identified together with the proposed corrective action;
 - (v) Materials, Goods, Plant and Equipment received, with a statement as to their acceptability and storage;
 - (vi) information, documents, or drawings reviewed with reference to the Contract particulars/requirements, by whom and the action(s) taken;
 - (vii) job safety evaluations;
 - (viii) progress photographs;
 - (ix) a list of instructions given and received and any discrepancies, conflicts, or ambiguities inclusive of non-conformances and the reasons for the same;
 - (x) weather conditions encountered;
 - (xi) the number of persons working on Site by trade, activity and location;
 - (xii) information required from, and information given by the Employer/E.R.;
 - (xiii) any delays and/or disruption encountered and the reasons for the same;
 - (xiv) any other information considered relevant by the Contractor.
- (c) Unless otherwise instructed by the E.R., the daily reports shall be delivered to the E.R. by electronic transmission followed subsequently by hand delivery at the close of business for each working day, or by the beginning of the following day, and shall comply with the following requirements:
- (i) Each report shall be prepared, signed by the Contractor's Representative (C.R.), numbered sequentially and submitted for each day of work performed;

- (ii) Hard copies shall be prepared and submitted at least in duplicate;
 - (iii) The report shall be acknowledged, commented upon, signed and dated by the E.R. within 48 hours of its receipt from the Contractor; failing which it shall be deemed that the E.R. has no objections as to its accuracy and contents;
 - (iv) Any deficiency in the work and/or the report shall be identified by the E.R. As these deficiencies shall be progressively corrected by the Contractor, such deficiencies shall be acknowledged on the daily report;
 - (v) The E.R. shall notify the Contractor of any non-compliance with the reporting requirements. All the deficiencies cited and verbal instructions given to the Contractor by the E.R. shall be recorded/entered on the daily report.
- (d) A weekly report shall be delivered by the Contractor to the E.R. within 2 Days at the end of the week to which it relates, or as otherwise directed by the E.R. The weekly report shall be in a form and delivered using the mode of service as mutually agreed to by the Contractor and the E.R. and shall include (but be not limited to) the following:
- (i) Summary of the work performed;
 - (ii) Summary of the works performed as referenced on the accepted, or upgraded programme;
 - (iii) Summary of the list of deficiencies and the corrective action taken or proposed;
 - (iv) Summary of any delays and/or disruptions encountered and the reasons for the same; and
 - (v) any other information considered relevant by the Contractor.
- (e) A monthly report pursuant to sub-clause 20.6 shall be delivered by the Contractor to the E.R. in the form, content, mode of service and within the time specified in the said sub-clause.

20.6 Progress Reports

- (a) Unless otherwise stated in the Contract, monthly progress reports shall be prepared by the Contractor and submitted to the E.R. in triplicate. Soft copies shall also be submitted to the E.R. at no additional charge in the format and the time period as directed by the latter

- (b) The first progress report shall cover the period up to the end of the first calendar month following the Date of Commencement of the Contract. Reports shall be submitted monthly thereafter, each within 7 Days after the last day of the period to which it relates.
- (c) Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in Clauses 32.0, 33.0 or 34.0 (as applicable).
- (d) Unless otherwise instructed by the E.R., each report shall include the following minimum contents:
 - (i) charts, programme of work (under Clause 30.0) and detailed descriptions of progress, including each stage of design, Contractor's documents covering procurement, manufacture/fabrication, delivery to Site, construction/installation, erection, testing and commissioning; and including, these stages of work by each Sub-contractor.
 - (ii) photographs showing the status of manufacture/fabrication, and of progress of work on the Site;
 - (iii) for the manufacture/fabrication of each main item of Materials, Goods, Plant and Equipment, the name of the manufacturer/fabricator, manufacturing/fabrication location, percentage progress and the actual, or expected dates of:
 - 1. commencement of manufacture/fabrication;
 - 2. Contractor's inspections;
 - 3. testing and/or commissioning (as applicable), and
 - 4. shipment to, and arrival at the Site.
 - (iv) the full details of the record of the Contractor's Personnel and Contractor's Plant and Contractor's Equipment on the Site, and off the Site;
 - (v) copies of all relevant quality assurance documents, test results and certificates of Materials, Goods, Equipment and Plant;
 - (vi) list of notices, Requests for Information ("RFI") or instructions given by the E.R./Employer to the Contractor;
 - (vii) list of notices and/or RFIs given by the Contractor to the E.R./Employer;

- (viii) safety report, including details of any accidents, hazardous incidents and activities relating to environmental aspects and public relations;
- (ix) comparisons of actual and planned physical 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 and/or mitigate the delays;
- (x) comparison of actual and planned financial progress, with all relevant details on the status of payments, variations, and financial claims; and
- (xi) any other information/details the Contractor/E.R. feels necessary to make the progress report accurate, complete and sufficient.

Should the Contractor fail to submit these progress reports by the due dates and/or by any extended date fixed by the E.R., the latter shall be entitled to exercise any or all of the sanctions stipulated in Clause 30.5 below.

20.7 As-Built Documentation

- (a) It is the Contractor's express obligation to prepare its As-built drawings/documentation contemporaneously with the progress of the physical Works on Site. For this purpose, the Contractor shall provide all necessary facilities on Site for the preparation of the said drawings inclusive of the relevant computer "hardware" and "software" and a dedicated person/team at all times during the full duration of the Contract inclusive of the Defects Liability Period. Unless otherwise stipulated elsewhere in the Contract, the Contractor shall submit to the E.R., as a condition precedent to the certification of the completion of the Works for each milestone/stage completion stipulated in the Contract and the completion of the Works under Clauses 32.0, 33.0 or 34.0 (as applicable), without additional charge 6 hard copies each of:
 - (i) such drawings describing the Works, or any Section of the Works as-built, or as-installed; and
 - (ii) manuals concerning the operation and maintenance of the Works, or any Section of the Works including any Plant, Equipment, apparatus and/or installation comprised in the Works, or Section of the Works.
- (b) The contents of the documents stipulated in sub-clause 20.7(a) shall be to the approval of the E.R.; which approval shall be sought by the Contractor within such time as is not unreasonably distant for the Contractor to meet its obligations under the Contract.

- (c) Unless otherwise directed by the E.R., the form of the said documents shall be as follows:
 - (i) hardcopies and a “soft” copy of all drawings under sub-clause 20.7(a)(i); and
 - (ii) hardcopies and where applicable, a “soft” copy of all manuals under sub-clause 20.7(a)(ii).
- (d) If required by the E.R., the Contractor shall submit draft copies of the above documents to the E.R. for approval in such form and within such times as instructed by the latter prior to the preparation and handing over of the final documents under this sub-clause.
- (e) For the avoidance of doubt, the Contractor shall also cause all its Sub-contractors to supply such documents in the manner, form and time as specified herein. The E.R. shall have the right not to certify nor pay for the Works involved, i.e. be these for the particular stage/milestone, or for the overall Works, unless and until the Contractor complies with the above requirements to the reasonable satisfaction of the E.R.

21.0 MATERIALS, GOODS, EQUIPMENT, PLANT AND WORKMANSHIP

21.1 Provision of Materials, Goods, Equipment, Plant and Workmanship

Except to the extent that the Contract stipulates to the contrary:

- (a) the Contractor shall provide all specialist skills, manpower, Materials, Goods, Equipment, Plant and workmanship necessary for the proper performance of the Contractor's obligations and the discharge of the Contractor's liabilities under the Contract; and
- (b) incidental items and work not expressly mentioned in the Contract but which are necessary for the satisfactory completion and performance of the Works under the Contract shall be supplied and executed by the Contractor without adjustment to the Contract Sum and/or time for completion.

21.2 Materials, Goods, Equipment, Plant and Workmanship

- (a) All Materials, Goods, Equipment, Plant and workmanship shall be:

- (i) of the respective kinds and standards described in the Contract; and
 - (ii) of good quality; and
 - (iii) in accordance with the standard of workmanship in the industry.
- (b) All Materials, Goods, Equipment, Plant and workmanship shall be subjected to such tests and inspections in accordance with the provisions of the Contract:
 - (i) at their respective places of fabrication or manufacture; or
 - (ii) on the Site; or
 - (iii) at such other places described in the Contract; or
 - (iv) at such other places required by the E.R.
- (c) The Contractor shall upon the request of the E.R., furnish the E.R. with the relevant certificates, reports, and/or vouchers to prove that the Materials, Goods, Equipment and Plant comply with the Contract.

21.2 Information to be Furnished

- (a) In respect of any, or all of the Materials, Goods, Equipment and Plant to be supplied by the Contractor under, or used in connection with the Contract, the E.R. may instruct the Contractor in writing to supply particulars of or information as to:
 - (i) the mode and place of manufacture/fabrication;
 - (ii) the source of supply;
 - (iii) the performance capacities; and
 - (iv) any other information deemed necessary by the E.R.
- (b) Upon receipt of the E.R.'s instruction, the Contractor shall furnish the particulars or information requested by the E.R. pursuant to sub-clause 21.2(a) within either:
 - (i) 7 Days; or
 - (ii) such other time approved by the E.R.

21.3 Removal from the Site

- (a) From time to time, the E.R. may by written notice instruct the Contractor (and its Sub-contractors, where applicable) not to remove from the Site the following:
 - (i) Materials, Goods, Equipment and Plant; and/or
 - (ii) Contractor's Equipment and/or Contractor's Plant.
- (b) Thereafter, the Contractor shall not remove the items referred to in sub-clause 21.3(a) above without the prior written approval of the E.R.; which approval shall not be unreasonably withheld.

21.4 Warranties/Guarantees

- (a) Where either:
 - (i) the Contract expressly requires; or
 - (ii) the E.R. instructs in writing

the Contractor shall procure from the relevant Sub-contractors (inclusive of all Specialists including the designer/consultants) all necessary warranties and/or guarantees (as applicable).
- (b) These warranties shall be in the name of the Employer and to the effect as stated either in:
 - (i) the applicable provisions of the Contract; or
 - (ii) in the E.R.'s instruction of sub-clause 21.4(a) above.
- (c) Such warranties shall:
 - (i) be in a form directly exercisable for the benefit of the Employer; and
 - (ii) be capable of being freely assigned by the Employer to third parties; and
 - (iii) be as approved by the E.R.
- (d) The warranties shall be submitted to the E.R. in accordance with the particular requirements of the Contract, before the issue of:
 - (i) the Certificate of Practical Completion for the whole Works under Clause 32.0;
 - or

- (ii) the applicable Sectional Completion Certificate pursuant to Clause 33.0; or
- (iii) the relevant Certificate of Partial Occupation under Clause 34.0,

unless the E.R. expressly instructs to the contrary.

- (e) To the extent that the Contractor, in breach of this sub-clause 21.4, does not procure warranties in the name of the Employer, to the effect as stipulated in sub-clause 21.4(b), then, without prejudice to the Employer's other rights in relation to that breach, the Contractor must:
 - (i) assign to the Employer, or its nominee (at no cost to the Employer) all manufacturer's, supplier's, or Sub-contractor's warranties and/or guarantees which are issued, or given in respect of the Works and any Materials, Goods, Plant and/or Equipment incorporated in the Works; and
 - (ii) ensure that such warranties and/or guarantees are assigned as from their effective dates and in any case no later than the dates of completion stipulated in sub-clause 21.4(d) above.
- (f) To the extent that the assignment contemplated in the preceding sub-clause 21.4(e) is not effected, then, without prejudice to any of the Employer's other rights in relation to that matter, the Contractor shall be deemed to hold the relevant warranties and/or guarantees on trust for the Employer and will exercise the rights under those warranties and/or guarantees as directed by the Employer.

21.5 Quality Assurance and Quality Control

- (a) Within 14 Days of the receipt of the Letter of Acceptance, the Contractor shall submit to the E.R., a quality plan to ensure that the Works are designed, executed and completed in accordance with the Contract.
- (b) Within 21 Days of receipt of the quality plan from the Contractor, the E.R. shall either:
 - (i) accept the plan; or
 - (ii) reject it with reasons and require the Contractor to resubmit.
- (c) The submission to and acceptance by the E.R. of the quality plan shall not relieve the Contractor of any of its obligations under the Contract. Any such quality plan shall be

used only as an aid to achieving compliance with the Contract and to document such compliance and to enable monitoring and quality auditing.

- (d) Should the Contractor fail to submit, or resubmit after the rejection of the quality plan, the E.R. shall:
 - (i) be entitled to reduce by 10% the amount due to the Contractor in the Interim Certificates until the Contractor has satisfactorily complied with its contractual obligations in respect of the quality plan; and
 - (ii) take the Contractor's default in the assessment of any claims from the Contractor as to the extension of time and/or loss and expense under Clauses 31.0 and 57.0 respectively; and
 - (iii) should the default be serious and/or of a continuing nature, invoke Clauses 50.0 and 51.0 (on Suspension and Determination respectively) as appropriate
- (e) For the avoidance of any doubt, a reference to the Contractor's quality plan shall also include the corresponding quality plans of all the Contractor's Sub-contractors. Should the appointment dates of such Sub-contractors be different from the Contractor itself,, the time period for the submission of their respective quality plans in sub-clause 21.5(a) above shall commence from their respective dates of appointment.

21.6 Samples and Mock-Ups

- (a) The Contractor shall supply at its own cost, samples of Materials, Goods, Plant and Equipment to the E.R. for consent prior to:
 - (i) selection and ordering the bulk or remainder; and/or
 - (ii) incorporation into the Works; and
 - (iii) testingas described and/or stipulated in the Contract.
- (b) The Contractor shall also supply at its own cost, samples of Materials, Goods, Plant and Equipment to the E.R. for consent as required by the E.R. in accordance with the relevant provisions of the Contract.
- (c) Unless otherwise stipulated in the Contract, or directed by the E.R., each sample shall:

- (i) be labeled as to its origin and intended use in the Works;
 - (ii) be accompanied with all relevant information i.e. technical data, specifications and test certificates.;
 - (iii) be submitted timeously bearing in mind the period for review and the giving of the consent by the E.R. and the need for the Contractor to initiate and complete its procurement in time to meet the time for completion.
- (d) The samples shall be submitted on a sample board, or where the sample is bulky or not capable of being mounted on a sample board, alternative arrangements shall be made for the E.R.'s inspection and verification.
- (e) In the alternative, the E.R. may instruct the Contractor to prepare a "mock-up" where:
- (i) such "mock-up" is stipulated in the Contract, or
 - (ii) due to the nature of the Works, the E.R. is of the opinion that a "mock-up" is desirable for review and consent before further Works are undertaken.

The requirements of sub-clauses 21.6(a) to (c) above shall apply *mutatis mutandis*.

- (f) Unless otherwise provided in the Contract, all samples and "mock-ups" shall be supplied and/or prepared by the Contractor at its own cost and sufficient time shall be allocated in the Contractor's programme under Clause 30.0 for all activities connected with their preparation, submission, review and consent by the E.R. and their subsequent procurement by the Contractor and/or its Sub-contractors.
- (g) Following the review process, any consent given by the E.R. shall not absolve the Contractor of its obligations, duties, responsibilities and liabilities under the Contract for the same.

21.7 Non-Compliances during Progress of the Works

- (a) If the E.R. discovers:
- (i) non-compliances or breaches of the Contractor's reviewed samples, or mock-ups, or quality plan; and/or
 - (ii) Materials, Goods, Plant, Equipment or workmanship provided by the Contractor which are not in accordance with the Contract; and/or

(iii) any other Defects whatsoever,

notwithstanding any previous consent, approval or interim payment for the Works, or part of the Works, the E.R. shall as soon as practicable undertake the options as stated in sub-clause 21.7(b) to (d) below.

(b) Pursuant to sub-clause 21.7(a), the E.R. may instruct the Contractor to do any or all of the following:

- (i) to remove the non-compliant Materials, Goods, Plant and/or Equipment from the Site and replace these with contractually compliant ones;
- (ii) not to deliver the non-compliant Materials, Goods, Plant, Equipment or work to the Site;
- (iii) to demolish the non-compliant work;
- (iv) to redesign (if necessary), reconstruct, replace or correct the non-compliant Materials, Goods, Plant, Equipment and/or work.

(c) The E.R.'s instruction of sub-clause 21.7(b) must specify the time within which the Contractor is to comply with the same. If the Contractor fails to comply with the said instruction within the time specified by the E.R., or any other time extended/approved by the E.R., the E.R. may be entitled to:

- (i) employ and pay other persons to carry out the same; or
- (ii) permit the Employer to undertake the said work itself; or
- (iii) issue an omission Variation Order under Clause 39.0 for a diminution in value, if the E.R. is of the opinion that it will be impracticable, or inconvenient to have the Contractor to undertake the same.

(d) Following the Contractor's failure to comply with the E.R.'s instruction, should the E.R. exercise the default options as stipulated in sub-clause 21.7(c) above, the amount of any loss, expense, costs (including "On-Cost" Charges) or damages suffered or incurred by the Employer shall be fully recoverable from the Contractor:

- (i) from any monies due or to become due to the Contractor; and/or
- (ii) from the Performance Security; and/or
- (iii) as a claim for a debt due.

21.8 Payment of Duties, Taxes and Other Charges

- (a) The Contractor shall pay all duties and taxes, which may be imposed by law, such as customs duties, sales tax and GST (if applicable), on all Materials, Goods, Plant and Equipment, whether purchased or imported in the Contractor's (and/or Sub-contractor's) name or its agents', which are incorporated into the Works or used directly in the design, construction, completion or maintenance of the Works.
- (b) Except where otherwise specified in the Contract, the Contractor shall pay all tonnage and other royalties, rent, fees and other payments or compensation (if any) for getting stone, sand, clay or other materials for the Works.

22.0 INSPECTION AND TESTING OF MATERIAL, GOODS, EQUIPMENT, PLANT AND WORK

22.1 Meaning and Stages for Undertaking

- (a) In this Clause the word:
 - (i) "test" shall also mean examine and measure;
 - (ii) "testing" shall also mean examination and measurement; and
 - (iii) "testing and commissioning" shall also mean the examination and measurement to ensure optimal performance and compliance with the performance specifications set out in the Employer's Requirements and/or the Contract Documents.
- (b) In this clause the word:
 - (i) "inspect" shall also mean audit, review and check; and
 - (ii) "inspection" shall also mean auditing, reviewing and checking.
- (c) The Contractor shall undertake in respect of testing and/or commissioning the following:
 - (i) Preliminary testing and/or commissioning on its own, prior to any final testing and/or commissioning to satisfy itself that it can meet the requirements of the subsequent final testing and/or commissioning (as applicable); and
 - (ii) Final testing and/or commissioning in the presence of the E.R. and/or statutory authorities and/or independent third party specialists named in, and/or required

by the Contract to show compliance with the performance specifications in the Employer's Requirements/Contract Documents and/or to meet the applicable statutory requirements and/or the requirements of independent third party specialists employed by the Party or Parties.

- (d) Unless expressly stated in the Contract to the contrary, the testing and/or commissioning shall be carried out at the following times/stages of the Works:
 - (i) During the currency of the Contract and before the issue of the relevant completion certificate under Clause 32.0, 33.0 or 34.0
 - (ii) Following the issue of the relevant completion certificate and during the Defects Liability Period and Maintenance Period; and
 - (iii) Prior to the issue of the Certificate of Making Good of Defects and/or Maintenance Certificates under Clause 36.0
- (e) For all the above-mentioned testing and/or commissioning, the provisions of the following Clauses 22.2 (c), 22.3, 22.4 and 22.5 shall apply.

22.2 Inspection and Testing

- (a) At any time prior to the issue of the relevant certificate of completion, the E.R. may instruct the Contractor to submit to the E.R. for its consent or approval any Materials, Goods, Equipment, Plant or Works under the Contract for inspection and/or testing to ensure that the Contractor's obligations under the Contract are fulfilled.
- (b) The Contractor shall, when so instructed carry out, or permit to be carried out, the relevant inspections and tests at:
 - (i) the Site; or
 - (ii) "Off-Site" (if applicable),and such further inspections and tests as the E.R. may reasonably require, including:
 - (i) to open up for inspection any work covered up; or
 - (ii) to carry out any test on any Materials, Goods, Equipment or Plant whether or not already incorporated in the Works, or any executed Works.

- (c) The Contractor shall provide all apparatus, assistance, documents and other information, utilities, equipment, fuel, consumables, instruments, labour, materials and suitably qualified and experienced staff, as are necessary to carry out the specified inspections and tests effectively and efficiently. The Contractor shall mutually agree, with the E.R. as to the time and place for the specified inspections and/or testing of any Materials, Goods, Equipment, Plant and/or other parts of the Works.

22.3 Results of Inspection and/or Testing

- (a) The Contractor shall not later than 7 Days after the completion of the inspections and/or tests, forward to the E.R., duly certified reports of the same. When the specified inspections and/or tests have been satisfactorily undertaken, the E.R. shall, within 7 Days of receipt from the Contractor of the said reports, endorse the Contractor's inspections and/or test certificates or issue certificates to that effect. If the E.R. has not attended the inspection and/or test despite being officially notified by the Contractor, and/or does not respond within the stipulated 7 Day period of the receipt of the reports from the Contractor, the E.R. shall be deemed to have accepted the results/findings or readings as accurate.
- (b) If, as a result of an inspection or testing, any Material, Goods, Plant, Equipment or workmanship is found to be:
 - (i) defective; or
 - (ii) otherwise not in accordance with the Contract,

the E.R. may reject the same within 7 Days of receipt of the said report from the Contractor, by giving a written notice to the Contractor, with reasons and a reasonable period for the latter to cure the non-compliances. The Contractor shall then promptly make good the defect or non-compliance within the stipulated period and ensure that the rejected item complies with the Contract.

- (c) If the E.R. requires the said item to be re-inspected and/or re-tested, the inspections and/or tests shall be repeated under the same terms and conditions as before. If the rejection and retesting causes the Employer and/or the E.R. to incur additional costs, the Contractor shall pay these costs directly to the latter.

22.4 Cost of Inspection and Testing

- (a) The costs of carrying out any inspection and/or test shall be borne by the Contractor if such inspection and/or test is:
 - (i) intended by, or provided for in the Contract, or
 - (ii) additional inspections and/or tests required by the E.R. in consequence of some prior failure, or breach of contract, or other default of the Contractor.
- (b) The costs of carrying out any inspection and/or test shall be borne by the Employer if such inspection and/or test is:
 - (i) not so intended by, or provided for in the Contract, and
 - (ii) the Contractor is instructed to undertake the same through a Variation Order issued pursuant to Clause 39.0.

22.5 Contractor Remains Liable

The Contractor remains liable for the quality of the Works carried out under the Contract even though the E.R. may have had such work (including any Materials, Goods, Plant and Equipment) inspected and/or tested, or otherwise indicated that such work (inclusive of any Materials, Goods, Plant and Equipment) is in accordance with the Contract, or otherwise acceptable.

22.6 Examination/Inspection of Works before Covering Up

- (a) No part of the Works shall be covered up or put out of view without the prior written approval of the E.R. and the Contractor shall afford full opportunity for the E.R. to examine/inspect such part of the Works which is about to be covered up, or put out of view.
- (b) The Contractor shall give due and sufficient written notice to the E.R. in the form of a "Request for Information" ("RFI") whenever any part of the Works is ready, or about to be ready for inspection/examination and the E.R. shall without unreasonable delay (unless the E.R. considers it unnecessary and advises the Contractor in writing accordingly), attend such examination/inspection of such part of the Works.
- (c) If the Contractor fails and/or neglects to comply with the provisions of sub-clauses 22.6(a) and (b):

- (i) the E.R. may require the Contractor to uncover, or make openings in, or through any part or parts of the affected Works, or do all such things as are necessary for the E.R. to inspect such part, or parts of the Works as executed; and
- (ii) the cost of such uncovering, or making openings and subsequent reinstating and making good of the same shall be borne by the Contractor whether or not such part or parts uncovered are found to be executed in accordance with the Contract; and
- (iii) the Contractor shall not be entitled to any extension of time, and loss and/or expense for any delay caused by such failure and/or neglect; and
- (iv) the additional costs of any necessary measures or requirements carried out by or instructed by the E.R. shall be solely and fully borne by the Contractor.

22.7 Uncovering and Making Openings

- (a) The Contractor shall uncover any part of the Works, or make openings in, or through the same as the E.R. may from time to time instruct and shall reinstate and make good such part of the Works to the satisfaction of the E.R.
- (b) If any such part of the Works has been covered up, or put out of view after compliance with the requirements of sub-clauses 22.6(a) and (b) and is found to be executed in accordance with the Contract, then, such work carried out by the Contractor shall be deemed a Variation under Clause 39.0.

23.0 CONTRACTOR'S EQUIPMENT, CONTRACTOR'S PLANT

23.1 Exclusive use for the Works

- (a) All Contractor's Equipment, Contractor's Plant, Temporary Works and materials provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works.
- (b) The Contractor shall not without the prior written consent of the E.R. remove such Contractor's Equipment, Contractor's Plant, Temporary Works, materials or any part of the same except for the purpose of moving these within the Site. Such consent of the E.R. shall nevertheless be not required for vehicles engaged in transporting any staff, workmen, Contractor's Equipment, Plant, Goods or Materials to and from the Site.

23.2 Passing of Property and Vesting

- (a) Property in the Goods, Materials, Plant, Equipment and Temporary Works shall pass to the Employer when payment for the same is made in accordance with Clause 41.0
- (b) All the Contractor's Equipment, Contractor's Plant and Temporary Works:
 - (i) owned by the Contractor, or
 - (ii) by any Company in which the Contractor has a controlling interest,shall, when on Site, be deemed to be the property of the Contractor.
- (c) The vesting of such property pursuant to sub-clause 23.2(a) shall not prejudice the right of the Contractor to the sole use of the Goods, Materials, Plant, Equipment and Temporary Works for the purpose of the Works, nor shall it affect the Contractor's responsibility to operate and maintain the same under the provisions of the Contract.

23.3 Employer not liable for Damage

- (a) The Employer shall not at any time be liable for any:
 - (i) loss or damage to any of the Contractor's Equipment, Contractor's Plant, Temporary Works, or materials; or
 - (ii) loss, expense, costs, damages, liability or claim arising from the presence at Site or use of the Contractor's Equipment, Contractor's Plant, Temporary Works, or materials.except, and to the extent that the same is due to:
 - 1. excepted risks under the various insurance cover provisions, or
 - 2. any act or neglect of the Employer, or of any person for whom the Employer is responsible, or
 - 3. any dispensations granted under any other provisions of the Contract.
- (b) Save as to the exclusions stipulated in sub-clause 23.3(a) above; the Contractor shall at all times remain primarily liable for the matters adverted to in the said sub-clause.

23.4 Conditions for Hire

- (a) This Clause shall apply to only Contractor's Equipment, Contractor's Plant, and/or Temporary Works hired by the Contractor.
- (b) With a view to securing the continued availability for the purpose of executing the Works in the event of the determination of the Contractor's employment under the relevant provisions of the Contract, of any hired:
 - (i) Contractor's Equipment; and/or
 - (ii) Contractor's Plant; and/or
 - (ii) Temporary Works

the Contractor shall not bring onto the Site any such items unless the provisions of sub-clause 23.4(c) are satisfied.

- (c) The Contractor shall only be permitted to bring on to the Site hired Contractor's Equipment, Contractor's Equipment and/or Temporary Works if there is an agreement for the hire of the same (which agreement shall be deemed not to include an agreement for Hire Purchase) which contains a provision to the effect that the owner of such Contractor's Equipment, Contractor's Plant and/or Temporary Works shall:
 - (i) on request in writing made by the Employer within 14 Days after the date on which the determination of the Contractor's employment has become effective; and
 - (ii) on the Employer undertaking to pay the hire charges in respect of such Contractor's Equipment, Contractor's Plant and/or Temporary Works from such date,

hire out such Contractor's Equipment, Contractor's Plant and/or Temporary Works to the Employer on the same terms in all respects as the same was hired to the Contractor, provided that the Employer shall be entitled to permit the use of such items by any other Contractor engaged by the Employer for the purpose of executing and completing the Works and remedying Defects under the relevant provisions of the Contract.

23.5 Re-vesting and Removal

- (a) Upon the removal from the Site, with the written consent of the E.R. under sub-clause 23.1 of any such Contractor's Equipment, Contractor's Plant, Temporary Works, or materials as:
 - (i) have become the property of the Employer under sub-clause 23.2; or

- (ii) been deemed to have become the property of the Employer under sub-clause 23.2

the property in the same shall re-vest in the Contractor.

- (b) Upon the completion of the Works and the issue by the E.R. of the Certificate of Completion and Making Good Defects, the property in the remainder of such Contractor's Equipment, Contractor's Plant, Temporary Works, or materials, subject to the relevant clauses on the determination of the Contractor's employment by the Employer, re-vest in the Contractor.

23.6 Incorporation of Clause in Sub-Contracts

- (a) The Contractor shall, when entering into any Sub-Contract for the execution of any part of the Works, incorporate into such Sub-Contracts (by reference or otherwise) the provisions of this Clause 23.0 in relation to the Contractor's Equipment, Contractor's Plant, Temporary Works, or materials brought on to the Site by the Sub-Contractor.
- (b) The E.R. may request the Contractor in writing to supply all necessary evidence to show that the requirements of sub-clause 23.6(a) have been satisfactorily met for any, or all of its Sub-Contractors. The Contractor shall comply with the said request with all reasonable dispatch but not later than 7 Days of its receipt. Failure by the Contractor to respond within the said period shall be deemed that the Contractor has failed to comply with this provision.

23.7 Payment of Custom Duties and Taxes

- (a) The Contractor shall be required to pay all customs duties and sales tax in respect of:
 - (i) all Plant, Equipment, Materials and Goods for incorporation in the Works; and
 - (ii) all Contractor's Equipment, Contractor's Plant, Temporary Works or materials for use in connection with the Works.
- (b) The Contractor shall be required to pay all taxes payable by itself or its agents and Sub-contractors as are chargeable under the laws of the country (where the site is located) for the time being in force.
- (c) The Contract Sum shall be deemed to include for the payment of all such duties and taxes.

23.8 Payment of other Fees, Charges, etc.

- (a) The Contractor shall pay for the Contractor's Equipment and Contractor's Plant for use directly in connection with the design, construction, completion or maintenance of the Works brought into and dispatched from the country (where the site is located) by the Contractor (or in its name, by agents), all port dues, including (but not by way of limitation):
 - (i) wharfage dues,
 - (ii) pilotage fees,
 - (iii) anchorage,
 - (iv) berthage and mooring fees,
 - (v) quarantine dues,
 - (vi) loading portorage,
 - (vii) overtime fees, and
 - (viii) any other incidental fee and/or charge.
- (b) The Contractor shall also pay all charges and other expenses in connection with landing and shipment of all Contractor's Equipment, Contractor's Plant and other things of whatsoever nature brought into or dispatched from the country (where the site is located) for the purposes of the Contract.
- (c) The Contract Sum shall be deemed to include for the payment of all such fees, charges and other expenses.

23.9 Variation in Duties, Taxes, Fees, Charges and Expense

The duties, taxes, fees, charges and expenses as stipulated in sub-clause 23.8 above shall not be subjected to any fluctuation.

23.10 Documentation and Procedural Matters

- (a) The Contractor shall furnish to the E.R. all such shipping documents, airfreight records, invoices and other documentation as may be required by the relevant authorities (inclusive of the customs authorities) in connection with the importation of Contractor's Equipment, Contractor's Plant, Temporary Works and/or any other item required for the completion and maintenance of the Works.
- (b) In the case of such items being imported on the Contractor's behalf by importing agents and the like, both the shipping/airfreight documents and the invoices of the original suppliers or manufacturers must indicate clearly that the consignment is for the Contractor's account.
- (c) The procedure in respect of the requirements of the foregoing shall be determined by the relevant authorities, in particular, the customs authorities. The Contractor shall make written application to the E.R. and shall provide all relevant documentation of all items to be imported into the country (where the Site is located) not less than 30 Days before the arrival of the said items.
- (d) The Contractor shall make its own arrangement to obtain clearance through the relevant authorities, in particular, the customs of all such items. However, if required, the assistance of the E.R. and/or the Employer may be sought.
- (e) Further and above to the foregoing provisions, the Contractor shall furnish to the E.R. as and when deemed necessary by the latter, a full list of all Contractor's Equipment, Contractor's Plant and/or Temporary Works, whether such items are hired or acquired.

23.11 Insurance covers for Contractor's Equipment, etc

- (a) Unless the insurance covers as stipulated in this Clause have been provided for by the Contractor under any other provisions of the Contract, the Contractor shall provide, for all the Contractor's Equipment, and Contractor's Equipment the said insurance covers before the commencement of work under the Contract.
- (b) The Contractor acknowledges and agrees that it shall ensure that all Contractor's Equipment and Contractor's Plant it brings to the Site for use under the Contract is insured to provide cover:
 - (i) against loss or damages for its replacement value; and
 - (ii) for not less than the amount as indicated in Appendix I for loss or damage to property and death or injury to any person or persons.

- (c) The Contractor shall, at its cost, effect and maintain or cause to be effected and maintained insurance/cover relevant to the Contractor's obligations under the Contract, and with respect of the Contractor's liability to the Employer pursuant to the indemnity provisions, including:
 - (i) Third Party Property Damage insurance cover for not less than the amount as indicated in Appendix I for any occurrence which covers third-party property damage related to any Contractor's Plant, Contractor's Equipment including vehicles (registered or unregistered) used in respect of the performance of the Contract and which covers injury to, illness of, or death of any person or persons related to any unregistered plant, equipment or vehicles used in the performance of the Contract, where relevant; and
 - (ii) compulsory Third Party Motor Vehicle insurance/cover for not less than the amount as indicated in the Appendix I to be maintained from the Date of Commencement until the completion of the works under the Contract, in respect of all registrable vehicles used in the performance of the Contract, where relevant.
- (d) Any insurance cover required to be effected and maintained by the Contractor pursuant to this Clause shall:
 - (i) be in a form and content acceptable to the E.R.; and
 - (ii) be taken from an insurer cover operator approved by the Employer; and
 - (iii) also, comply with the other relevant provisions of insurance cover in the Contract.
- (e) Before the Contractor commences Works under the Contract and whenever requested in writing by the E.R., the Contractor shall produce evidence of the same to the satisfaction and approval of the E.R. Should the Contractor fail to do so or fail to effect and maintain the stipulated insurance covers, the Employer may effect and maintain the applicable insurance cover and pay the applicable premium(s). The amount so paid shall be a debt due from the Contractor to the Employer. The Employer may further refuse any payment under the Contract until evidence of compliance with the insurance cover obligations under this clause 23.11 is produced by the Contractor to the satisfaction and approval of the E.R.

- (f) The effecting of insurance cover shall not limit the liabilities or obligations of the Contractor under other provisions of the Contract.

24.0 SAFETY MANAGEMENT

24.1 Contractor's Safety Management

The Contractor's obligations and entitlements in relation to:

- (a) Safety management systems; and
- (b) Safety management documentation

are as set out in this Clause 24.0.

24.2 Contractor's Obligations and Entitlements

- (a) In carrying out all its obligations in relation to the Works, the Contractor shall ensure that it meets the standards specified:
 - (i) in the Contract; and/or
 - (ii) the applicable laws, by-laws and regulations

in order to prepare and implement its safety management documentation.

- (b) The Contractor shall do all things necessary to ensure that there is a timely preparation and submission to the E.R. for the consent of the safety management documentation incorporating the relevant safety management systems.
- (c) Upon the E.R.'s consent, the Contractor shall make available all relevant personnel responsible for the safety management documentation prepared by the Contractor to attend safety management systems course and/or workshops arranged by the Contractor and/or the E.R.
- (d) Further to sub-clause 24.2(c), the Contractor shall provide any additional documentation or information in relation to the safety management documentation as may be reasonably required by the E.R. or as updates.

- (e) Once the safety management documentation has been consented to by the E.R., the Contractor shall immediately put in place all relevant safety management systems and/or measures contained therein, inclusive of but not limited to the following:
 - (i) the relevant personnel including a safety officer to implement and oversee such systems; and
 - (ii) the relevant procedures inclusive of regular reporting, and investigation of breaches.
- (f) For the avoidance of doubt:
 - (i) any consent by the E.R. to the Contractors' safety management documentation shall not absolve the Contractor of its obligations, duties and liabilities for the same under the Contract and/or the law;
 - (ii) the Contractor's obligations in respect of the safety management systems as set out above shall continue until the issue of the Certificate of Completion and Making Good Defects;
 - (iii) the Contractor shall not be entitled to any:
 - 1. extension of time to the Date for Completion (or any extended date under Clause 31.0); and/or
 - 2. adjustment to the Contract Sum.

from, or in connection with the preparation, submission and/or revision of its safety management documentation or its other obligations under this Clause 24.0; and
 - (iv) the Contractor acknowledges that it has made full allowance in the Contract Sum under Clause 3.0 for all activities, obligations, duties and liabilities arising from, or in connection with the preparation, submission, revision and implementation of its safety management documentation, or its other obligation under this Clause 24.0.

25.0 ENVIRONMENTAL MATTERS

25.1 Compliance with Environmental Laws

The Contractor shall fully comply with all relevant laws relating to the protection and preservation of the environment, and the requirements of the authorities having jurisdiction over the same.

25.2 Measures to be taken by Contractor

The Contractor shall give due consideration to the preservation and social implications of water and air quality, soil, flora and fauna (if any) within the Site during execution of the Works.

25.3 Time and Costs Deemed Included

The time and costs allowances for all the measures taken by the Contractor in compliance with this Clause 25.0 shall be deemed to be included in the Contract Period and the Contract Sum under Clauses 2.0 and 3.0 respectively.

26.0 EPIDEMICS AND MEDICAL ATTENDANCE

26.1 Contractor's Duties

- (a) The Contractor shall maintain the Site in a clean, hygienic and sanitary condition and shall comply with all the requirements of the relevant government health and sanitary authorities, and the applicable laws and regulations.
- (b) In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the government or the relevant medical and health authorities for the purpose of dealing with and overcoming the same.

26.2 Site First Aid Facilities

The Contractor shall ensure that sufficient first aid facilities inclusive of first aid kits are made available at suitable locations on the Site and/or as directed by the E.R.

26.3 Time and Sums deemed included

The time and costs allowances for all measures taken by the Contractor in compliance with this Clause 26.0 shall be deemed to be included in the Contract Period and Contract Sum under Clauses 2.0 and 3.0 respectively.

PART IV: CONTINGENCY AND PROVISIONAL SUMS.

27.0 CONTINGENCY AND PROVISIONAL SUMS

27.1 Inclusion of Contingency and Provisional Sums

- (a) For the particular purposes of the Employer, the Contract may include provisions covering Contingency Sums and/or Provisional Sums; which Sums shall be shown in the Contract Sum Analysis and the Contract Sum as separate Items.
- (b) Further and in amplification of the definitions as provided for in Clause 1.1, the said terms shall carry the following meanings in the context of the Contract:
 - (i) Contingency Sum shall mean the sum provided for work or expenditure which cannot be foreseen at the time the tender documents and/or the Employer's Requirements are issued by the Employer to the Contractor; and
 - (ii) Provisional Sum shall mean a sum provided for work or expenditure which has not been quantified or detailed at the time the tender documents and/or the Employer's Requirements are issued by the Employer to the Contractor.

27.2 Expenditure of the Contingency and/or Provisional Sums

- (a) The Contingency and/or Provisional Sums may be expended at such times and in such amounts as the E.R. may direct; the directions coming in the form of written instructions under Clause 8.0 to the Contractor.
- (b) Such sums, if not used either wholly or in part, shall be deducted from the Contract Sum pursuant to Clause 42.0.
- (c) If instructed by the E.R., the value of such work executed by the Contractor shall be set-off against all such Contingency and/or Provisional Sums and the balance shall be added to or deducted from the Contract Sum pursuant to Clause 42.0 as the case may be.

28.0 SUB-CONTRACTORS

28.1 Meaning

- (a) In amplification of the definition in sub-clause 1.1, for the purposes of this Contract, the term "Sub-Contractors" shall encompass all the Contractor's:
 - (i) Domestic Sub-Contractors and/or Suppliers; and
 - (ii) Specialists including designers/consultants; and
 - (iii) Novated Sub-Contractors and/or Suppliers.
- (b) Clause 28.0 shall be read together with Clause 17.0.
- (c) In view of the particular nature of the Contract and in order to ensure that the Contractor's obligation for single point responsibility is not materially compromised, the Parties hereby agree that all Sub-contractors shall be directly engaged by the Contractor itself to undertake any parts of the Works and/or shall be novated pursuant to Clause 17.0.

28.2 Sub-Contracting

- (a) The Contractor shall not sub-contract the whole or any substantial part of the Works.
- (b) Except where otherwise provided for in the Contract, the Contractor shall not sub-contract any part of the Works without the prior written consent of the E.R. (which consent shall not be unreasonably delayed or withheld).
- (c) Where the E.R. consents to any sub-contract under sub-clause 28.2(b), such consent shall not:
 - (i) in any way absolve the obligations of the Contractor under Clause 12.0; or
 - (ii) relieve the Contractor from any liability or obligation under the Contract.

and the Contractor shall be fully responsible for:

1. the due observance by such Sub-contractors of all the terms, stipulations and conditions under the Contract; and

2. for the acts defaults or neglects of any Sub-contractor (including 'labour only' Sub-contractors), it's agents, servants or workmen as if they were the acts, defaults or neglects of the Contractor, it's agents, servants or workmen.
- (d) In amplification of sub-clause 28.2(b), the Contractor shall not be required to obtain such consent for:
- (i) the provision of labour on a 'piecework' basis; or
 - (ii) the purchase of Materials, Goods, Plant and/or Equipment which are in accordance with the standards specified in the Contract; or
 - (iii) the sub-contracting of any part of the Works for which the Sub-contractor is novated under the Contract.
- (e) It shall be a condition in any sub-contract which has been consented to by the E.R. pursuant to this sub-clause 28.2, that upon the determination of the Contractor's employment under the Contract:
- (i) the employment of the Sub-contractor under the sub-contract shall determine immediately unless the Employer exercises its right for the assignment of the benefits of the sub-contract to it under sub-clauses 51.9(e) and 53.3(b)(vi); and
 - (ii) no claim whatsoever by the Contractor and/or Sub-contractor against the Employer for any work done, or Materials, Goods, Plant and/or Equipment supplied will be entertained or given effect to by the Employer.

28.3 Consultants

- (a) The Contractor shall employ only local consultants for the design and supervision of the Works and the management of the Contract. Under no circumstances will the Contractor be permitted to employ foreign consultants except where the Contractor can prove that there are no local consultants with the required expertise and/or the Contractor has made a true declaration on the lack of such expertise in the Contractor's Proposals/Tender.
- (b) The Contractor shall submit, as part of its Contractor's Proposal/Tender, a complete list of consultants to be employed for the Works including their respective job descriptions, obligations under the Contract, the area of expertise and qualifications/accreditations.

- (c) The Contractor shall ensure that the consultants are efficient, suitably qualified, experienced and registered with their respective professional bodies as required by the governing laws and/or authorities.
- (d) The Contractor shall not employ any other consultants (other than those named in the Contractor's Proposals/Tender) without the prior express consent of the E.R.
- (e) The said consultants shall be retained throughout duration of the Contract and they shall not be discharged or terminated without the express consent of the E.R.
- (f) Any action, decision, instruction or consent taken, made or given by the Employer and/or the E.R., as the case may be under this Clause shall not in any way whatsoever relieve the Contractor of any of its obligations under the Contract.
- (g) For the purposes of the Contract, any consultant engaged by the Contractor shall be considered to be its Sub-contractor for which the other requirements of this Clause and/or other relevant provisions of the Contract shall equally apply.

28.4 Consequences of Default

- (a) If the Contractor defaults in that:
 - (i) sub-contracts the whole or any substantial part of the Works in contravention of sub-clause 28.2(a); or
 - (ii) sub-contracts any part of the Works without the prior written consent of the E.R. in contravention of sub-clause 28.2(b); or
 - (iii) breaches Clause 28.3,

then the Employer may exercise the rights and remedies as stipulated in sub-clause 28.4(b).
- (b) Upon the occurrence of the Contractor's default as specified in sub-clause 28.3(a), the Employer may, either:
 - (i) determine the Contractor's employment pursuant to Clause 51.0; or
 - (ii) pursue any other right, or remedy it is entitled to under the Contract or the applicable law.

28.5 No Privity of Contract

Neither the existence nor the exercise of powers pursuant under this Clause 28.0 and/or the Contract shall create a privity of contract between the Employer and the Sub-contractor (as defined in Clause 28.1 (a) above) or render the Employer in any way liable in law to any of them.

28.6 Contractor's Responsibilities

- (a) The Contractor shall be fully responsible:
 - (i) to ensure that the Sub-contractors:
 - 1. conform fully with the terms and conditions of the Contract and with the respective sub-contracts; and
 - 2. carry out the sub-contract Works in compliance with their respective sub-contracts.
 - (ii) for the acts, defaults or breach of any terms and/or conditions of the Contract by the said Sub-contractors on their part in the same way as for its own or those of other Sub-contractors engaged by itself.
- (b) The Employer shall in no circumstances be liable to the Contractor for the default of any such Sub-contractor.
- (d) The Contractor shall furnish to the E.R. full details of any Sub-Contractor which it proposes to employ for any portion of the Works and obtain the latter's prior consent.
- (e) Where the Contractor directly engages/appoints a Specialist, in particular, a designer/consultant, to undertake the design or other specialist service under a contract of service, the Contractor shall procure from the Specialist and furnish to the E.R. within 14 Days of the latter's appointment/engagement, a warranty covering its particular service rendered in the form and content as stipulated in the Employer's Requirements. The requirements of sub-clause 21.4 shall equally apply in this case. For the avoidance of doubt, nothing in the said warranty shall be interpreted as altering the rights and duties of the parties under the Contract.

PART V: COMMENCEMENT, DELAYS AND CONSEQUENCES

29.0 COMMENCEMENT OF WORK AND POSSESSION OF SITE

29.1 Meaning

For the purposes of the Contract, the term "Site" wherever used shall mean:

- (a) the land and other places provided, or made available by the Employer on, above, under, in or through which the Works are to be executed, or to which Materials, Goods, Plant or Equipment are to be delivered, and
- (b) together with so much of the area surrounding the same (if any) as the Contractor shall, with the consent of the Employer use in connection with the Works otherwise than merely for the purposes of access; and
- (c) such other places provided by the Employer, or designated by the E.R. in the Contract from time to time as forming part of the Site whether the same may fall under sub-clause 29.1(a) and/or (b) or not.

29.2 Commencement of Work

- (a) The Contractor shall, subject to the fulfillment of the conditions precedents stipulated in sub-clause 29.2(c) commence the Works, or such sections of the Works, on the Date of Commencement, that is:
 - (i) the date stipulated in the Letter of Acceptance; or
 - (ii) on the date stipulated in Appendix I; or
 - (iii) where no date is stipulated in the Letter of Acceptance, or the Contract, on the date specified in an instruction for commencement (which, unless otherwise agreed, shall not be less than 14 Days after the date of the instruction) from the E.R.
- (b) Thereafter the Contractor shall proceed with due diligence and expedition and without delay in accordance with:
 - (i) the Contract; and
 - (ii) by reference to the programme and/or Method Statement, accepted by the E.R.
or

- (iii) any revised or modified programme and/or Method Statement accepted by the E.R.

The time for completion shall run pursuant to Clause 2.0 from the Date of Commencement which is fixed pursuant to sub-clause 29.2(a) above.

- (c) The conditions precedent to the commencement of the Works or such Sections of the Works as adverted to in sub-clause 29.2(a) are:

- (i) the submission of the Performance Security stipulated under Clause 13.0; and
- (ii) the depositing of insurance cover policies as specified under Clauses 23.0, 46.0 and 49.0; and
- (iii) the submission of Code Numbers and Social Security Numbers for all workmen registered under the applicable statutory enactment (if any) pursuant to Clause 48.0; and
- (iv) any other conditions precedent as expressly stipulated under any other provisions of the Contract.

- (d) For the purposes of sub-clause 29.2(c)(ii) only but for no other, the submission of the original:

- (i) cover notes of the said insurance cover policies; and
- (ii) receipts of premiums paid for the said insurance cover policies.

shall be a sufficient discharge of the Contractor's obligations under the said sub-clause. This shall be subject to the Contractor's submission of the original copies of such policies to the E.R. within 30 Days of the Date of Commencement as aforesaid; failing which the Contractor shall be deemed to be in default.

29.3 Possession of Site

- (a) Unless the Contract Documents otherwise provide, the Contractor shall be entitled to on:
 - (i) the Date of Possession stipulated in Appendix I, or

- (ii) the Date of Commencement stipulated in sub-clause 29.2(a), or
- (iii) within a reasonable time of such date

access to, and possession of the Site, or such part of the Site to enable the Contractor to commence the Works.

(b) The Contractor's access to, and possession of the Site, or such part of the Site:

- (i) shall not constitute a tenancy; and
- (ii) shall not be exclusive

but shall be subject to the Employer's other rights inclusive of (but not limited) to, in respect of other contractors and third parties.

29.4 Possession ,of Site in Sections,.

(a) The Contractor may be given access to and possession of the Site in sections, phases, stages or in parts (called "the Sections") as:

- (i) stated in the Contract Documents; or
- (ii) stipulated in Appendix I; or
- (iii) instructed by the E.R.

(b) Any other restrictions upon the access to, and possession of Site and the Date of Commencement of any such Sections shall be as:

- (i) stated in the Contract Documents; or
- (ii) stipulated in Appendix I; or
- (iii) instructed by the E.R.

29.5 No Date of Commencement

(a) Where no Date of Commencement is specified in accordance with sub-clause 29.2(a)(i) or (ii) or (iii), then the Contractor shall notify the E.R. in writing requiring the E.R. to stipulate the Date of Commencement concerned.

- (b) If the E.R. fails to stipulate such date within 14 Days as calculated from the date of the Contractor's notification, then the Contractor shall be entitled to deem the Works as having been suspended pursuant to Clause 50.0.

29.6 Failure to give Access and Possession

- (a) In the event of any delay in giving access to, and possession of:

- (i) the Site as stipulated in sub-clause 29.3(a); or
- (ii) any Section of the Site as stipulated in sub-clause 29.4(a),

the E.R. may issue instructions in regard to the revision of the respective date, or dates of access and possession.

- (b) The Date or Dates for Completion shall be appropriately revised under Clause 31.0 hereof. The Contractor:

- (i) shall be entitled to claim for loss and/or expense incurred by reason of such delay under Clause 57.0 but,
- (ii) shall not be entitled to determine its employment under Clause 52.0.

- (c) Pursuant to sub-clause 29.6(a)(i), should the delay in giving access to and possession of the whole Site be more than 90 Days, the E.R. shall give written notice to the Contractor of the cause or causes of the delay. Upon the receipt of the said written notice from the E.R., the Contractor shall inform the E.R. in writing within a further 14 Days, of its decision either to:

- (i) agree to proceed with the Works when the Site is subsequently made available and accessible, in which case sub-clause 29.6(b)(i) shall apply in particular; or
- (ii) determine its employment under the Contract pursuant to Clause 52.0 without prejudice to any other rights or remedies that the Employer and the Contractor may have as a result of such determination.

- (d) Further to sub-clause 29.6(a)(ii), should the delay giving access to and possession of any Section of the Site be more than 90 Days, the E.R. shall give written notice to the Contractor of the cause or causes of the delay. Upon receipt of the said written notice from the E.R., the Contractor shall inform the E.R. in writing within a further 14 Days, of its decision either to:

- (i) agree to proceed with the Works when the relevant Section of the Site is subsequently made available and accessible, in which case sub-clause 29.6(b)(i) shall apply in particular; or
- (ii) request the E.R.'s instruction to omit the relevant Section from the Contract. If the E.R. so agrees to such a request, then the relevant Section shall be duly omitted and deemed to be a Variation to the Contract under Clause 39.0. If the E.R. does not agree to such a request, then the Contractor shall be entitled to claim for any loss and/or expense caused by, and in respect of such delay beyond the 90 Days as aforesaid.

29.7 Rights of Way or Access

- (a) In amplification of the foregoing provisions, the Employer shall provide the Contractor with the permanent rights of way or access to the Site.
- (b) The Contractor shall at its own expense (which expense shall be deemed to be included in the Contract Sum) be responsible for obtaining any other rights of way, or access (including rights of easement) that may be required by the Contractor for the purposes of the execution and completion of the Works.
- (c) The Contractor shall also provide as its own expense (which expense shall be deemed to be included in the Contract Sum) any additional accommodation, land or facilities outside the Site required by the Contractor for the purposes of the execution and completion of the Works.

29.8 Consents and Wayleaves

- (a) Unless the Contract Documents otherwise provide, the Employer shall, in due time obtain all consents, wayleaves and approvals which the Employer is responsible for, in connection with the regulations and by-laws of any local or other authority which shall be applicable for the execution and completion of the Works on the Site.
- (b) If the Contractor is required to undertake the above, all costs and expenses in respect to conformance to sub-clause 29.8(a) shall be deemed to be excluded from the Contract Sum and shall constitute a Variation to the Contract under Clause 39.0.

30.0 PROGRAMME OF WORKS

30.1 General Requirements

- (a) The requirements for the preparation, submittal, updating and the revision of the Contractor's programme of Works (called "the Programme") are set out in this Clause. The requirements are in addition to or expand upon the requirements set out in Clause 20.6 of the Contract.
- (b) The Programme shall be used by the Contractor to plan and execute the Works. The Programme will also be used by the E.R. to monitor progress and be the basis for the assessment of extensions of time (if any) and the effect of the delay (if any) on the progress of the Works.
- (c) The Programme shall be produced by the Contractor in the following phases:
 - (i) Initial Programme: an initial programme for the first three months of work;
 - (ii) Accepted Programme: a programme (incorporating the initial Programme) for the totality of the Works, which shall be submitted to the E.R. for its acceptance. If the E.R. does not accept it, the programme shall be revised and resubmitted for acceptance as set out in the Contract.
 - (iii) Updated Programme: the accepted Programme shall be updated with actual progress and submitted on at least a monthly basis for record purposes. The Contractor may submit for acceptance by the E.R. other revisions to the accepted or Updated Programme.
- (d) Acceptance by the E.R. of any Programme or phase of the Programme shall not make the Programme a contract document or mandate that the Works shall be executed strictly in accordance with the Programme. The Contractor at all times remains responsible for the execution of the Works in accordance with the relevant provisions of the Contract, in particular, Clause 12.0.
- (e) If at any time there is a dispute or difference between the Contractor and the E.R. over any matter concerning the programme, then immediate steps should be taken by either party to have the dispute settled in accordance with Clause 58.0.

30.2 Submission of Programme

- (a) Within 14 Days of the issue of the Letter of Acceptance, the Contractor shall submit to the E.R. for its information, an Initial Programme showing the order in which the Contractor proposes to carry out the Works anticipated in the first 3 months following the issuance of the said Letter. The Initial Programme shall have regard to the Contract Completion Dates and any other milestones, and/or constraints set out in the Contract.
- (b) Within 28 Days of the issue of the Letter of Acceptance, the Contractor shall submit to the E.R. for review and acceptance, a Programme for the whole contract (incorporating the Initial Programme) showing the order of precedence in which the Contractor proposes to carry out the Works. The contents of this Programme shall be as set out in sub-clause 30.6.
- (c) Upon acceptance by the E.R., this Programme shall become the Accepted Programme. Thereafter, if the actual progress does not conform to the Accepted Programme, the E.R. shall be entitled to require the Contractor to submit to the E.R. for acceptance, a revised Programme in accordance with sub-clause 30.7.
- (d) The Contractor shall furnish the Method Statement as stipulated in sub-clause 20.4 and such other details and information as the E.R. may reasonably require to endorse the Accepted Programme.

30.3 Form of the Programme

- (a) Unless otherwise stipulated in the Contract and/or permitted by the E.R., the Contractor shall supply the E.R. with:
 - (i) an electronic (or soft) copy of each Programme together with,
 - (ii) a hard-copy or print-out bar chart; or
 - (iii) a hard-copy or print-out tabular report.

The above Programme shall be in a pre-agreed format.

- (b) All Programmes shall be prepared and submitted using the specified or agreed planning software. The software shall be capable of producing Programmes and information that comply with the requirements of this Clause and shall be in a format that can be read by commercially available propriety planning software.

30.4 E.R.'s Response

- (a) Within 14 Days of the Contractor submitting a Programme complete with all the information required by this Clause to the E.R. for acceptance, the E.R. shall either:
 - (i) accept the Programme; or
 - (ii) give its reasons for not accepting the Programme
The decision shall be given in writing.
- (b) If such reasons are given by the E.R. for not accepting the Programme, the Contractor shall take account of these reasons and resubmit the Programme within a period of 7 Days from the date of receipt of the E.R.'s decision.
- (c) If the E.R. does not either accept or reject the Programme within 21 days of the Contractor's submission or resubmission under sub-clauses 30.4(a) and 30.4(b) respectively, the E.R. shall be deemed to have accepted the Programme as submitted or resubmitted (as the case may be).

30.5 Default in Submission of Programmes

- (a) Should the Contractor fail and/or neglect to:
 - (i) submit a Programme for acceptance as the initial and/or the accepted programme in accordance with sub-clause 30.3 above, or
 - (ii) resubmit the Programme pursuant to sub-clause 30.4(b); or
 - (ii) not regularly update the accepted Programme as an updated Programme,

then the E.R. shall be entitled to enforce the necessary sanctions as listed in sub-clause 30.5(b) below.
- (b) The sanctions shall be:
 - (i) the E.R. shall be entitled to reduce by the percentage stipulated in Appendix I the amount due to the Contractor in the Interim Certificates until the Contractor has complied with its contractual obligations in respect of the Programme; and
 - (ii) the E.R. shall not be obliged to comply with any of the Contractor's requirements as to the order or timing for the giving of possession of and/or access to the Site, or for the E.R. to supply supplementary drawings or details or information or instruction; and

- (iii) the E.R. shall take the Contractor's defaults in the assessment of any claims of the Contractor as to the extension of time under Clause 31.0 and/or loss and expense under Clause 57.0.

30.6 Contents of the Programmes

(a) The Initial Programme shall:

- (i) show the first 3 month's work in the same level of detail as is required for the accepted programme set out in sub-clause 30.6(b) below.
- (ii) also, be presented as a Programme in the form as directed by the E.R. showing the detailed activities in the period covered by the network diagram together with the major activities and milestones in the remainder of the period of the contract.

(b) The Accepted Programme

The Programme to be accepted may either be at the direction of the E.R. in a linked "Bar"/"Gantt" chart format or precedence network format prepared using techniques acceptable to the E.R. and shall show the following as far as is reasonably practicable.

- (i) The activities in all work packages including those by the principal Sub-Contractors, statutory undertakers, utilities providers, those contractors and suppliers directly employed by the Employer and others.
- (ii) The earliest and latest start and finish dates for every activity in each work package. Activities shall include all scope activities and any activities or time durations expected in addition to the scope activities.
- (iii) Access dates for each phase or Section.
- (iv) The earliest or latest start and finish dates for each phase or Section including dates when the Contractor plans to complete the work to allow the Employer and others to do their work.
- (v) Milestones and key dates
- (vi) Holiday periods

- (vii) Dates by which design work or drawings to be produced by the Contractor or Sub-contractors will be submitted to the E.R. for acceptance and dates by which acceptance of such design work or drawings will be required by the Contractor, allowing time for submittals, resubmittals and reviews.
 - (viii) Dates by which samples to be produced by the Contractor will be submitted for approval by the E.R. and dates by which approvals of such samples will be required by the Contractor, allowing time for submittals, resubmittals and reviews.
 - (ix) Procurement periods and delivery dates for the major items of Materials, Goods, Plant and Equipment.
 - (x) Dates by which work will be ready for testing by the E.R./Employer or independent third parties.
 - (xi) Details and dates of any information required from the Employer.
 - (xii) The work contained in defined Provisional Sums and/or Contingency Sums (if any).
 - (xiii) Activities representing the likely work content of undefined Provisional Sums and/or Contingency Sums (if any), complete with logic links but with durations set to zero (unless specified otherwise).
 - (xiv) Testing & commissioning periods.
 - (xv) Provisions for float, time risk allowances, quality control procedures, health and safety requirements and any other requirements that are set out in the Contract.
 - (xvi) Any other schedules, network analysis or information that may be considered necessary by the Contractor and the E.R. so as to make the programme complete and accurate.
- (c) The E.R. is entitled to withhold acceptance of a programme showing the work to be completed earlier than the contract completion date (an 'optimistic programme') if that programme is reasonably considered by the E.R. to be not realistic, or not achievable or not in the interest of the Employer.

- (d) Float wherever indicated or accepted shall be shared as mutually agreed to by the Contractor and the E.R. and the provisions of sub-clause 31.4(d)(iv) shall accordingly apply.

30.7 Modification or Revision

- (a) The Accepted Programme (or, if the Accepted Programme has already been updated, the Updated Programme) shall be revised:
 - (i) within 7 Days of the Contractor changing its methods and/or sequences of working, or
 - (ii) if the changes are frequent, revised every month, or
 - (iii) within 7 Days of the E.R. granting any extension of time pursuant to Clause 31.0; or
 - (iv) whenever circumstances arise that in the opinion of the E.R. affect the progress of the works; or
 - (v) the E.R. is of the opinion that the Contractor is not working to the Accepted (or previously Updated) Programme.
- (b) Unless otherwise specified in the Contract, the Contractor shall for the purposes of sub-clause 30.7(a)(v) above be deemed not to be working to the Accepted (or previously Updated) Programme if the actual progresses of the Contractor's work under the Contract is more than 21 Days behind the dates shown in it even if such Programme shows that each interface milestone date and the Work under the Contract can still be completed by the Date for Completion.
- (c) Each revision to the Programme shall be submitted to the E.R. for its review and acceptance. Once a revised Programme is accepted by the E.R., it shall replace the previously Accepted or Updated Programme.

31.0 DELAYS AND CONSEQUENCES

31.1 Scope of Clause

- (a) This Clause shall cover the situations where there is a material delay to the regular progress of the Works or any part thereof caused by:
 - (i) an event or cause of delay which under the Contract is at the risk or responsibility of the Employer (called the “Employer Risk Event”); and/or
 - (ii) a neutral event beyond either Parties’ control (called the “Neutral Event”) which has a material impact on the Date for Completion of either the whole Works or a Section or Sections of the Works.
- (b) The rights and entitlements of the Parties shall be exclusively governed by the provisions of this Clause 31.0 and any other applicable Clause in the Contract.

31.2 Notification of Delay

- (a) Where the regular progress of the Works or any part thereof is materially delayed by any cause or causes (called “Time Impacted Event(s)”) stated in Clause 31.4 (and no other) in such a manner which might reasonably be expected to result in delay in the Works (or any part thereof) reaching the Date for Completion referred to in Clause 32.0 or beyond any extended Completion Date previously fixed under this Clause 31.0, the Contractor may give a notice to E.R. (called “the Notice of Delay”) as specified in sub-clause 31.2(b).
- (b) The Notice of Delay shall:
 - (i) be in writing;
 - (ii) be given not later than 7 Days after the cause of the delay first arose;
 - (iii) stipulate the particular Contract reference under which it is given;
 - (iv) state with as much detail as is possible, the nature of the cause or causes of the delay;
 - (v) specify, where applicable, the extent of the delay;
 - (vi) state the steps being taken to mitigate/alleviate or otherwise deal with the delay and its cause or causes; and
 - (vii) include any other information or details that might be relevant to the Notice of Delay.

- (c) Should the Contractor be seeking an extension of time under sub-clause 31.3, the giving of the said Notice of Delay shall be a condition precedent to the Contractor's entitlement of an extension of time under this Clause.

31.3 Extension of Time: Application

- (a) In the event that the Contractor is seeking an extension of time to the Contract pursuant to sub-clauses 31.1(a)(i) and (ii), the Contractor shall not later than 30 days after giving the Notice of Delay under sub-clause 31.2 give the E.R. necessary documents and/or information to substantiate its claim.
- (b) The contents of the Contractor's substantiations under sub-clause 31.3(a) shall include but be not necessarily limited to the following:
 - (i) the exact cause, or causes of the alleged delay;
 - (ii) the appropriate Contract reference to such cause of alleged delay;
 - (iii) full details of the effect of the alleged delay on the critical path of the Works as set out in the Contractor's Programme accepted under Clause 30.0.
 - (iv) steps taken or being taken by the Contractor to minimize, mitigate or avoid the delay;
 - (v) the estimated length of the delay and the extension of time required;
 - (vi) all relevant scheduling and rescheduling documents consequent to the alleged delay and mitigation of it; and
 - (vii) all other supporting records, data, evidence and information that will help the Contractor to make its case for an extension of time.
- (c) Where a delaying event has a continuing effect such that it is not practicable for the Contractor to submit all particulars and further information in accordance with sub-clauses 31.3(a) and (b), the Contractor shall nevertheless submit to the E.R. interim particulars at intervals of not more than 30 Days and the final particulars within 30 Days of the event causing the delay ceasing to operate.
- (d) For the avoidance of doubt, the requirements of sub-clause 31.3(a) to (c) shall, in addition to sub-clause 31.2 be a condition precedent to the Contractor's entitlement for an extension of time under this Clause.

- (e) The Contractor shall, before making any application for extension of time consult and come to a mutual agreement with the E.R. on the appropriate method of delay analysis that should be employed for the application in question. Failure of the Contractor to consult the E.R. on the delay analysis methodology will be a matter that the E.R. might take into account in granting/allowing any consequential time and/or costs entitlements that may be due to the Contractor.
- (f) The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, on the Site or at another location acceptable and accessible to the E.R. Without admitting the Employer's liability, the E.R. may, after receiving any notice under Clause 31.2, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the E.R. to inspect all these records, and shall (if instructed) submit copies to the E.R. For the avoidance of doubt, the provisions of Clause 57.4 shall equally apply to the said contemporary records.

31.4 Extension of Time Causes/Time Impacted Events

- (a) The Contractor shall only be entitled to an extension of time where the completion of the Works or any Section is likely to be delayed, or has been delayed beyond the Date for Completion stated in Appendix I or beyond any extended Date for Completion previously fixed under this Clause where the provisions of Clauses 31.2 and 31.3, in particular, the conditions precedent are satisfied.
- (b) The cause or causes of the delay/Time Impacted Events entitling the Contractor to an extension of time shall be one, or more of the following:
 - 1. Neutral Events mean:
 - (i) Force Majeure as defined in Clause 56.0;
 - (ii) exceptionally Inclement Weather as defined in Clause 31.4 (d) below. The Contractor is required to show that the Exceptionally Inclement Weather occurred at the time when the Works were actually carried out, and not when they were programmed to be carried out nor, at a time when there was not supposed to be any work in progress, and it has caused delay to the completion of the Works;

- (iii) loss and/or damage occasioned by one or more of the contingencies referred to in Clause 46.0, as the case may be, always provided that the same is not due to any negligence, omission, default and/or breach of contract by the Contractor;
- (iv) compliance with any changes to any law, regulations, by-law or terms and conditions of any Appropriate Authority and/or service provider;
- (v) delay caused by any Appropriate Authority and/or service provider in carrying out, or failure to carry out their work which affects the Contractor's work progress, provided always that the Contractor has diligently followed the procedures, terms and conditions laid down by the Appropriate Authority and/or service provider; the delay was unforeseeable; and such delay is not due to any negligence, omission, default and/or breach of contract by the Contractor; and
- (vi) any other ground for EOT constituting a Neutral Event expressly mentioned in the Contract.

2. Employer's Risk Events mean:

- (i) the Contractor not having received in due time necessary E.R.'s Instruction (including those for or in regard to the expenditure of Contingency Sums and Provisional Sums) for which it had specifically applied in writing to the E.R.. The Contractor's application must be submitted to the E.R. in sufficient time before the commencement of construction of the affected works, to enable the E.R. to issue the necessary E.R.'s Instruction within a period which would not materially affect the progress of the affected works, having regard to the Completion Date. Provided always that the E.R.'s Instruction was not required as a result of any negligence, omission, default and/or breach of contract by the Contractor;
- (ii) delay by the Employer in giving possession of the Site or any Section of the Site in accordance with Clause 29.6 ;
- (iii) compliance with E.R.'s Instructions under Clauses 39.3, or 50.10, unless the E.R.'s Instruction was issued due to or is necessitated by or is intended to rectify any negligence, omission, default and/or breach of contract by the Contractor;

- (iv) delay on the part of craftsmen, tradesmen or others employed or engaged by the Employer in executing work not forming part of this Contract or their failure to execute such work, provided always that the Contractor has given reasonable access to enable such craftsmen, tradesmen or others employed or engaged by the Employer to execute their works and has provided true and accurate Site conditions and reasonable timelines for such works to be completed by them;
- (v) delay or failure in the supply of Materials, Goods, Plant or Equipment which the Employer had agreed to supply for the Works;
- (vi) the opening up for inspection of any work covered up, the testing of any work, Materials, Goods, Plant or Equipment in accordance with Clause 22.7 (including making good in consequence of such opening up or testing) unless the inspection or test is provided for in the Employer's Requirements or Contractor's Proposals, show that the works, Materials, Goods, Plant or Equipment were not in accordance with the Contract, or is required by the E.R. in consequence of prior negligence, omission, default and/or breach of contract by the Contractor;
- (vii) any act of prevention or breach of contract by the Employer;
- (viii) compliance with the E.R's instructions issued in connection with the discovery of fossils, coins, articles of value or antiquity, or structures or other remains or items of geological or archeological interest on the site under Clause 60.0;
- (ix) compliance with E.R's instructions issued in connection with disputes with neighbouring property owners always provided that such dispute is not caused by any negligence, omission, default and/or breach of contract by the Contractor;
- (x) delay as a result of the execution of work for which a Contingency Sum or Provisional Sum/Quantity is included in the Contract for which the E.R's instruction is issued under Clause 27.0;
- (xi) failure of the Employer under Clause 29.0 to give in due time entry to or exit from the Site or any part through or over any land, by way of passage adjoining or connected to the Site and in possession or control of the

Employer, provided always that it is the duty and responsibility of the Employer to give such passage under the Contract;

- (xii) suspension by the Contractor of its obligations under Clause 50.0, and
- (xiii) suspension of the whole or part of the Works by order of an Appropriate Authority provided that the same is not due to any negligence, omission, default and/or breach of contract by the Contractor.

(c) In amplification of the foregoing, the Contractor's entitlement shall be subject to the conditions that:

- (i) the delay is not due to, or concurrent with any act, negligence, default or breach of contract by Contractor, its servants or agents and, other than that related to Exceptionally Inclement Weather under sub-clause 31.4(b)(ii) above, occurs during the approved working hours as defined in Clause 15.0.
- (ii) the Contractor has:
 - 1. complied strictly with the provisions of sub-clause 31.2 and 31.3, and in particular, has given the necessary notices and substantiations strictly in the manner and within the times stipulated therein, unless otherwise decided by the E.R.;
 - 2. complied with any reasonable instructions of the E.R. with respect to the cause of the delay;
 - 3. extended all relevant insurance covers and the Performance Security Deposit by an amount commensurate with the extension being sought and provided adequate proof or evidence of the same to the E.R.;
 - 4. taken all proper and reasonable steps necessary and within its control both to preclude the occurrence of the cause of the delay and/or to avoid, or minimize the consequences thereof and shall have demonstrated this to the reasonable satisfaction of the E.R.;
 - 5. demonstrated to the reasonable satisfaction of the E.R. that the delay has occurred to critical activities on the critical path of the Works and will cause or have caused the Contractor to be delayed as claimed; and
 - 6. demonstrated to the reasonable satisfaction of the E.R. that the delay is not concurrent with any other delay for which extension of time already granted or being granted.

(d) For the avoidance of doubt:

- (i) extension of time for Exceptionally Inclement Weather shall, subject to the requirement of sub-clause 31.4(b)(ii) mean, any weather conditions which are materially unfavourable to the carrying out of the construction works/activities on the site and shall include but be not limited to unusual/exceptional wind conditions, precipitation, temperature, lightning, air pollution levels (smog), and temperature as determined by the E.R. based on evidence/records submitted from the meteorological department as specified by the E.R. For precipitation, it shall be limited to the increase in “unworkable days” for each month, when compared with the “normal average unworkable days” computed from the last 10 years rainfall data of the specified meteorological departments and/or rainfall measurement station (or nearest to the Site, if not specified) for the same month, with such increase in the “unworkable days” for the month being the entitlement for an extension of the contract period in calendar days;
- (ii) An “unworkable day” as adverted to above shall be one where more than 10mm rainfall was recorded over a 24 hour period for that day;
- (iii) the Contractor shall be deemed to have allowed in its tender and in the programming of the Works under Clause 30.0 for all other delays relating to non-Exceptionally Inclement Weather and its effect, and no claims additional to that permitted in this clause shall be entertained;
- (iv) Any Float within the Programme under Clause 30.0 shall belong to the Parties in the quantum/proportion as per mutual agreement and the E.R. may direct that the Float be utilized by the Contractor to advance the performance of the Works and the Contractor shall immediately comply with such direction; with any consequent cost and/or time impact to be assessed by the E.R. in accordance with the relevant provisions of the Contract.
- (v) an extension of time that may be granted in respect of one Section of the Works shall not of itself entitle the Contractor to an extension of time for any other Section; and
- (vi) in this Clause 31.0, any reference to delay or extension of time includes further delay, further notice or further extension of time.

31.5 Extension of Time Certification

- (a) Within 21 Days of the receipt of the Contractor's substantiations under sub-clause 31.3, the E.R. shall notify the Contractor in writing whether:
 - (i) the notice and substantiations provided by the Contractor under sub-clauses 31.2 and 31.3 are insufficient to enable it to decide on the Contractor's application; or
 - (ii) the cause of delay is one which in principle entitles the Contractor to an extension of time; or
 - (iii) the Contractor's claim for extension of time is rejected.

If the E.R. fails to respond as stated above, upon the expiry of the said 21 Day period, it shall be deemed that the E.R. has no objections to the Contractor's particular application for time extension and effect shall be accordingly given to the same by both Parties.

- (b) If sub-clause 31.5(a)(i) is applicable, the E.R. may require the Contractor to provide within:
 - (i) 14 Days, or
 - (ii) such period as may be specified by the E.R.

such further information, or details which the E.R. may reasonably require including particulars concerning any cause and/or the circumstances of the delay, the details/results of the delay analysis, and the measures planned and/or taken to avoid or reduce the delay.

- (c) Should the E.R. adopt the option contained in sub-clause 31.5(a)(ii), the E.R. may either:
 - (i) proceed to assess and certify the commensurate extension of time under sub-clause 31.5(e) to (j); or
 - (ii) instruct the Contractor to accelerate the Works under sub-clause 31.6.

(d) In the event the E.R. rejects the Contractor's claim pursuant to sub-clause 31.5(a)(iii), the E.R. must furnish the reasons for the said rejection and the Contractor may thereafter either:

(i) make a fresh application whereby the provisions of sub-clauses 31.2 and 31.3 shall equally apply; or

(ii) refer the matter for dispute resolution under Clause 58.0.

(e) Within a further 21 Days after the decision in sub-clause 31.5(a)(ii) but in any event prior to the expiry of:

(i) the Date for Completion stated in Appendix I; or

(ii) the date of any extended Date for Completion previously granted under this Clause.

(unless sub-clauses 31.5(b) and 31.6 applies), the E.R. shall grant a commensurate extension of time together with its basis/reasons for the quantum of the same, for:

1. the whole of the Works; or

2. any Section of the Works.

(as the case may be), as may in the E.R.'s opinion be fair, reasonable and necessary for the completion of the Works or any Section thereof. Any failure or delay by the E.R. to grant a reasonable extension of time or to grant an extension of time within the stipulated time shall not cause the Date for Completion to be set at large but nothing contained in this paragraph shall prejudice the right of the Contractor to make claims under Clause 57.0.

(f) Where the E.R. considers that it does not have sufficient information to enable it to decide on the Contractor's application in accordance with sub-clause 31.5(e), the E.R. may nevertheless grant such extension of time as may in its opinion appear to be fair, reasonable and necessary on the information available, taking into account all the matters as set out in sub-clause 31.5(g) below.

(g) The E.R. when deciding on any extension of time under this sub-clause 31.5, shall take into account the following:

(i) extension of time previously granted, if any;

- (ii) the effect of any work omitted under the Contract provided that the E.R. shall not fix a Date for Completion earlier than the Date for Completion stated in Appendix I; and/or
 - (iii) any delays which may operate concurrently with the delay due to the cause or causes in question including those that are due to the acts or defaults of the Contractor.
- (h) For a delaying event having a continuing effect, provided that the Contractor has complied with the provisions of sub-clause 31.3(c), on receipt of such interim particulars from the Contractor, the E.R. shall, without undue delay, make an interim decision on extension of time and within 21 Days of the receipt of the final particulars. The E.R. shall, subject to sub-clause 31.5(g), review all the circumstances and shall decide an overall extension of time in regard to the event.
- (i) Notwithstanding any other provisions of this Clause 31.0, the E.R. may, in its reasonable discretion (but is not obliged to) grant a fair, reasonable and necessary extension of time notwithstanding that the Contractor has failed to comply with the provisions of this Clause 31.0.
- (j) Where the delaying even under sub-clause 31.4 occurs after the issuance of the Certificate of Non-Completion under Clause 35.0, the E.R. shall grant an extension of time provided all the relevant requirements of this Clause 31.0 have been satisfied. The extension of time so granted shall be added to the Date for Completion of the whole Works or any Section of the Works.
- (k) Any decision of the E.R. in granting an extension of time under the Clause 31.0 shall be notified by the E.R. to the Contractor in a Certificate (called "the Certificate of Extension of Time").
- (l) At any time prior to the issuance of the Final Certificate, the E.R. may review any previous extension of time granted and either:
 - (i) fix a Date for Completion later than that previously granted if in the E.R.'s opinion the granting of such longer time for completion is fair and reasonable; or
 - (ii) confirm to the Contractor the Date for Completion previously fixed.
- (m) No such final review of extension of time undertaken pursuant to sub-clause 31.5(l) shall result in a decrease in any extension of time previously granted by the E.R. In the event the fixing of such later Date for Completion affects the amount of Liquidated

Damages the Employer is entitled to retain, the Employer shall repay any surplus amount free of interest to the Contractor within the corresponding period of honouring certificates; and

- (n) For the avoidance of doubt, where the Contract specifies that a separable part of the Works shall be executed to completion within a period or by a date different from the period or date provided for completion of the whole Works, the provisions of this Clause shall apply to, and with respect to, the extension of time for completion of that separable part of the Works; and for that purpose reference in this Clause to the Works shall be read as references to that separable part of the Works.

31.6 Acceleration of Works

- (a) As an alternative to the granting of an extension of time to the Contractor pursuant to sub-clause 31.5(a)(ii), the E.R. may, within 21 Days of receipt of the Contractor's substantiations under sub-clause 31.3, or at any time at its discretion, instruct the Contractor in writing to accelerate the Work to recover the period of delay specified in such instruction.
- (b) The instruction to accelerate issued by the E.R. pursuant to sub-clause 31.6(a) may be either:
 - (i) Partial; or
 - (ii) Totalin its nature and/or extent (as the case may be).
- (c) If the E.R. issues an instruction to the Contractor pursuant to sub-clause 31.6(a) requiring the Contractor to accelerate the work under the Contract and it only applies to part of the delay, the Contractor's entitlement to any extension of time, which it otherwise would have had, will be reduced to the extent to which the instruction to accelerate requires the Contractor to accelerate to overcome that part of the delay.
- (d) Should the E.R. issues an instruction to accelerate to the Contractor under sub-clause 31.6(a):
 - (i) the Contractor shall thereupon immediately comply with, and give effect to such instruction by the implementation of such measures as the E.R. shall direct or approve in writing (such approval not to be unreasonably withheld);

- (ii) the Contractor shall submit all relevant documents including but not limited to the updated programme, and Method Statements incorporating the accelerative measures adopted, to the E.R. for its consent; and
- (iii) any such instruction shall be treated as a Variation under Clause 39.0 and valued in accordance with Clause 40.0 (Valuation of Variations).

31.7 Expediting Progress of Works, etc.

- (a) If, at any time:
 - (i) the E.R. is of the opinion that:
 - 1. the Contractor's actual progress is too slow to complete the Works and/or the Sections thereof by the Date or Dates for Completion; or
 - 2. the Contractor's actual progress has fallen or will fall behind the accepted programme under Clause 30.0.

other than as a result of a cause listed in sub-clause 31.4, or
 - (ii) if for any reason which does not entitle the Contractor to an extension of time, the Contractor's actual progress of the Works, or any Section thereof is too slow to complete the Works or any such Section by the Date or Dates of Completion (including any revised date granted previously under this Clause), the E.R. shall so notify the Contractor in writing (called "the Notice to Expedite").
- (b) The E.R. in its Notice to Expedite may instruct the Contractor to:
 - (i) expedite the work involved;
 - (ii) submit, under Clause 30.0 an updated programme;
 - (iii) submit all supporting documents describing the revised methods or steps which the Contractor proposes to adopt in order to expedite progress and complete by the Date for Completion; and
 - (iv) stipulate a period not exceeding 14 Days for the Contractor to comply with the instruction,
- (c) Immediately and within the time stipulated in the Notice to Expedite the Contractor shall:

- (i) comply with the E.R.'s instruction; and
 - (ii) take such steps or measures as are necessary and to which the E.R. may consent, to expedite the progress of the Work.
- (d) In amplification of sub-clause 31.7(c), the Contractor shall adopt these revised methods, which may require:
 - (i) increases in the working hours (even working at night); and/or
 - (ii) working on Public Holidays; and/or
 - (iii) increases in the numbers of the Contractor's Personnel, workmen, the Contractor's Equipment, Contractor's Plant and/or Temporary Works.
- (e) The Contractor shall not be entitled to any further extension of time and/or payment whatsoever for, or in respect of, or arising out of:
 - (i) taking such steps, or revised methods, and/or
 - (ii) complying

with the provisions of sub-clause 31.7(b) to (d).
- (f) If the Employer has incurred additional, or other costs as a result of any order or instruction given under this Clause, such costs (including On-Cost Charges) shall be determined by the E.R. and may be deducted by the Employer from sums due or which may become due to the Contractor under the relevant provisions of the Contract.

31.8 EOT Pursuant to Section 29 of CIPAA (if applicable)

- a) If the Contractor is of the opinion that the completion of the Works has been delayed by reason of the suspension or reduction of the rate of progress of performance of the Works under Section 29 of CIPAA, the following provisions shall apply:
 - (i) as soon as practicable, but not later than 30 Days after the date of resumption of performance or the rate of progress performance of the Works under Section 29(4)(d) of CIPAA, the Contractor shall send to the E.R. the relevant particulars of its claim for EOT together with all necessary calculations and documents to substantiate its claims,

- (ii) if the Contractor fails to submit the required particulars within the stipulated 30 Days under sub-clause 31.8(a)(i) or such other period as approved by the E.R., the E.R. is not obliged (until after the practical completion of the Works) to assess and grant any EOT in respect of the Contractor's application for EOT. In that event, subject to the E.R.'s review under Clause 31.5, the Contractor shall not be entitled to any EOT, and the non-assessment and non-granting of the EOT due to the Contractor's failure under this Clause shall not be a ground for challenging the validity of the Certificate of Non-Completion (if any) issued by the E.R., or any deduction or claim for Liquidated Damages made by the Employer under Clause 35.0;
 - (iii) if the E.R. is of the opinion that the particulars submitted by the Contractor pursuant to sub-clause 31.8(a)(i) are insufficient for its assessment of the EOT applied, the E.R. shall within 14 Days from the date of receipt of Contractor's particulars, inform it of any deficiency in its submission and require the Contractor to provide such further particulars within such period of time as may be stated by the E.R. in writing. If the Contractor fails to submit the required further particulars within the time as instructed by the E.R., the E.R. may determine the Contractor's claim for such EOT based on whatever information which is available to it and shall either reject the Contractor's application or issue a Certificate of Extension of Time within 21 Days from the last date of the period for the provision of further particulars by the Contractor. The E.R.'s determination shall be binding upon the Contractor and the Employer until and unless it is revised by the E.R. under Clause 31.5,
 - (iv) Clauses 31.3 to 31.5 shall apply to an application for EOT under this Clause 31.8.
- (b) In the event that the Adjudication Decision to which the subject claim made by the Contractor relates, is subsequently set aside by the Court or superseded by a final decision of the Court or arbitration, the Contractor shall not be entitled to any such EOT and any EOT previously granted by the E.R. pursuant to this Clause 31.8 shall be deemed automatically cancelled. The E.R. may (but is not obliged to) issue a revised Certificate of Non-Completion, but the failure of the E.R. to issue a revised Certificate of Non-Completion shall not affect or invalidate the Employer's right to his Liquidated Damages for the delay from the last date when the Contractor ought to have completed the Works, to the date of Practical Completion.

PART VI: COMPLETION, DEFECTS LIABILITY AND MAINTENANCE

32.0 COMPLETION OF WORKS

32.1 Contractor to Complete on Time

Subject to Clauses 33.0 and 34.0, the Contractor shall complete the whole of the Works on or before:

- (a) the Date for Completion as stated in Appendix I and the Contract Document; or
- (b) such extended time as may be allowed under Clause 31.0 hereof.

32.2 Application and Certification Procedure

- (a) If the Contractor is of the opinion that the whole of the Works have achieved practical completion, the Contractor shall immediately notify the E.R. in writing to that effect.
- (b) Within 14 Days of receipt of such written notice from the Contractor, the E.R. shall carry out the relevant inspections and/or testing of the Works jointly with the Contractor and the Employer so as to verify whether the whole Works have achieved practical completion within the ambit of this Clause.
- (c) Pursuant to such inspections and/or testing, the E.R. shall within 14 Days after receipt of the Contractor's notification/application of sub-clause 32.2(a) above do either one of the following:
 - (i) issue the Certificate of Practical Completion, if in the E.R.'s opinion the whole Works have reached practical completion; or
 - (ii) reject the application, if in the E.R.'s opinion the whole Works have not reached practical completion.

If the E.R. fails to exercise either of the two options stated above within the period of 14 Days and if the Works are actually practically completed within the meaning of Clause 32.3, the relevant Certificate of Practical Completion shall be deemed to have been issued on the last day of the said 14 Days period. The deemed issuance of the said Certificate shall not relieve the Contractor's duties, obligations and responsibilities in completing any outstanding works and/or Defects.

- (d) If the E.R. decides that pursuant to sub-clause 32.2(c)(i) the whole of the Works have reached practical completion, the following shall ensue:
- (i) the E.R. shall issue a Certificate of Practical Completion for the whole Works to the Contractor with copies extended to the Employer, and other persons or parties designated by the Employer (as applicable);
 - (ii) the Certificate of Practical Completion shall be accompanied with a list of outstanding and/or defective Works together with a stipulated period not exceeding 30 Days for the Contractor to complete the same;
 - (iii) the E.R. shall state in the said Certificate of Practical Completion the date on which the Works have achieved practical completion and handed over to the Employer;
 - (iv) the Contractor shall as of the Date of Practical Completion return Site possession to the Employer;
 - (v) the date of such Certification of Practical Completion shall be date of the commencement of the Defects Liability Period and Maintenance Period as provided in Clause 36.0 hereof;
 - (vi) all other consequential entitlements as stipulated in the relevant provisions of the Contract shall crystallize as of the date of Certificate of Practical Completion; and
 - (vii) the issuance of the Certificate of Practical Completion shall not relieve the Contractor's duties, obligations and responsibilities in completing any outstanding works and/or the making good of Defects.
- (e) If the E.R. decides that pursuant to sub-clause 32.2(c)(ii), the whole of the Works have not reached practical completion, the following shall ensue:
- (i) the E.R. shall give written notice to the Contractor with a copy extended to the Employer, stating the reasons for its opinion; and
 - (ii) the said notice of rejection shall be accompanied with a list of outstanding and/or defective Works to be undertaken by the Contractor before applying once again for practical completion; and

- (iii) the Contractor shall not be entitled to the Certificate of Practical Completion until the Works specified in the said list of outstanding and/or defective Works have been completed to the satisfaction of the E.R.
- (f) In the event that a Certificate of Practical Completion has been issued to the Contractor together with a list of outstanding and/or defective Works pursuant to sub-clause 32.2(d)(ii) above, the Contractor shall comply with the instruction to complete the same to the satisfaction of the E.R. within the prescribed time period. In the event the Contractor fails to comply with the said instruction, the E.R. may without prejudice to any other rights or remedies which the Employer may possess under the Contract and the law, do any one of the following:
 - (i) grant the Contractor additional time not exceeding 30 Days to enable the Contractor to comply with the said instruction; or
 - (ii) employ or pay other Persons to execute any work which may be necessary to give effect to the said instruction. All costs incurred including any loss and/or expense shall be set-off by the Employer under Clause 39.0; or
 - (iii) accept to leave all or any such works and defects of a minor nature in the Works subject to an appropriate omission for diminution in value under Clause 40.0; or
 - (iv) take any other measures under the Contract as deemed necessary and appropriate by the E.R.

32.3 Basis of Certifying Practical Completion

- (a) For the avoidance of doubt, the Works shall not be regarded as practically completed unless, in the E.R.'s opinion, the Works have fulfilled the requirements as set-out in sub-clause 32.3(b).
- (b) The requirements to be considered by the E.R. in reaching its decision shall include but be not necessarily limited to the following:
 - (i) the Works have been satisfactorily completed in accordance with the terms and conditions of the Contract;
 - (ii) the Employer can have full, proper, beneficial and safe use of the Works for their intended purpose, notwithstanding that there may be defects and/or Works of a

minor nature still to be fully executed and/or rectified, provided that such Works do not prevent, or diminish the full, proper, beneficial and safe use as aforesaid;

- (iii) the Works have satisfactorily passed all testing and commissioning tests required under the Contract; and
- (iv) all the relevant training of the Employer's staff or personnel as stipulated in the Contract has been satisfactorily completed; and
- (v) all technical manuals and 'as-built' drawings required by the Contract Documents to be prepared before the completion of the Works have been satisfactorily completed and handed over to the E.R.; and
- (vi) all the relevant design and/or suppliers'/manufacturers' warranties and/or guarantees for all Equipment, Plant, Materials and Goods incorporated into the Works have been duly and properly assigned to the Employer and handed over to the E.R.; and
- (vii) all relevant licences, approvals and clearances from the Authorities to operate the various Equipment, Plant and mechanical and electrical systems/facilities have been satisfactorily procured for, and in the name of the Employer and handed over to the E.R; and
- (vii) all relevant spare parts and tools specified in the Contract have been satisfactorily delivered to the E.R.; and
- (viii) for building Works, all essential services, including access roads, landscape, car parks, drains, sanitary, water and electricity installations, fire hydrants, sewerage and refuse disposal equipment and fire lifts specified in the Contract have been provided; and
- (ix) the Works are in a condition fit for occupation and/or use by the Employer, and the Contractor has obtained the necessary/relevant certificates inclusive of the Certificate of Completion and Compliance (CCC), or Certificate of Fitness for Occupation (CF) (as applicable) from the Appropriate Authorities and/or Person/body authorized under the applicable laws and regulations and handed these over to the E.R.; and
- (x) all other requirements expressly stated in the Contract Documents as a precondition for the issuance of the Certificate of Practical Completion have been satisfactorily complied with.

32.4 Access for Remedial and/or Maintenance Work

- (a) The Contractor's right to possession of the Site shall cease on the Date of Practical Completion and handing over to the Employer.
- (b) Notwithstanding the above, the Contractor shall, upon giving reasonable notice in writing to the E.R., be permitted to enter the Site to carry out any outstanding work, servicing and maintenance and the rectification of Defects during the Defects Liability Period and the Maintenance Period.

33.0 SECTIONAL COMPLETION

33.1 Meaning/Application

This Clause shall apply where different completion dates are envisaged for different sections, stages, phases or parts of the Work collectively called "Sections".

33.2 Completion in Sections

- (a) Where different Sections are stated and identified in Appendix I, or elsewhere in the Contract Documents and different and separate Liquidated Damages are provided for each such Section, the provisions of the Contract in regard to:
 - (i) Certificate of Practical Completion (Clause 32.0);
 - (ii) Delay and Extension of Time (Clause 31.0);
 - (iii) Liquidated Damages (Clause 35.0); and
 - (iv) Defects Liability Period and Maintenance Period (Clause 36.0)but not:
 - 1. Insurance cover of the Works (Clause 49.0)
 - 2. Performance Security (Clause 13.0);
 - 3. Retention Monies (Clause 41.0); and
 - 4. Final payment on the Final Certificate (Clause 43.0)

shall, in the absence of any express provisions to the contrary elsewhere in any part of the Contract Documents apply as if each such Section was the subject of a separate and distinct Contract between the Contractor and the Employer.

- (b) For the avoidance of doubt, nothing contained in sub-clause 33.2 shall entitle the Contractor upon the completion of each Section, to the release of the whole or any part of the Performance Security deposited by it pursuant to Clause 13.0. The Performance Security shall be released or refunded only upon the issue of the Certificate of Making Good of the whole of the Works, or in respect of the last Section of the Works, or as otherwise provided for to the contrary elsewhere in the Contract Documents, as the case may be.
- (c) The application and certification procedure as stipulated in sub-clause 32.2 shall apply *mutatis mutandis* for each Section of the Works.

33.3 Basis of Certifying Practical Completion for Section

- (a) In relation to any Section of the Works, the Section shall not be regarded as having reached practical completion unless it has reached the stage where the requirements as stipulated in sub-clause 33.3(b) have been satisfied in the E.R.'s opinion.
- (b) The requirements adverted to in sub-clause 33.3(a) shall include, but be not necessarily limited to the following:
 - (i) the relevant Section of the Works has been satisfactorily completed in accordance with the terms and conditions of the Contract; and
 - (ii) the Employer can have full, proper, beneficial and safe use of the relevant Section for its intended purpose (save only in so far as such use is limited by reason of any other Section not having been completed), notwithstanding that there may be works of a minor nature still to be fully executed and/or rectified, provided such works do not prevent or diminish the full, proper beneficial and safe use as aforesaid; and
 - (iii) the relevant Section of the Works has satisfactorily passed all testing and commissioning tests required in the Contract; and
 - (iv) all the relevant training of the Employer's staff or personnel in regard to the relevant Section as stipulated in the Contract has been satisfactorily completed; and
 - (v) in relation to the relevant Section, all technical manuals and "as-built" drawings required by the Contract to be prepared before the completion of that Section have been satisfactorily completed and handed over to the E.R.; and

- (vi) in relation to the relevant Section, all the relevant design and/or suppliers'/manufacturers' warranties and/or guarantees for all equipment, materials and goods incorporated into that Section of the Works have been duly and properly assigned to the Employer and handed over to the E.R.; and
- (vii) in relation to the relevant Section, all relevant licences, approvals and clearances from the authorities to operate the various equipment and mechanical and electrical equipment/facilities have been satisfactorily procured for and in the name of the Employer and handed over to the E.R. and
- (viii) in relation to the relevant Section, all spare parts and tools specified in the Contract have been satisfactorily delivered to the E.R.; and
- (ix) for building Works, in relation to the relevant Section, all essential services, including access roads, landscape, carparks, drains, sanitary, water and electricity installations, fire hydrants, sewerage and refuse disposal equipment and fire lifts specified in the Contract have been provided; and
- (x) in relation to the relevant Section, the Works are in a condition fit for occupation and/or use by the Employer and the Contractor has obtained, the necessary/relevant certificates inclusive of the Partial or Full Certificate of Completion and Compliance (PCCC or CCC), Partial, or Full Certificate of Fitness for Occupation (PCF or CF), as the case may be, from the Appropriate Authorities and/or Person/body authorized under the applicable laws and regulations and handed over to the E.R.; and
- (xi) all other requirements expressly stated in the Contract Documents as a precondition for the issuance of the Certificate of Practical Completion for the relevant Section have been satisfactorily complied with.

33.4 Access for Remedial Work

- (a) In relation to the relevant Section, the Contractor's right to possession of Site shall cease on the Date of Practical Completion and handing over to the Employer of that particular Section of the Works.
- (b) Notwithstanding the above, the Contractor shall, upon giving reasonable notice in writing to the E.R., be permitted to enter the Site to carry out any outstanding work,

servicing and maintenance work and rectification of Defects during the Defects Liability Period and Maintenance Period for the relevant Section.

34.0 PREMATURE/PARTIAL POSSESSION BY EMPLOYER

34.0 Meaning/Application

(a) This Clause shall apply when the Employer occupies, or takes over the possession of either:

- (i) the whole of the Works; or
- (ii) part or parts of the Work

before the whole of the Works have reached practical completion pursuant to clause 32.0.

(b) Such occupation/possession may be:

- (i) With the Contractor's consent; or
- (ii) Without the Contractor's consent.

34.2 Premature/Partial Possession with Consent

(a) The Employer may, with the consent of the Contractor (whose consent shall not be unreasonably withheld or delayed), before the practical completion of the Works in accordance with Clause 32.0, and notwithstanding anything expressed or implied elsewhere in the Contract, take possession and/or occupy the whole of any part or parts of the Work (called "the Occupied Part").

(b) Within 14 days from the date the Employer has taken possession and/or occupied the whole or part or parts of the Works, the E.R. shall issue to the Contractor with copies to the Employer and the Sub-Contractors(as applicable):

- (i) a Certificate of Practical Completion in accordance with sub-clause 32.2(d) in respect of whole Works; or

- (ii) a Certificate of Partial Occupation in accordance with sub-clause 34.2(c) in respect of the Occupied Part.
- (c) The Certificate of Partial Occupation stipulated in sub-clause 34.2(b)(ii) shall:
 - (i) clearly identify the Occupied Part; and
 - (ii) state the E.R.'s estimated value of the Occupied Part (which value for the purposes of this Clause 34.0 shall be deemed to be the total value of the Occupied Part); and
 - (iii) be accompanied with a list of outstanding and/or defective work together with a stipulated period not exceeding 30 Days for the Contractor to complete the same.
- (d) Should the Works prematurely occupied by the Employer and certified accordingly pursuant to sub-clause 34.2(b)(i) above be for the whole Works, then the consequential effects as stipulated in sub-clause 32.2(d)(v) and (vi) shall be applicable.
- (e) In the case of the Occupied Part for which a Certificate of Partial Occupation has been issued pursuant to sub-clause 34.2(b)(ii), the following provisions shall apply to the Occupied Part as of the date of the issue of the Certificate until the completion of the remainder of the Works:
 - (i) for the purposes of Clauses 32.0 and 36.0, the Occupied Part shall be deemed to have reached practical completion and the Defects Liability Period and Maintenance Period in respect of the Occupied Part shall be deemed to have commenced on the date the Employer shall have taken possession and occupied the same;
 - (ii) at the end of the Defect Liability Period of the Occupied Part, the E.R. shall issue a Certificate of Completion and Making Good Defects in accordance with the provisions of Clause 36.0 when in its opinion all Defects in the Occupied Part which it may have required to be made good under the said Clause and sub-clause 34.2(c)(iii) have been satisfactorily undertaken by the Contractor;
 - (iii) the Liquidated Damages under Clause 35.0 for the remaining Works shall be reduced by the ratio of the estimated value of the Occupied Part to the Contract Sum;

- (iv) within 14 Days of the issue of the Certificate of Partial Occupation, the E.R. shall issue an Interim Certificate under Clause 28.0 certifying the release of half the amount of the Retention Monies in the ratio of the estimated value of the Occupied Part to the Contract Sum. The amount of the Limit of the Retention Monies shall then be reduced by the same amount; and
 - (v) upon the issuance of the Certificate of Completion and Making Good Defects of the Occupied Part, the E.R. shall, within 14 Days, issue a Certificate for the release of the remaining half of the Retention Monies in respect of the Occupied Part.
- (f)
- (i) Notwithstanding the premature occupation by the Employer of the Occupied Part and the subsequent issue of the Certificate of Partial Occupation for the same by the E.R., the Contractor shall insure and keep insured in the manner as stipulated under the relevant insurance cover provisions in the Contract (in particular under Clause 49.0) the remaining Works and the Contractor shall give notice to the insurer cover operator (with copies to the Employer and the E.R.) of such partial occupation; and
 - (ii) for the avoidance of doubt, nothing contained in the preceding sub-clauses shall entitle the Contractor to the release of either the whole or any part of the Performance Security deposited by it under Clause 13.0. The Performance Security or any part of it shall be released or refunded only upon the issue of the Certificate of Completion and Making Good Defects of the whole of the Works under Clause 36.0, or as expressly provided for otherwise in the Contract.

34.3 Premature/Partial Possession without Consent

- (a) The Employer may, without prejudice to any other rights or remedies which it may possess under the Contract, enter and occupy such part or parts of the Works (called the "Occupied Part") prior to the completion of the whole Works or sectional completion of the Works without the consent of the Contractor pursuant to sub-clause 34.2 provided that:

- (i) the completion of the Works has been delayed, and a Certificate of Non-Completion has been issued by the E.R. under Clause 35.0; which certificate is still operative; and
 - (ii) such entry and occupation of the Occupied Part can be satisfactorily undertaken without any adverse transgressions of safety and/or any unreasonable disturbance to the Contractor's arrangements for completing the remainder of the Works; and
 - (iii) the E.R. has issued a written notification to the Contractor of the Employer's intention to possess the Occupied Part stipulating the date and time for such action and instruction to accordingly remove all its Contractor's Plant, Contractor's Equipment and Temporary Works for the said part.
- (b) The Contractor shall within 7 Days of receipt of the instruction of the E.R., remove its site facilities, Temporary Works, Contractor's Plant, Contractor's Equipment, Materials or Goods from the Occupied Part. The provisions of sub-clause 34.2 shall apply in the same manner as if the Contractor has consented to the Employer taking possession of such Occupied Part.

35.0 DAMAGES FOR NON-COMPLETION

35.1 Certificate of Non-Completion and Liquidated Damages

- (a) If the Contractor fails to complete the Works by the Completion Date or within any extended time fixed under Clause 31.0, and the E.R. issues a Certificate of Non-Completion that in its opinion the same ought reasonably so to have been completed by such date(s), then:
- (i) the Contractor shall pay or allow to the Employer a sum calculated at the rate stated in the Appendix I as Liquidated Damages for the period from the Completion Date, or any extended date where applicable, to the Date of Practical Completion, provided always that the total amount of Liquidated Damages due and retained under this Clause shall not exceed the amount stated in Appendix I as the Limit of Liquidated Damages.

- (ii) the Employer may recover such sum as a debt or may deduct such sum from any monies due or to become due to the Contractor under the Contract or may recover such sum from the Performance Security.
- (b) In the event the E.R. issues a Certificate of Extension of Time under the Contract which has the effect of fixing a Completion Date which is later than the date stated in a Certificate of Non-Completion previously issued:
 - (i) The Employer shall then revise the amount of Liquidated Damages it is entitled to retain.
 - (ii) For the avoidance of doubt, the E.R. may (but is not obliged to) issue a further Certificate of Non-Completion, but the failure of the E.R. to issue a further Certificate of Non-Completion shall not affect or invalidate the Employer's right to its Liquidated Damages for the delay (if any) from the extended completion date to the date of practical completion.
 - (iii) In the event the amount of Liquidated Damages retained exceeds the amount the Employer is entitled to retain, it shall repay the surplus amount to the Contractor within the period of honouring Certificates calculated from the date of the latest Certificate of Extension of Time.

35.2 Liquidated Damages Amount Deemed as Agreed

- (a) The Liquidated Damages stated in Appendix I are deemed to be a reasonable loss and/or damage which the Employer will suffer in the event that the Contractor is in breach of the Clause hereof. The Parties agree that by entering into this Contract, Section 75 of the Contracts Act 1950 (if relevant under the particular statutory enactment governing the Contract) shall not apply for the purposes of the Contractor's liability to pay Liquidated Damages under this Clause, and the Contractor shall upon first written demand by the Employer, forthwith pay or allow to the Employer the said amount of Liquidated Damages due without the need of the Employer to prove its actual damage or loss.
- (b) Further and in any event, the Employer and the Contractor acknowledge and declare that it will be difficult to assess damages for the actual damage or loss incurred as a result of the Contractor's failure to complete the Works by the Completion Date. The Contractor acknowledges that the Liquidated Damages stated in the Appendix I represents the loss or damage that would be caused to the Employer which naturally arose in the usual course of things from the breach and/or which the Parties knew,

when they made the Contract, to be likely to result from the breach of the Contract. The Contractor irrevocably undertakes that it will not, whether by legal proceedings or otherwise, contend that such sums and the limits thereon in the Appendix I are not reasonable nor will it put the Employer to the proof thereof, nor further contend that its agreement to such sum and undertaking as aforesaid were arrived at by force, duress, coercion, mistake or misrepresentation on the part of the Employer.

- (c) For the avoidance of doubt, the Liquidated Damages imposed or deducted by the Employer shall not relieve the Contractor from its obligation to complete the Works, or from any other duties, obligations or responsibilities which it may have under the Contract.

36.0 DEFECTS LIABILITY AND MAINTENANCE

36.1 Meaning of Defect

- (a) The term 'Defects' as used in the Contract shall include, but be not limited to the following:
 - (i) any Works executed, or Material supplied which is not in accordance with the Contract;
 - (ii) any failure to execute and complete the Works under the Contract;
 - (iii) any failure to fulfill the Employer's Requirements; and
 - (iv) any failure to execute and complete the Contractor's design obligations.
- (b) For the avoidance of doubt and without limiting the generality of the expression, the term shall be taken to also include:
 - (i) any imperfection, shrinkage, or other fault whatsoever; and
 - (ii) any item of Plant, Equipment, Materials, or Goods, or work incorporated, or used in the Works which does not:
 1. conform to the relevant quality standards, or
 2. pass the tests prescribed in, or to be inferred from the Contract.

36.2 Defect Liability

- (a) The Contractor shall be liable for all patent and latent Defects as defined in sub-clause 36.1 which are within the Contractor's scope under the Contract, namely encompassing the following broad categories:
 - (i) as to the quality of Materials, Goods, Plant or Equipment; and
 - (ii) the standard of workmanship; and
 - (iii) standard of design
- (b) Unless otherwise stipulated to the contrary in the Contract, the Contractor shall not be liable for the following categories of Defects:
 - (i) Defects arising from "fair wear and tear";
 - (ii) Defects arising from misuse, or abuse by the Employer;
 - (iii) Defects arising from work for which the Contractor is not responsible under the Contract;
 - (iv) Defects that are out of time, or statute-barred;
 - (v) Defects expressly waived by the Employer; and/or
 - (vi) Defects arising from a number of causes with the Contractor's default/breach being a minor one.

36.3 Duration of Liability

- (a) The Contractor shall be contractually liable for all Defects during:
 - (i) the pre-completion period, i.e. during the currency of the Contract; and
 - (ii) the Defects Liability Period.

The Defects arising during the pre-completion period shall be addressed by the E.R. pursuant to Clauses 6.0, 7.0 and 8.0. This Clause shall encompass Defects arising only during the Defects Liability Period after the completion and handing over of the Works to the Employer.

- (b) The Defects Liability Period:
 - (i) shall be for a period as stated in Appendix I; or
 - (ii) if none is stated it shall be for a period of 24 months; and
 - (iii) shall commence from the Date of Completion in the :
 - 1. Certificate of Practical Completion (CPC) for the Whole Works under Clause 32.0; or
 - 2. Certificate of Practical Completion (CPC) of each Section under Clause 33.0; or
 - 3. Certificate of Partial Occupation (CPO) under Clause 34.0.
- (c) The Defects Liability Period shall also include any extension under sub-clauses 36.5(f) and 36.9(h).
- (d) The Contractor shall, during the said Defects Liability Period:
 - (i) complete any work that is outstanding, and/or defective on the date stated in the Certificate of Practical Completion, within the period as instructed by the E.R. pursuant to Clauses 32.0, 33.0 and 34.0; and
 - (ii) execute all work required to remedy Defects as may be notified by the E.R. under sub-clause 36.4.

36.4 Defects Rectification Reporting Procedure

- (a) At any time during the Defects Liability Period as specified in sub-clause 36.3, or within 14 Days of its expiration, the E.R. may instruct the Contractor to rectify any Defects in the Works under the Contract for which the Contractor is responsible.
- (b) The E.R.'s instruction issued pursuant to sub-clause 36.4(a) shall:
 - (i) be in writing;
 - (ii) properly identify the alleged Defects;
 - (iii) stipulate a definite period for the Contractor to make good the same; and

- (iv) include any other information, or details to enable the Contractor to expedite the remedial Works.
- (c) The E.R.'s instruction may provide in respect of the rectification work, that there shall be a separate Defects Liability Period of a stated duration not exceeding the period stipulated in sub-clause 36.5(f). The separate Defects Liability Period shall commence on the date the rectification work is completed and certified by the E.R.
- (d) Under sub-clause 36.4(b), the E.R. may, if necessary, specify the particulars of the work envisaged, including but not limited to the following:
- (i) Contractor to search for the cause(s) of the Defects;
 - (ii) the undertaking of rectification Works "on-site"; or
 - (iii) demolishing and reconstructing; or
 - (iv) the undertaking the rectification "Off-Site".
- (e) In prescribing the time for the Contractor to complete the rectification Works pursuant to sub-clause 36.4(b)(iii), the E.R. shall take into consideration whether the Defects are of an urgent/emergency nature or are of the normal type.
- (f) If the Defects are of an urgent/emergency nature, meaning, these are Defects which:
- (i) render the Works liable to damage by the elements of weather; and/or
 - (ii) will further deteriorate if not made good immediately; and/or
 - (iii) will impair the safe functioning and use of the Works; and/or
 - (iv) will critically deny the proper operation and/or beneficial use of the Works
- then the E.R. may, based on its discretion, prescribe a reasonably short period varying from 2 hours up to 24 hours, as the case may be.
- (g) Should the Defects be of the normal type, i.e. not fulfilling the criteria in sub-clause 36.4(f), the E.R. may, based on its discretion, prescribe a reasonable period of between 2 Days to 21 Days depending on factors such as:
- (i) the relative seriousness and extent of the Defects involved;

- (ii) whether materials, parts, or labour from “off-site” and/or foreign sources are necessary to remedy the Defects;
- (iii) the locality of the Works; and/or
- (iv) the availability of competent and skilled local, or “on-site” personnel.

36.5 Defects Rectification: Contractor’s Responsibility

- (a) Upon the receipt of the E.R.’s Instruction under sub-clause 36.4, the Contractor:
 - (i) may seek clarifications and/or further and better particulars, especially if the scope and content of the instruction is unclear, or does not comply with sub-clause 36.4; or
 - (ii) may seek a review, or an extension to the time prescribed with necessary justification should the said time in the Instruction not comply with the relevant contract provisions, or is not, in the Contractor’s opinion, reasonable under the circumstances; or
 - (iii) shall immediately comply with the Instruction.
- (b) In the event the Contractor adopts either one of the options stated in sub-clauses 36.5(a)(i) and (ii), the Contractor must respond within a reasonable time before the expiry of the prescribed time in the E.R.’s particular Instruction. Should the Contractor fail to respond within the said time and upon the lapse of the prescribed time in the Instruction, the Contractor shall be deemed to have defaulted to comply with the E.R.’s instruction, and the provisions of sub-clause 36.7 shall apply.
- (c) Upon the receipt of the Contractor’s official response pursuant to sub-clause 36.5(a)(i) and (ii), the E.R. may:
 - (i) modify its instruction; and/or
 - (ii) issue further and better particulars requested; or
 - (iii) extend the time as requested; or
 - (iv) maintain its earlier instruction.

This decision shall be communicated in writing to the Contractor and shall for the purposes of the Contract be considered as a valid E.R.'s Instruction with the duty of compliance on the Contractor.

- (d) Should the Contractor exercise the option under sub-clause 36.5(a)(iii), the Contractor shall undertake the following activities (but not limited to), as applicable, within the prescribed period:
 - (i) mobilize all necessary resources;
 - (ii) seek the necessary access to the Works to be rectified;
 - (iii) search for the cause(s) of the Defects;
 - (iv) undertake the necessary rectification and incidental Work;
 - (v) carry out the relevant testing/retesting on the rectified Work;
 - (vi) put the rectified Work back into normal service;
 - (vii) prepare a detailed report on all the Works undertaken in response to the instruction;
 - (viii) have the report signed-off/certified by the E.R.; and
 - (ix) carry out any other necessary and/or incidental work, e.g. updating the "as-built" drawings, and operation and maintenance manuals.
- (e) All work referred to in sub-clause 36.5(d) shall be executed by the Contractor at its own cost, time and risk.
- (f) The Employer shall be entitled, subject to the E.R.'s written notification to the Contractor, to an extension of the Defects Liability Period for the Whole Works, or a Section or part of the Works, if and to the extent that the Works, Section or major item of Plant/Equipment (as the case may be, and after handing over) cannot be used for the purposes for which they are intended by reason of Defects. However, the Defects Liability Period shall not be extended for more than 1 year.
- (g) If the Defects cannot be rectified expeditiously on the Site and the E.R. gives consent, the Contractor may remove from the Site for the purposes of Defects rectification, such items of Plant or Equipment as are reported to be defective. The E.R.'s said consent:

- (i) may require the amount of the Performance Security to be increased by the full replacement cost of these items, or
 - (ii) may require the Contractor to provide other appropriate security, and
 - (iii) shall stipulate a maximum time for the Contractor to complete and return the Plant or Equipment to the Site, and
 - (iv) may require the Contractor to provide a suitable replacement in the interim.
- (h) If the rectification work undertaken by the Contractor pursuant to the E.R.'s instruction of sub-clause 36.4, is in the opinion of the E.R. affecting the performance of the Works, the following shall apply:
- (i) The E.R. may require the repetition of any of the relevant tests described in the Contract;
 - (ii) The requirement shall be made by a written notice to the Contractor within 14 days after the Defects have been certified to be rectified; and
 - (iii) These tests shall be carried out in accordance with the terms and conditions applicable to the previous tests, except that they shall be undertaken at the risk, cost and time of the Contractor.

36.6 Defects Rectification: Certification

- (a) It shall be the E.R.'s duty to:
- (i) provide all assistance necessary to enable the Contractor to satisfactorily comply with the E.R.'s Instruction within the prescribed period; and
 - (ii) monitor the Contractor's rectification Works; and
 - (iii) sign-off/certify the satisfactory completion of the rectification Works instructed.
- (b) For the avoidance of doubt, the Defects shall not be considered as satisfactorily rectified until the E.R. has officially certified the same. To this effect the E.R. shall undertake the certification within 14 Days of the Contractor's submission of the detailed report specified in sub-clause 36.5(d)(viii); failing which the Defects shall be deemed to have been satisfactorily rectified.

36.7 Failure to Remedy Defects

- (a) If the Contractor shall fail to satisfactorily comply with the E.R.'s Instruction of sub-clause 36.4, i.e. in that the Contractor either fails:

- (i) to satisfactorily rectify the Defects; or
 - (ii) to satisfactorily rectify the Defects within the prescribed time.

the Employer may at its discretion be entitled to the remedies as stipulated in sub-clause 36.7(b).

- (b) Pursuant to sub-clause 36.7(a), the Employer:

- (i) may carry out the rectification work itself, or by others as it deems fit, in which case all costs (including "On-Cost" Charges) thereby incurred shall be deducted from any money due, or to become due to the Contractor under the Contract and failing which such costs shall be recovered from the Performance Security, or as a debt due from the Contractor; or

- (ii) if any Defects are such that in the opinion of the E.R. it shall be impracticable, or inconvenient to the Employer to have the Contractor to rectify the same:

- 1. the E.R. shall ascertain the diminution in value of the works pursuant to Clause 40.0 due to the existence of such Defects (including but not limited to the loss of functionality and/or deterioration in performance) and
 - 2. deduct the amount of such diminution pursuant to Clause 39.0 from any money due, or to become due to the Contractor under the Contract and failing which such costs shall be recovered from the Performance Security, or as a debt due from the Contractor; or

- (iii) if the Defects deprive the Employer substantially the benefit of the Works or any major part of the Works, the Employer may terminate the Contract as a whole, or in respect of such major part which cannot be put to its intended use. Without prejudice to any other rights under the Contract, or otherwise, the Employer shall then be entitled to recover:

1. all sums paid for the Works, or such part of the Work (as the case may be), and
 2. financing costs, and
 3. cost of dismantling the same, clearing the Site and returning Plant, Equipment and Materials to the Contractor; and
 4. all other incidental costs involved.
- (c) Should the Employer exercise the remedy in sub-clause 36.7(b)(i), the Contractor shall have, full liability for the rectification works undertaken irrespective whether by the Employer, or other Persons.

36.8 Recurrence of Defects

- (a) If during the Defect Liability Period:
- (i) Defects previously rectified recur repeatedly, or at least 3 times; or
 - (ii) part, or parts of Equipment, or Plant are found, or observed to break down repeatedly, or at least 3 times despite repairs;
- then the provisions of sub-clause 36.8(b) shall apply.
- (b) In the case of recurring Defects under sub-clause 36.8(a)(i) the Employer may:
- (i) require the Contractor to completely demolish, reconstruct, or replace the work involved; or
 - (ii) exercise the remedy pursuant to sub-clause 36.7(b)(iii)
- (c) In the case of sub-clause 36.8(a)(ii), the Employer may require the Contractor to replace the affected part, or parts immediately and in any event not later than the period specified in Appendix I at no cost and time to the Employer.
- (d) A full report pertaining to:
- (i) the recurring Defects; and/or
 - (ii) the repeated breakdowns.

shall be submitted to the E.R. by the Contractor within 14 days from the date of notice given by the E.R.

- (e) Any defective:
 - (i) work rectified; or
 - (ii) part repaired or replaced

shall itself be subject to a further 6 month Defect Liability Period from the date of such rectification, repair or replacement. Further, the Works or system containing such Defects shall also be subject to a further 24-month Defects Liability Period from the date of such rectification, repair, or replacement provided that the original Defects Liability Period of the Works had not expired at the date of such rectification, repair or replacement.

36.9 Expiry of Defect Liability Period

- (a) On the last day of the expiry of the:
 - (i) Defects Liability Period; or
 - (ii) any extension to the Defects Liability Period under this Clause 36.0;

the E.R. shall hold a joint inspection with the Contractor's Representative (C.R.) and the Employer at the site to establish:

- (i) any Defects reported previously under sub-clause 36.4 that are still not rectified, or outstanding; and
 - (ii) any new Defects observed or identified at the said joint inspection.
- (b) Following the above joint inspection, the E.R. shall:
 - (i) prepare a consolidated schedule of Defects which the E.R. shall issue to the Contractor not later than 14 days of the said joint inspection; and
 - (ii) prescribe a period of not more than 3 months from the date of issue of the said schedule of Defects for the Contractor to rectify or make good the same at its own cost.

- (c) The E.R. shall not be allowed to issue:

- (i) any further schedule of Defects; and/or
- (ii) any further instructions to the Contractor to make good any new Defects

after the 14th day following the joint inspection as specified in sub-clause 36.9(b)(i).

- (d) Upon receipt of the schedule of Defects specified in sub-clause 36.9(b), the Contractor shall proceed to rectify or make good the reported Defects within the period of time stipulated in the E.R.'s Instruction but not exceeding the same.
- (e) On the last day of the period prescribed in sub-clause 36.9(b)(ii), the E.R. shall hold another joint inspection with the C.R. and the Employer to establish if the Contractor has satisfactorily completed all the reported Defects in the schedule of Defects issued further to sub-clause 36.9(b).
- (f)
 - (i) If following the joint inspection of sub-clause 36.9(e), the E.R. is of the opinion that the Contractor has satisfactorily rectified, or made good all the reported Defects in the Schedule of Defects (of sub-clause 36.9(b)), the following shall apply:
 - 1. the E.R. shall issue a Certificate of Completion and Making Good Defects to the Contractor;
 - 2. the said Certificate shall be issued within 14 Days of the date of the joint inspection; and
 - 3. the date specified in such Certificate shall be the date on which the Contractor shall be considered for the purposes of the Contract to have satisfactorily rectified or made good such Defects.
 - (ii) should the E.R. fail and/or neglect to issue the said Certificate within the period stipulated in sub-clause 36.9(f)(i), it shall be deemed that the Contractor has rectified or made good all the reported Defects and the date of the joint inspection of sub-clause 36.9(e) shall be considered to be the date when the Contractor has discharged its obligations for the same.
- (g) In the event, following the joint inspection of sub-clause 36.9(e), the E.R. is of the opinion that there are still Defects remaining outstanding and unrectified and that these Defects are either:
 - (i) minor in nature; or

(ii) not material; and

(iii) it would be impracticable, or inconvenient for the Contractor to rectify or make good.

the E.R. shall then:

1. prepare and carry out an assessment of the diminution in value pursuant to sub-clause 36.7(b)(ii) for the said Defects; and

2. issue a Certificate of Completion and Making Good Defects in accordance with sub-clause 36.9(f) for the whole Works.

(h) (i) If, following the joint inspection of sub-clause 36.9(e), the E.R. is of the opinion that there are still Defects remaining outstanding and unrectified and that these Defects are:

1. serious, and/or

2. material,

the E.R. may exercise the following options:

1. carry out the rectification Works pursuant to sub-clause 36.7(b)(i) and issue the Certificate of Completion and Making Good Defects for the remaining work in accordance with sub-clause 36.9(f); or

2. subject to sub-clause 36.5(f), extend the Defects Liability Period by another 3 months for the Defects still outstanding, or unrectified but issue the Certificate of Completion and Making Good Defects for the remaining Works in accordance with sub-clause 36.9(f).

(ii) In the event, the Defects Liability Period is extended under sub-clause 36.9(h)(i), the relevant insurances cover and Performance Security shall be increased by a corresponding amount for the said period of extension.

(i) The E.R. shall issue the original copy of the Certificate of Completion and Making Good Defects under this sub-clause to the Contractor with copies to the:

(i) Employer; and

- (ii) Sub-Contractors (if applicable).

36.10 Effect of the Certificate of Completion and Making Good Defects

- (a) The Certificate of Completion and Making Good Defects shall finally discharge the Contractor from any physical attendance upon the Works for the purpose of remedying the Defects but shall not prejudice any other rights of the Employer in regard to both patent latent Defects, or other breaches of the Contract under the governing laws.
- (b) Notwithstanding the issue of the said Certificate, the Contractor and the Employer shall remain liable for the fulfillment of any obligations incurred under the provisions of the Contract prior to the issue of such Certificate, which remain unfulfilled at the time the Certificate is issued, and for the purpose of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the Parties hereto.
- (c) The provisions of sub-clauses 36.1 to 36.9 shall not derogate in any way whatsoever from the Contractor's liability under the Contract, or otherwise for defective work at law.

36.11 Contractor's Remaining Obligations

- (a) Upon receiving the Certificate of Completion and Making Good Defects under sub-clause 36.9 from the E.R., the Contractor shall immediately remove from the Site any:
 - (i) remaining Contractor's Plant and/or Contractor's Equipment,
 - (ii) surplus material,
 - (iii) wreckage/rubbish and
 - (iv) Temporary Works.
- (b) If all these items have not been removed from the Site by the Contractor within 21 Days after the Contractor receives the said Certificate from the E.R.:
 - (i) the Employer may sell, or otherwise, dispose of any remaining items as and when it deems fit; and
 - (ii) the Employer shall be entitled to be paid all costs incurred in connection with, or attributable to such sale, or disposal and restoring the Site; and
 - (iii) any balance of the monies from the sale shall be paid to the Contractor.

- (c) If these monies are less than the Employer's cost, the Employer shall be entitled to recover such cost from:
 - (i) any money due, or to become due to the Contractor under the Contract; and
 - (ii) failing which such cost shall be recovered from the Performance Security, or as a debt due from the Contractor.

36.12 Servicing and Maintenance

- (a) Following the issue of the relevant completion/handing over Certificate for either the whole Works or particular Section(s) of the Works, the Contractor shall be responsible for undertaking of the servicing and maintenance of all Works and services such as the architectural, civil, structural, mechanical, electrical, and landscape works as stated in the Employer's Requirements, Contractor's proposals and/or the Contract Documents for those Works certified as being so completed/handed over.
- (b) The period of this servicing and maintenance ("the Maintenance Period") obligation shall be for a duration as stipulated in Appendix I.
- (c) The extent and frequency of the servicing and maintenance shall be as stated in the Contract Documents and/or the relevant operation and maintenance manuals and/or the applicable manufacturer's warranties/recommendations. The Contractor shall finalize the same with the E.R. within 7 Days of the issue of the relevant completion certificate by the latter. It is hereby agreed that the Employer will undertake daily and weekly servicing and maintenance, with the Contractor expected to do the same on a monthly, quarterly, half-yearly and yearly basis unless expressly stipulated to the contrary in the Contract Documents.
- (d) All costs incurred in such servicing and maintenance activities shall include but be not limited to the costs of consumables, spares, replacement items, utilities, labour, handling, and transport shall be borne by the Contractor and shall be accordingly priced for in the Contract Sum Analysis and the Contract Sum. On no account will any claims over and above what has been so priced will be entertained by the E.R./Employer.
- (e) It is the Contractor's express duty to keep proper records in the form of a maintenance register of the various servicing and maintenance activities that it undertakes over the duration of the Maintenance Period. Each such record shall be signed off by the authorized representative(s) of the Contractor on each occasion and presented to the E.R./ Employer for the latter's approval/endorsement. Unless and until all such records

are so processed and approved/endorsed by the latter, the particular servicing and maintenance activity shall not be considered to be completed and the Contractor shall be deemed to be in default.

- (f) It is the Contractor's express obligation to notify the E.R./Employer in advance of each servicing and maintenance activity on details such as the date and time for undertaking the same, the nature and extent of access to the completed work required, the expected duration of the activity and other material information to enable the latter to ensure that such request can be satisfactorily and timeously met.
- (g) Should the Contractor fail to undertake the servicing and maintenance at all, or should it undertake the same erroneously and/or negligently, the Contractor shall be responsible for all the contractual consequences of the same including but not limited to any loss or damage to the works, and/or breach/nullification of the manufacturer's warranties. The E.R. may employ third parties or the Employer may undertake the same itself on the Contractor's behalf and deduct the costs incurred (including On-Cost Charges) thereby from any monies owing to the Contractor and/or as a claim for a debt due. For more serious defaults/breaches in the said obligation, the E.R. may refuse or postpone the certification of the completion of the Contractor's maintenance obligations and may extend the Maintenance Period by not more than 6 months.

PART VII: PAYMENTS, VARIATIONS AND ADJUSTMENTS

37.0 CONTRACT SUM ANALYSIS AND PAYMENTS

37.1 Contract Sum Analysis and Payment Schedule

- (a) The finally agreed Contract Sum Analysis as included in Appendix IVI to the Conditions of Contract and the Payment Schedule shall form the basis of the breakdown of the Contract Sum stipulated in Clause 3.0.
- (b) Within 14 Days of the receipt of the Letter of Acceptance, the Contractor shall submit to the E.R. for the latter's approval, the following:
 - (i) a detailed breakdown of the Contract Sum Analysis on an elemental basis showing the various Items constituting the Works for all Works to be undertaken under the Contract inclusive of design work, Temporary Works, preliminaries, and Permanent Works.

- (ii) all supporting documents and calculations with respect to the said detailed breakdown;
 - (iii) a detailed Payment Schedule for the entire duration of the Contract Period; and
 - (iv) any other information and/or details that the E.R. may need to issue its approval.
- (c) The E.R. shall, within 14 Days of receipt of the said information/documents from the Contractor:
 - (i) approve the same; or
 - (ii) reject with reasons; or
 - (iii) request for more information; or
 - (iv) make its proposal for adoption by the Parties.
- (d) If the E.R. does not exercise any of the above options, upon the expiry of the 14 Day period, it shall be deemed that the Contractor's submission has been approved by the E.R. Notwithstanding such deemed acceptance, the E.R. shall have a right to subsequently require the Contractor to amend or augment the details contained therein at any stage of the latter payment processes.

37.2 Adjustment of Rates and Prices

- (a) The Parties shall negotiate and mutually agree to adjust the rates in the Contract Schedule of Rates and the prices in the Contract Sum Analysis submitted by the Contractor to ensure their reasonableness before acceptance of tender and any agreement so reached shall be final and binding on them.
- (b) Any adjustment of the prices and the correction of any arithmetical error in the Contract Sum Analysis shall be undertaken before the signing of this Contract such that the total amount in the Contract Sum Analysis shall correspond to the lump sum amount quoted by the Contractor in the Tender. Provided always the lump sum amount shown in the Tender shall remain unaltered.

37.3 Quality and Quantity of Works

Subject to the sub-clause 5.8(a) and Clause 18.0 hereof, the quality and quantity of the Works included in the Contract Sum shall be to be that which is stipulated and/or described in the

Employer's Requirements, Contractor's Proposals and/or the Contract Sum Analysis. Where quantities of work are given in the said documents, for the purpose of the Contract and payment thereunder, these are deemed to be estimates only, and the risk of any errors in the same is wholly on the Contractor. These shall not be subject to measurement or re-measurement, save for items of work which are ordered under Clause 27.0, or varied per Clause 39.0; in which case the provisions of Clause 38.0 shall apply.

37.4 Adjustment of Contract Sum

For the purpose of sub-clause 37.3, the amount to be paid to the Contractor shall be set off against the amount for such work in the Contract Sum Analysis, and the balance shall be added to or deducted from the Contract Sum as the case may be.

38.0 MEASUREMENT OF WORKS

38.1 Notification, etc.

The E.R. shall, when it requires any part or parts of the Works to be measured or re-measured for the purposes of the provisions on Variation under Clause 39.0, and Contingency Sums and/or Provisional Sums under Clause 27.2, give reasonable notice to the Contractor who shall attend or send a qualified agent to assist the E.R. or E.R.'s Representative in making such measurement and shall furnish all particulars required by the E.R. Should the Contractor fail to attend or neglect or omit to send such agent, then the measurement made by the E.R. or approved by it shall be taken to be the correct measurement of the work.

38.2 Record of Measurement

Upon the completion of the measurement pursuant to sub-clause 38.1, the E.R. shall supply the Contractor with such measurement in respect of the said Works.

39.0 VARIATIONS

39.1 Meaning of the term "Variation"

- (a) The term "Variation" as used in the Contract shall mean any change to the Employer's Requirements or the Works, which is instructed or approved as a variation under this Clause.
- (b) It shall include, inter alia, the following:
 - (i) the addition, or substitution of any work including design work;

- (ii) the alteration of the kind or standard of any of the design, Materials, Goods, Plant or Equipment to be used in the Works; or
 - (iii) the removal from the Site of any Work executed or Materials or Goods or Plant or Equipment brought thereon by the Contractor for the purposes of the Works other than Materials or Goods or Plant or Equipment which are not in accordance with the Contract.
 - (iv) material changes in the Employer's Requirements;
 - (v) material changes to the sequence, method, or timing of the execution of the Works;
 - (vi) any material limitation to the approved working hours, working space and/or access to or utilization of any specific part of the site;
 - (vii) omission of any work unless it is to be carried out by others; and
 - (viii) any changes expressly stipulated under any other provision of the Contract that are stated to constitute a variation under this Clause.
- (c) It shall exclude:
- (i) any changes intended to rectify any negligence, omission, default and/or breach of contract by the Contractor (and/or its Sub-contractor); which changes shall be executed by the Contractor at its own cost and/or time; and
 - (ii) the taking over of the Occupied Part under Clause 34.3.

39.2 Parties empowered to Initiate Variations

- (a) Both Parties are equally entitled to initiate Variations to the Works in accordance with the express provisions of the Contract.
- (b) The Employer's right to initiate is stipulated in Clause 39.3 below and is exercised for and on its behalf by the E.R. whilst the Contractor's right is contained in Clause 39.5.

39.3 E.R.'s right to Vary

- (a) The E.R. may at its discretion issue instructions requiring a Variation in the form of a Variation Order. Such a Variation Order may also be used to sanction any Variation made by the Contractor;
- (b) All such Variation Orders shall be in writing and issued formally to the Contractor;
- (c) The E.R. is obliged to consult the Contractor prior to its ordering the latter to undertake any Variations and get the latter's written consent (which consent shall not be unreasonably be delayed or withheld), thereto provided such Variation is likely to:
 - (i) alter or modify the design of the Works materially; and/or
 - (ii) have a material effect on the Contractor's programme inclusive of the ordering, procurement and fabrication of major items such as Materials, Goods, Plant and/or Equipment; and/or
 - (iii) affect safety; and/or
 - (iv) breach any regulation and/or law.
- (d) The E.R. shall be empowered to issue a Variation Order after the issue of the Certificate of Practical Completion, provided that this is:
 - (i) rendered necessary by the Contractor's obligation to correct Defects in the Works and to discharge its obligations and comply with the requirements of the Appropriate Authority and/or service provider; or
 - (ii) permitted by any express provision of the Contract; or
 - (iii) mutually agreed to by the Parties.
- (e) No Variation ordered by the E.R. or subsequently sanctioned by it shall vitiate the Contract;
- (f) The E.R. may issue instructions in regard to the expenditure of Contingency Sums and/or Provisional Sums under Clause 27.0 (as applicable); which instructions shall be in writing.

39.4 Contractor's obligations

- (a) Pending the valuation of the Variations and the granting of any Extension of Time (if applicable), the Contractor shall immediately carry out with due diligence and expedition, all Variations so instructed by the E.R.
- (b) The Contractor shall not vary or alter any of the Works except as:
 - (i) instructed in the form of a Variation Order; or
 - (ii) subsequently approved or sanctioned in the form of a Variation Order.
- (c) In the event, the Contractor is of the opinion that:
 - (i) any Variation Order is not sufficiently detailed to allow for its proper implementation; and/or
 - (ii) presents a design, procurement or construction impracticability; or
 - (iii) prevents it from fulfilling any of its obligations under the Contract; and/or
 - (iv) affects safety; and/or
 - (v) breaches any statutory requirements or law, and/or
 - (vi) has a material impact on its accepted and/or updated programme

the Contractor shall immediately, but not later than 7 Days after the receipt of the Variation Order, notify the E.R. in writing providing full particulars of the same. Within 7 Days upon receiving this notice, the E.R. shall either:

- 1. cancel the Variation Order; or
 - 2. confirm the Variation Order; or
 - 3. modify the Variation Order as it deems fit.
- (d) If and to the extent an instruction does not state that it constitutes a Variation Order, but the Contractor considers that it does, the Contractor shall comply with the same but may request the E.R. in writing to specify that the said instruction constitutes a Variation Order. The E.R. shall within 7 Days of the Contractor's written request either confirm, modify or rescind in writing the said instruction; failure to do so shall be deemed that the E.R. does consider it to be Variation Order.

39.5 Contractor's proposal to vary

- (a) The Contractor may at any time submit to the E.R. a written proposal for:
- (i) any modifications to the design; and/or
 - (ii) any modifications to the Works or any part thereof; and/or
 - (iii) any modifications to any Materials, Goods, Plant and Equipment
- which in the Contractor's opinion, will if adopted:
- 1. accelerate completion; and/or
 - 2. reduce the cost to the Employer of executing, maintaining or operating the Works; and/or
 - 3. improve the efficiency or value to the Employer of the completed Works; and/or
 - 4. improve the appearance or quality of the Works; and/or
 - 5. improve the safety of executing, maintaining or operating the Works; and/or
 - 6. otherwise be of material benefit to the Employer.
- (b) The Contractor may in addition to sub-clause 39.5(a) above, also submit written proposals to the E.R. for changes:
- (i) involving substitution of Materials, Goods, Plant or Equipment due to inability for reasons beyond its control to procure such items as stipulated in the Contract;
or
 - (ii) in respect of the substitution of Materials, Goods, Plant or Equipment due to product improvements; or
 - (iii) due to changes in the applicable law and/or statutory requirements.
- (c) The proposals shall be prepared at the cost of the Contractor and shall include the following minimum contents:
- (i) the reason or reasons for the proposed change;
 - (ii) a description of the proposed work to be performed and a programme for its execution;

- (iii) the Contractor's proposal for any necessary modifications to the accepted and/or updated programme according to Clause 30.0 and to the time for completion and/or to any of its obligations under the Contract; and
 - (iv) the Contractor's proposal for the costing or valuation of the Variation and adjustment of the Contract Sum inclusive of any formula for the sharing of the time and/or costs savings (if, any) involved; and
 - (v) all necessary supporting documents.
- (d) The E.R. may at its discretion, either approve or reject the Contractor's proposal to vary; such a decision to be communicated in writing to the Contractor within 14 Days of the official receipt of the Contractor's Proposal. Failure of the E.R. to reply to the Contractor's Proposal within the said time period shall be deemed to be an approval of the said proposal, and the Parties shall thereafter give due effect to the same.
- (e) If the E.R. approves the Contractor's proposal to vary, an instruction requiring a Variation (a "Variation Order") may be issued in accordance within this Clause 39.0.
- (f) The application of this Clause shall in no way permit the Contractor to suspend or delay its performance of the Works or any part thereof pending the E.R.'s review of the Contractor's proposal to vary. Unless the E.R. otherwise instructs in the form of a Variation Order approving the Variation, the Contractor shall not be entitled to:
- (i) any extension of time; and/or
 - (ii) extra payment whatsoever.

in respect of the Variation or anything arising out of the Variation which would not have arisen had the Variation not been approved.

39.6 Invalid Variations

- (a) The Contractor shall not be obliged to comply with any Variation Order which is not in accordance with the provisions of the Contract.
- (b) If the Contractor considers any Variation Order to be not in accordance with the Contract, it shall give the E.R. written notice to this effect immediately upon its receipt.

- (c) The E.R. shall then decide on the validity of such Variation Order within 7 Days of the receipt of the Contractor's said written notice and the Contractor shall give due effect to such a decision subject to Clause 58.0.
- (d) If the E.R. fails to respond as per sub-clause 39.6(c), upon the expiry of the 7 Day period, it shall be deemed that the Variation Order is not in accordance with the Contract and the provisions of sub-clause 39.6(a) shall apply.

39.7 Variation Order procedure

- (a) Unless the Variation is of an urgent nature (where the provisions of sub-clause 39.7(g) shall apply), prior to issuing any Variation Order, the E.R. shall notify the Contractor in writing of the nature and form of such Variation.
- (b) Upon receipt of the E.R.'s written notice of a proposed Variation, the Contractor shall within 7 Days, advise the E.R. whether the Variation can be carried out or otherwise. Should the Contractor be of the opinion that the Variation cannot be carried out then the provision of sub-clause 39.4(c) shall apply.
- (c) If the Contractor is of the opinion that the Variation can be carried out, then the Contractor shall submit to the E.R. in writing and within 7 Days of receipt of the E.R.'s, a written notice containing:
 - (i) a detailed description of the work to be performed inclusive of any Method Statement;
 - (ii) a detailed programme for the execution of the Works;
 - (iii) the Contractor's proposal for any necessary modifications to the accepted and/or updated programme according to Clause 30.0 and to the time for completion or to any of its obligations under the Contract; and
 - (iv) the Contractor's proposals for the costing, or valuation of the Variation and the adjustment of the Contract Sum; and
 - (v) all necessary supporting documents.

Any costing or valuation of the Variations in sub-clause 39.7(c)(iv) above shall be undertaken in accordance with Clause 40.0.

(d) The E.R. shall, as soon as practicable but not more than 14 Days after receiving such written notice from the Contractor, respond in writing with its:

- (i) approval; or
- (ii) disapproval; or
- (iii) comments.

The Contractor shall not in the meantime proceed with the Variation unless specifically instructed to do so by the E.R. but shall not delay any other of the remainder Works.

(e) If the E.R. approves the Contractor's proposals contained in the latter's written notice of sub-clause 39.7(c), or if agreement is reached between the E.R. and the Contractor on the E.R.'s or the Contractor's estimate (as the case may be), the E.R. shall so formalize it in the form of a Variation Order and notify the Contractor in writing of the same; in which case, the Contractor shall immediately proceed with the Variation and the agreement so reached shall be binding on the Parties.

(f) In the event that:

- (i) the Contractor fails to comply with sub-clause 39.7(c); or
- (ii) the E.R. rejects the Contractor's proposal contained in the written notice of sub-clause 39.7(c); or
- (iii) an agreement upon the estimate pursuant to sub-clause 39.7(e) cannot be reached within a period considered reasonable by the E.R.;

then the E.R. may in its discretion either:

1. instruct the Contractor to comply with the Variation instruction and the Contractor shall immediately so comply; or
2. instruct the Contractor not to comply with the relevant instruction in which case the Contractor shall have no claim whatsoever for Item (f)(i) above but for Items (f)(ii) & (iii) above, it shall be entitled to claim the reasonable cost of preparing its proposals.

(g) In respect of any Variation instructed by the E.R.:

- (i) on an urgent basis; or

(ii) under the provision of sub-clause 39.7(f) 1 above,

the E.R. may, at any time, estimate such sums and periods and extensions of time (if any) as it in its discretion considers appropriate and shall notify the Contractor of its decision accordingly.

(h) The E.R.'s decision pursuant to sub-clause 39.7(g) above shall be final and binding upon the Contractor until such time as it is reviewed by the E.R., or an Arbitrator appointed in accordance with Clause 58.0 or an Adjudicator under CIPAA (if applicable). In the event that the Contractor objects to the E.R.'s said decision, the Contractor shall, as a condition precedent to its entitlement to any further sums and/or extension of time:

(i) give written notice of its objections to the E.R. within 14 Days of the E.R.'s decision; and

(ii) submit within 14 days after its written notice in sub-clause 39.7(h)(i) above, full and complete details of its claim for the said entitlement.

Within 7 Days of receipt of the Contractor's aforesaid written notice and submissions, the E.R. shall confirm or vary its decision as it shall in its discretion deem fit, and shall notify the Contractor accordingly in writing. If the E.R. fails to respond within the said period, it shall be deemed upon the expiry of the 7 Days, that the E.R. has no objections to the same and that the Contractor is entitled to such further sums and/or extension of time as claimed.

(i) Notwithstanding the provisions of sub-clause 39.7(a) and (b), the E.R. may instruct the Contractor at any time, whether before or after the receipt of the Contractor's submissions of sub-clause 37.6(c) to comply with the relevant instruction immediately.

(j) The E.R. shall not be bound to give effect to the valuation of variations in Interim Certificates by adjustment to the Contract Sum, unless and until an agreement in writing as to the valuation thereof, or part thereof, exists between the E.R. and the Contractor. Such agreements shall be entirely conclusive as to the effect of any Variation or part referred to therein.

- (k) At the time of making application for an Interim Certificate, the Contractor shall submit a report setting out the status of all Variations and their effect (if any) on the planning and scheduling requirements and the Contract Sum.

39.8 Effect of a valid Variation Order

- (a) The effect of a valid Variation Order, i.e. one which is in accordance with the Contract is that the duty of compliance shall be on the Contractor, in that the Contractor shall be obliged to accept the instruction and carry out the changes ordered.
- (b) Should the Contractor refuse to accept the instruction or fail to comply with its requirements within any prescribed time limits, this shall constitute a breach of contract on the Contractor's part and, the provisions of sub-clauses 39.8(c) and (d) shall apply.

- (c) If the E.R. decides that the breach is not material and is not sufficiently serious:

- (i) the E.R. may take third-party action; or
- (ii) the Employer may undertake the work itself;

All costs and expenses incurred (including On-Cost Charges) in either situation shall be chargeable to the Contractor.

- (d) If the E.R. decides that the breach is material and sufficiently serious, the Employer may either:

- (i) Determine the Contractor's Employment pursuant to Clause 51.0; or
- (ii) Rescind the contract.

and recover all costs and expenses involved from the Contractor.

40.0 VALUATION OF VARIATIONS

40.1 Valuation of Variations

- (a) All variations, save for those referred to in sub-clause 39.7(e) shall be measured and valued by the E.R.

- (b) Where any recording of site information and/or site measurements are carried out at the Site, the Contractor shall provide the E.R. with such assistance as may be necessary to carry out the recording and/or measurements and the Contractor shall be given the opportunity to be present to take such notes and measurements as it may require.

40.2 Valuation of Variations and Provisional Sums and Contingency Sums

- (a) Unless the E.R. and the Contractor agree upon the price for a Variation, the Variation instructed or approved by the E.R. and executed by the Contractor shall be valued under sub-clause 40.3(a) to (i).
- (b) The expenditure of Provisional Sums and/or Contingency Sums (other than for work for which a tender has been accepted under Clause 27.0) shall be made under sub-clause 40.3(i).

40.3 Valuation Rules/Method

- (a) Where the Contract provides that valuation shall be made under this sub-clause 40.3:
 - (i) the Employer shall pay, or allow the Contractor; or
 - (ii) the Contractor shall pay, or allow the Employer

as the case may require, an amount ascertained by the E.R. in accordance with the applicable rules stipulated in sub-clauses 40.3(b) to (i).
- (b) Where the work is varied such that there are whole additions and/or omissions of items in the Contract Sum Analysis, then the said items in the Contract Sum Analysis shall form the basis of the items added and/or omitted as applicable. For the avoidance of doubt, the Contract Schedule of Rates in Appendix V shall not be used in this case.
- (c) Where the varied work is:
 - (i) of a similar character to; and
 - (ii) is executed under similar conditions as; and
 - (iii) does not significantly change the quantity of

the Work described in the Contract Documents, the rates for the Works, as stipulated in the Contract Schedule of Rates in Appendix V, as applicable, shall be used for the valuation.

(d) Where the varied work is of a similar character to the Work as set out in the Contract Documents but:

- (i) is not executed under similar conditions; and/or
- (ii) is executed under similar conditions, but there is a significant change in the quantity of work carried out, the rates in the Contract Schedule of Rates in Appendix V shall be the basis for the valuation but with a fair allowance, or adjustment to take into account such difference;

(e) Where sub-clauses 40.3(c) and (d) above do not apply, and work is not of a similar character to work set out in the Contract Documents, the valuation shall be at fair market rates and prices determined by the E.R.

(f) Where:

- (i) none of the above methods is applicable, or appropriate in the circumstances of that particular varied work; and/or
- (ii) the varied work cannot be properly measured, or valued; and/or
- (iii) the varied work is of a minor or incidental nature,

then the Contractor shall be allowed the valuation based on the Dayworks rates in the Contract Documents, i.e. the Contract Schedule of Rates in Appendix V in accordance with sub-clause 40.3(g), or where there are no Dayworks rates in the Contract Documents, in accordance with sub-clause 40.3(h)

(g) Where it is stipulated that the valuation of the varied work shall be based on Dayworks rates, the following rules shall apply:

- (i) as a condition precedent to any right to any payment under this sub-clause 40.3(g), the Contractor shall have received from the E.R. a written instruction authorizing that the varied work be executed on a Dayworks basis;

- (ii) unless specified to the contrary in the Contract, the Contractor shall be entitled to additional 15% on the Dayworks rates; which percentage shall be deemed to compensate adequately the Contractor in respect of all supervision, the use of Contractor's Equipment, Contractor's Plant and/or Temporary Works necessary for the execution of the varied work, overheads, profit and all other loss, expense, costs or damages incurred in or connected with the execution of the varied work;
- (iii) the Contractor shall record contemporaneously and shall deliver by the close of business of each day to the E.R. accurate statements in duplicate which shall include the following details of the resources used in executing that day's work:
 - 1. the names, trades/occupation and the time spent by each workman or Contractor's personnel; and
 - 2. the identification, type, number and time in use of the Contractor's Equipment, Contractor's Plant and Temporary Works; and
 - 3. the quantities and types of Goods and Materials used

One copy of each statement shall, if correct, or when agreed, shall be signed by the E.R. and returned to the Contractor within a day of its receipt from the latter.

- (iv) such records together with the relevant vouchers, delivery orders, or receipts shall be delivered to the E.R. for verification not later than 7 Days after varied work has been executed. In the case of continuing work, the records shall be delivered to the E.R. at weekly intervals for verification, with the final records delivered not later than 7 Days after the varied work has been completed.
- (h) Further to sub-clause 40.3(f), where there are no such Dayworks rates in the Contract Documents, the Contractor shall be allowed:
 - (i) the actual cost of its Materials, additional Contractor's Equipment, Contractor's Plant, Temporary Works including scaffolding (if applicable), transport and labour for the varied work concerned; and
 - (ii) 15%; which percentage shall include for the use of all tools, facilities, overheads and profits.
- (i) The rates in the Contract Documents, i.e. the Contract Schedule of Rates in Appendix V shall determine the valuation of the work and/or items omitted. If the omission

substantially varies the conditions under which any remaining parts or items of the Work are carried out, the prices of such remaining items shall be valued in accordance with sub-clauses 40.3(c), (d) or (e) as appropriate. For the avoidance of doubt, the Contractor shall not be entitled to any loss and expense (including any loss of profit) for omission of work unless such work is carried out by the Employer itself, or by another contractor engaged by the Employer.

40.4 Record of Costs

- (a) In any case, where the Contractor is instructed to proceed with a Variation prior to the determination of the adjustment to the Contract Sum in respect thereof, the Contractor shall keep records of all costs of undertaking the Variation and of time expended thereon.
- (b) Such records shall be open for inspection by the E.R. at all reasonable times.

40.5 Inclusion of Variations in Interim Certificates

- (a) As soon as the E.R. has ascertained the amount of the Variation undertaken by the Contractor pursuant to this Clause, the amount so ascertained shall be added to or deducted from the Contract Sum.
- (b) Pending the ascertainment of the final amount due to the Contractor pursuant to any Variation Order issued and satisfactorily carried out by the Contractor, the E.R. may, but shall not be obliged to certify a provisional payment of up to 75% of the E.R.'s estimated value of such varied work.
- (c) When an Interim Certificate or any other payment certificate is issued after the date of ascertainment, such amount shall be included in the said Certificate.

41.0 PAYMENT TO THE CONTRACTOR AND INTERIM CERTIFICATES

41.1 General

Subject to the Employer's rights of set-off and/or abatement under the Contract, or the common law or any written law, payment for the supply of Materials, Goods, Plant and/or Equipment and the performance of the Works under the Contract (inclusive of all design work) shall be made to the Contractor in the manner as set out in the Contract, this Clause and Appendix I.

41.2 Application for Payment

- (a) The Contractor shall submit to the E.R., at such times and such intervals as may be specified in Appendix I and/or as mutually agreed to by the Parties, an application for payment referred to as the “Statement of Work Done” in such form and quantity as the E.R. directs, showing in detail the amounts to which the Contractor considers itself to be entitled together with all necessary supporting documents.
- (b) The purpose of the application adverted to in sub-clause 41.1(a) shall be to enable the E.R. to undertake the necessary valuation of the work done and to issue the relevant Interim Certificate.
- (c) If the Contractor fails to make an application for payment under sub-clause 41.1(a), it shall be deemed that the Contractor has waived its contractual entitlement for that Interim Certificate, but the E.R. may, (but is not obliged to) nevertheless proceed to undertake the necessary valuation and certification on its own volition and the sum so certified shall not be subject to dispute by the Contractor.
- (d) After the issue of the Certificate of Practical Completion for the whole of the Works or the last part of the Works, the E.R. is contractually obliged to issue only two further types of payment certificates, i.e. the Penultimate Certificate and Final Certificate. However, the E.R. may issue such further payment certificates during the Defects Liability Period which may not fall under the said types of payment certificates, if the E.R. deems necessary under the particular circumstances and/or if necessitated by the provisions of Section 30 (3) of CIPAA and/or other applicable express provisions of the Contract.
- (e) The Parties hereby agree that total payment due to the Contractor for work done under the Contract shall be paid such through the Interim, Penultimate and Final Certificates (and/or other further payment certificates), and that the finalization of the amount due shall be undertaken progressively on a “stage”/”milestone, or “elemental” basis in accordance with the agreed Payment Schedule as contained in the Contract Documents. To this effect, the parties together with the E.R. shall endeavor to make all relevant adjustments to the Contract Sum as stated in Clause 42.0 in the respective Interim Certificates and the Penultimate Certificates, with any outstanding/residual adjustments to be undertaken only in the Final Account/Final Certificate.

41.3 Statement of Work Done

- (a) Unless otherwise approved by the E.R., the Statement of Work Done shall clearly stipulate and particularize the amounts to which the Contractor considers itself to be entitled to up to the last day of the relevant interval in respect of:
 - (i) the value of the Works properly executed (including works executed pursuant to the E.R.'s instructions under Clauses 27.0, and 39.0) subject to any agreement between the parties as to Stage/Milestone Payments for the Works, or any part of the Works stipulated in Appendix I;
 - (ii) any other items shown and separately priced in the Contract and/or the Contract Sum Analysis including, but not limited to those for Contractor's Equipment, Contractor's Plant, Temporary Works and Preliminaries.;
 - (iii) the percentage (as stated in Appendix I) of any Materials, Goods, Plant and/or Equipment delivered by the Contractor on Site for incorporation into the Works;
 - (iv) the percentage (as stated in Appendix I) of any Materials, Goods, Plant and/or Equipment stored off-site (if permitted under the Contract pursuant to Clause 41.0B);
 - (v) the value of any other sum expressly permitted as claimable under the Contract;
 - (vi) the value of the Works properly executed of any Sub-Contractor or Supplier (as applicable); and
 - (vii) any other sum to which the Contractor may consider itself to be properly entitled to under the Contract with a full itemization of such sums under the relevant provisions of the Contract.
- (b) Unless otherwise approved by the E.R., the Contractor shall submit all necessary supporting documents, including, but not limited to the following as applicable:
 - (i) Delivery orders for all Materials, Goods, Plant and/or Equipment;
 - (ii) Purchase orders and/or invoices;
 - (iii) Installation manuals for Plant, Equipment and proprietary systems;
 - (iv) Factory test certificates for Materials, Goods, Plant and/or Equipment (as applicable);

- (v) Certificates of quality (as applicable);
 - (vi) Documents evidencing ownership of the Materials, goods, Plant and/or Equipment;
 - (vii) Certificates on the waiver of retention of title clauses (as applicable);
 - (viii) Calculations, computations, quantification, data, information and documents; and
 - (ix) Any other document mutually agreed to by the Parties and/or deemed necessary by the E.R.
- (c) The Statement of Work Done and the supporting documents stipulated in sub-clause 41.3(b) shall be submitted in triplicate; each and every statement and document being suitably identified, paged continuously, dated and signed by the Contractor's Representative (C.R.) or any other authorized representative. Except for the Statement of Work Done which shall also be submitted in a soft copy, the other documents shall be in hard copies unless mutually agreed otherwise by the Parties.

41.4 Valuation of Work

- (a) The measurement (if applicable) and valuation of the Works properly executed by the Contractor shall be carried out by the E.R. on a date as mutually agreed to by the Parties but not later than 21 Days of the E.R.'s receipt of the Contractor's complete application for payment under sub-clause 41.2(a).
- (b) The pre-conditions to the E.R.'s valuation shall be:
 - (i) execution of sufficient work by the Contractor; and
 - (ii) formal application for payment by the Contractor; and
 - (iii) the reaching of the stipulated or agreed stage/milestone and/or date for valuation;
 - (iv) for stage/milestone payment, the satisfactory handing over of the relevant deliverables for that stage/milestone, e.g. design drawings and calculations, as-built drawings, technical manuals; and

- (v) the fulfillment of any other requirements stipulated in the Contract, or mutually agreed to by the Parties.
- (c) For the first interim valuation, the Contractor must have reached the minimum value of work executed inclusive of unfixed Materials, Goods, Plant and/or Equipment delivered to Site (and/or “off-site”, if permitted) up to the sum as stipulated in the Appendix I. In addition, the Contractor shall have delivered to the E.R. the following documents unless otherwise agreed to by the E.R:
- (i) Letter of Acceptance duly acknowledged, signed and witnessed; and
 - (ii) all relevant insurance cover policies stipulated in the Contract and/or the official premium receipts of the same; and
 - (iii) the relevant Performance Security as stipulated in the Contract; and
 - (iv) the relevant programme of Works as stipulated in the Contract; and
 - (v) all relevant indemnities to the Employer in respect of personal injuries, and damage to property and other indemnities as stipulated in the Contract; and
 - (vi) all other documents as expressly stipulated in the respective provisions of the Contract.
- (d) For the subsequent valuations, the Contractor must have reached the minimum value of work executed inclusive of unfixed Materials, Goods, Plant and/or Equipment delivered to Site (and/or “off-site”, if permitted) up to the sum stipulated in Appendix I.
- (e) Valuation shall be undertaken in line with recognized/mutually agreed valuation principles and the relevant stipulations of the Contract. The pre-requisite shall be that all the design and/or physical Works executed (inclusive of any varied work carried out), must have been, in the opinion of the E.R. “properly executed” i.e. it satisfactorily complies with the Contract.
- (f) Unfixed Materials, Goods, Plant and/or Equipment delivered to Site shall be valued according to the formula stipulated in Appendix I, provided the following conditions precedent are met:
- (i) the Materials, Goods, Plant and/or Equipment must be for incorporation into the Works; and
 - (ii) these must be delivered to, or adjacent to the Site of the Works; and

- (iii) the Materials, Goods, Plant and/or Equipment must not, in relation to the accepted and/or updated programme of Works (in Clause 30.0), be prematurely delivered to the Site; and
 - (iv) these must be properly protected against the elements of the weather, deterioration, theft and/or other loss or damage; and
 - (v) title in such Materials, Goods, Plant and/or Equipment must rest in the Contractor, or the Contractor must either get the relevant waivers/dispensations from the lawful owners, or must be able and willing to pass good title in law to the Employer upon payment of the sums certified; and
 - (vi) submission of all other relevant technical documents as expressly stipulated in the particular provisions of the Contract.
- (g) Where the Contract expressly permits, payment for unfixed Materials, Goods, Plant and/or Equipment stored "off-site", the valuation shall be according to the formula stipulated in Appendix I and subject to the conditions as stated in such express provisions applicable to this matter.

41.5 Certification

- (a) The E.R. shall issue an Interim Certificate to the Employer with a copy to the Contractor not later than 14 Days of the completion of the valuation of the Works in sub-clause 41.4 above.
- (b) The conditions precedent to the E.R.'s certification shall be:
 - (i) the stipulated period and/or stage/milestone (as applicable) for certification must have been reached;
 - (ii) the valuation must have been satisfactorily undertaken;
 - (iii) the stipulated minimum value of work permitting certification must have been achieved; and
 - (iv) all other pre-conditions as expressly stipulated in the Contract must have been satisfied; and

- (v) the E.R. is satisfied, based on its opinion, that taking all circumstances into consideration, a certificate should be issued.
- (c) Any Interim Certificate issued shall state the sums to which the Contractor is in the opinion of the E.R. entitled in respect of each of the amounts claimed in the Statement of Work Done less:
 - (i) Retention Monies under sub-clause 41.8;
 - (ii) any amount or amounts previously certified under this Clause 41.0;
 - (iii) any sum to be deducted under the relevant express provisions of the Contract.
- (d) Pursuant to sub-clause 41.5 (c), or in the event that sub-clause 41.2 (c) is applicable, the E.R. may at its discretion, but is not obliged to, issue an Interim Certificate if either:
 - (i) the total amounts to which the Contractor considers itself entitled to in the Statement of Work Done; or
 - (ii) the total amounts which the E.R. in its opinion considers the Contractor to be entitled to,

is less than the minimum amount stated in Appendix I.
- (e) If the E.R. decides not to issue an Interim Certificate, the E.R. shall notify the Contractor in writing within 21 Days of receiving the Statement of Work Done stating the reason(s) for its decision.
- (f) Without prejudice to the Employer's other rights and remedies, the E.R. may certify that the Employer withholds payments to the Contractor at any time, if, in the E.R.'s opinion the Contractor's work performance fails to comply in any respect to the relevant provisions of the Contract.

41.6 Correction of Certificates

- (a) The E.R. may, by any subsequent Interim Certificate, make any correction or modification in respect of any error, whether arithmetical or otherwise in any previous Interim Certificate which has been issued by it and make such adjustments as may be necessary in the amount of payment due and payable to the Contractor to take into account any overvaluation or undervaluation in any previous Interim Certificate.

- (b) Further to and in amplification of sub-clause 41.6(a), the E.R. may withdraw or reserve any Interim Certificate that is defective and/or contains patent errors on the face of it.
- (c) Where the amount paid by the Employer pursuant to any error in a previous Interim Certificate exceeds any amount due and payable to the Contractor under any subsequent Interim Certificates or the Final Certificate (under Clause 43.0), such excess shall be recoverable by the Employer from the Contractor.

41.7 Honouring of Certificates

- (a) The Employer shall pay the amount certified in an Interim Certificate to the Contractor within the Period of Honouring Certificates from the date of issuance of the Interim Certificate (less any Liquidated Damages and other sums which the Employer is expressly entitled to deduct under the Contract from the certified sum under the Contract). The Period of Honouring Certificates shall be as stated in Appendix I and shall commence as follows:
 - (i) if the Contractor is a taxable person under the Goods and Services Tax Act 2014 (if applicable), from the date of presentation of such Certificate together with a tax invoice which is issued in accordance with the said Act; or
 - (ii) if the Contractor is not a taxable person under the Goods and Services Tax Act 2014 (if applicable), from the date of issuance of the Interim Certificate.

For the avoidance of doubt, the submission of the tax invoice under the Goods and Services Act Tax 2014 (if applicable) shall be a condition precedent to payment under this Clause, provided that the Contractor is a taxable person under the said Act (If applicable).

- (b) In the event, the Employer exercises its right of recovery in respect of any payment due to the Contractor in accordance with this Clause 41.0, the amount so recovered or deducted by the Employer shall be deemed as payment made by the Employer to the Contractor under this Clause 41.0.

41.8 Suspension of Works Due to Non-Payment

- (a) Without prejudice to the Contractor's other rights and remedies which it may possess, if the Employer fails or neglects to pay the Contractor the amount due as shown in the

Interim Certificate (less any Liquidated Damages and/or other sums which the Employer is expressly entitled to deduct from the certified sum under the Contract) and such default shall continue for 14 Days from the receipt of a written notice delivered in accordance with Clause 67.0 from the Contractor stating that if payment is not made within the fourteen 14 Days, the Contractor may, by a further written notice delivered per Clause 67.0, forthwith suspend the execution of the Works until such time payment is made. Provided always that such notice shall not be given unreasonably or vexatiously.

- (b) For the avoidance of doubt, the Contractor in exercising its right to suspend under Clause 41.8(a):
 - (i) is not treated to be in breach of contract, and
 - (ii) is entitled to a reasonable EOT under Clause 31.0 and/or any loss and/or expense incurred under Clause 57.0 as a result of the Suspension.
- (c) The Contractor shall as soon as practicable, but not later than fourteen 14 Days after having been paid the said amount due, resume execution of the Works in accordance with the Contract
- (c) If the Contractor suspends the Works in accordance with the provisions of Clauses 41.8, it shall secure and protect the Works during the period of suspension and ensure that there is separate cessation insurance cover for all the risks specified in the relevant Clauses, for the whole period of suspension. The costs incurred for such protection and cessation insurance cover shall be added to the Contract Sum.

41.9 Retention Monies

- (a) For the purposes of the Contract, the term “Retention Monies” shall mean the provision for a part or a percentage of the amount certified in the Interim Certificates that shall be deducted and retained by the Employer up to the value as stated in Appendix I.
- (b) The Retention Monies shall be calculated by applying the stipulated Retention Percentage to the amounts to which the E.R. has certified in respect of the items listed in the Contractor’s Statement of Work Done.
- (c) When the sum of the amounts so certified for retention equals or exceeds the amount stated in Appendix I as Limit of Retention Monies, or that amount is reduced in pursuant to Clause 33.0 and 34.0 (if applicable), then no further amounts shall be certified for retention by virtue of this sub-clause 41.9.

- (d) The amount retained by virtue of this sub-clause 41.9 shall be subjected to the following rules:
- (i) the Employer's interest in the amount so retained shall be fiduciary as trustee for the Contractor (but without obligation to invest);
 - (ii) the Employer shall be entitled to the full benefit of any interest accrued and shall be under no duty to account for such interest to the Contractor;
 - (iii) the Contractor's beneficial interest in the Retention Monies shall be subject to the Employer's right of deduction for payment of any amounts as the E.R. may certify that the Employer is entitled to deduct from such Retention Monies under the relevant provisions of the Contract;
 - (iv) if and when the Employer exercises such right of deduction, it shall notify the Contractor in writing for such deduction. The Employer's right of deduction shall only arise after the Retention Monies are due to be released to the Contractor in accordance with this sub-clause 41.9, or after the Determination of the Contractor's Employment under the Contract.
 - (v) upon the issue of the Certificate of Practical Completion under Clause 32.0 and subject to the Employer's right of deduction under sub-clause 41.9(d)(iii) and (iv), the Contractor shall be entitled to the release of one-half of the total amount of the Retention Monies. The E.R. shall within 30 Days following the issue of the Certificate of Practical Completion issue an Interim Certificate under this Clause 41.0 certifying such release.
 - (vi) upon the issue of the Certificate of Completion and Making Good Defects and Maintenance Certificate pursuant to Clause 36.0 and subject to the Employer's right of deduction under sub-clause 41.9(d)(iii) and (iv), the Contractor shall be entitled to the release of the residual amount of the Retention Monies. The E.R. shall within 30 Days following the issue of the Certificate of Completion and Making Good Defects and/or the Maintenance Certificate, issue another Penultimate Certificate certifying such release, or include the same in the Final Certificate under sub-clause 43.4, (whichever is appropriate).
- (e) The Retention Percentage referred to in this sub-clause 41.9(a) to (c) above shall apply to all Variations under Clauses 39.0 and 40.0 but shall not apply to the following:

- (i) royalties, damages or other monies payable under Clause 21.0;
- (ii) fees paid in compliance with statutory requirements under Clause 66.0;
- (iii) loss and expense under Clause 57.0;
- (iv) proceeds from any insurance cover policy or policies under Clause 46.0 and 49.0;
- (v) costs payable to the Contractor for the cost of tests under sub-clause 22.4;
- (vi) costs payable to the Contractor for uncovering and making openings under sub-clause 22.7; and
- (vii) costs payable to the Contractor for searching of the cause of Defects under sub-clause 36.4(d); and
- (viii) any other costs payable to the Contractor certified as not subject to the Retention Percentage by the E.R. and/or excluded under any other express provisions of the Contract.

41.10 Direct Payment Pursuant to Section 30(3) of CIPAA (if applicable)

- a) In the event the Employer makes any payment, or is ordered by the Court to make any payment, in the capacity as the Principal, to the Person who obtained an adjudication decision under CIPAA against the Contractor pursuant to Section 30(3) of CIPAA, the Employer may recover the amount paid from the Contractor as a debt or by deducting from any monies due or to become due to the Contractor under this Contract, or from the Performance Security.
- b) The Contractor shall have no recourse against the Employer in respect of the payment made under Section 30 of CIPAA, notwithstanding that the adjudication decision upon which the payment is made, is subsequently set aside by the Court or superseded by a final decision of the Court or arbitration.

41A.0 ADVANCE PAYMENT (OPTIONAL)

41A.1 Quantum of Advance Payment

- (a) The Employer shall make an advance payment, as an interest-free loan for mobilization, when the Contractor satisfactorily complies with the pre-conditions stipulated in sub-clause 41A.2 below.
- (b) The quantum of the advance payment shall be a percentage of the Builder's Work (defined as the Contract Sum less Provisional Sums and/or Contingency Sums) as stated in Appendix I.
- (c) The quantum of the advance payment shall be subject to a maximum limit as stipulated in Appendix I.

41A.2 Pre-Conditions to Advance Payment

- (a) The Contractor shall be entitled to an advance payment as stipulated in sub-clause 41A.1 on satisfactory compliance with the following conditions:
 - (i) on return of the Letter of Acceptance duly signed by the Contractor together with the Performance Security, insurance cover policies, confirmation from SOCSO (if applicable) and the receipts of all premiums paid; and
 - (ii) production of a Banker's Guarantee in the Employer approved format equal in value to the advance payment to be paid; and
 - (iii) submission of the above-mentioned Banker's Guarantee not later than 1 month from the Date for Possession of the Site.
- (b) Unless the conditions stipulated in sub-clause 41A.2(a) above are complied with, or the Employer grants a waiver in writing to the same, the Contractor shall not be entitled to the said advance payment.

41A.3 Validity of Banker's Guarantee

- (a) The Contractor shall ensure that the Banker's Guarantee is valid and enforceable until the advance payment has been repaid in full to the Employer.

- (b) If the terms of the Banker's Guarantee specify its expiry date, and the advance payment has not been repaid by a date 30 Days prior to the stated expiry date, the Contractor shall extend the validity of the Banker's Guarantee until the advance payment has been repaid in full.
- (c) If the Contractor fails to extend the Banker's Guarantee in default of sub-clause 41A.3(b), the Employer shall be entitled, at any time, to call upon the Banker's Guarantee wholly or partially as it deems fit in order to satisfy any entitlement that the Employer may have to compensation from the Contractor.
- (d) The provisions of sub-clause 13.8(c) shall apply *mutatis mutandis* to the Banker's Guarantee in the event a call is made by the Employer pursuant to sub-clause 41A.3(c).

41A.4 Recoupment of the Advance Payment

- (a) The advance payment shall be recouped when the cumulative value of the Builder's Work (as defined in sub-clause 41A.1(b)) executed and certified (including the amount certified for materials on site) reaches the percentage stated in Appendix I.
- (b) The recoupment shall be made from each Interim Payment by way of a fixed percentage deduction from the total certified value of the Builder's Work executed (including the amount certified for Materials, Goods, Plant and/or Equipment on site) during the period covered by an Interim Certificate, in all the subsequent Interim Certificates on the basis that the advance payment made shall be fully recovered in the Interim Certificate in which the cumulative total certified value of the Builder's Work executed (including the amount certified for materials on site) reaches 75% of the total contract value of the Builder's Work.
- (c) The deduction shall be calculated as follows:

$$RM\ D = 200 \times \frac{RM\ A}{RM\ B} \text{ percent of } RM\ P$$

Where:

- (i) RM D = cumulative deduction to be made in Interim Certificate
- (ii) RM A = total amount of advance paid
- (iii) RM B = total contract value of Builder's Work

- (iv) R M P = gross certified value of Builder's work executed (including the amount certified for materials on Site) or cumulative scheduled payments in excess of the percentage stipulated in Appendix I of RM B.

41A.5 Termination of liability for Banker's Guarantee

- (a) The liability under the Banker's Guarantee given pursuant to this Clause for the securing of the advance payment shall be terminated upon the realization by the Employer of the full sum of the advance payment made to the Contractor.
- (b) However, if the full sum of the advance payment made to the Contractor cannot be realized before:
 - (i) the Completion Date of the Contract or any extension thereof; or
 - (ii) the determination of the Contractor's employment; or
 - (iii) the termination of the Contract.

as the case may be, then the whole of the balance still outstanding and repayable to the Employer, shall be immediately recovered from the Banker's Guarantee for advance payment and/or from any monies due or to become due to the Contractor, and/or as a debt due and payable by the Contractor to the Employer.

41B.0 UNFIXED MATERIALS, GOODS, PLANT AND EQUIPMENT STORED OFF SITE (OPTIONAL)

41B.1 Payment by Employer

The Employer may but is not obliged to pay the Contractor for Materials, Goods, Plant and Equipment stored off-site. Such payment shall be subject to any conditions precedent that the Employer may impose on the Contractor and the percentage value shall be as shown in Appendix I.

41B.2 Pre-Conditions to Payment

The Conditions precedent referred to in sub-clause 41B.1 shall be (but not limited) to the following:

- (a) The documents stipulated in sub-clause 41B.3(a) are submitted;

- (b) The Materials, Goods, Plant and Equipment are intended for incorporation into the Works;
- (c) The Materials, Goods, Plant and Equipment are in accordance with the Contract;
- (d) The Materials, Goods, Plant and Equipment are located in the country where the Site is located and have been and are either set apart at the premises where they have been manufactured, or assembled, or are suitably stored and in any case visibly marked or identified in a manner directed by the E.R. and properly protected from loss and damage and the weather;
- (e) The progress of the Contract is such that the E.R. is satisfied that the said Materials, Goods, Plant and Equipment cannot at the time of certification be fully and properly incorporated into the Works;
- (f) The E.R. is satisfied that the Materials, Goods, Plant and Equipment are not prematurely delivered and there is inadequate storage space at the Site or such items, if brought to the Site cannot be adequately protected against theft, loss, damage, or deterioration.
- (g) The Contractor provides the E.R. with reasonable proof that the said items are properly insured against theft, loss, damages, or deterioration for their full value under a policy of insurance cover protecting the interests of the Employer and the Contractor in respect of all risks (save only the excepted risks) referred to in the relevant insurance cover provision in the Contract during the period commencing with the transfer of the property in the said items to the Contractor until they are delivered to the Site;
- (h) Property in the said Materials, Goods, Plant and Equipment shall pass to the Employer when payment is made for the same in accordance with Clause 41.0;
- (i) The Employer shall not at any time be liable for theft, loss, damage, or deterioration to any of the said items except and to the extent that the same is due to any excepted risks or any act or neglect of the Employer or of any person for whom the Employer is responsible; and
- (j) If the Materials, Goods, Plant and Equipment for which payment has been made by the Employer have been removed from the place of manufacture, assembly or storage to another destination other than the Site, or should the Contractor fail to deliver any such items for which payment has been made by the Employer to the Site as and when directed by the E.R. without reasonable cause, or have an intent to deceive or defraud the

Employer, such amount paid by the Employer for any such Materials, Goods, Plant and Equipment moved or delivered shall be fully recoverable from the Contractor.

41B.3 Documentation

- (a) Unless otherwise stipulated or directed by the E.R., when making claims for payment under Clause 41.0, the Contractor shall submit all documents as may be necessary or requested by the E.R., including (but not limited to the following):
 - (i) Delivery Orders;
 - (ii) Invoices (where applicable)
 - (iii) Certificates of quality;
 - (iv) Statements on ownership and/or waiver of retention of title clauses;
 - (v) Installation manuals (for Plant and Equipment)
 - (vi) Test certificates (where applicable)
- (b) The certificate of quality shall certify to the effect that the Materials, Goods, Plant and Equipment supplied are new and in all respects are in accordance with the provisions of the Contract.
- (c) The statement under sub-clause 41B.3(a) above shall stipulate unequivocally that the Materials, Goods, Plant and Equipment supplied to the Employer by the Contractor under the Contract are not subject to any retention of title by any third party. The Contractor shall also produce letters of undertaking substantially in the form provided by the Employer from its Sub-contractors and/or Suppliers (whether nominated or otherwise) that:
 - (i) they will not bring any claim, action or proceedings in connection with or arising from any issues or disputes on the ownership, title, interests and rights that they may have in relation to the Materials, Goods, Plant and Equipment which may affect the interest of the Employer in any way whatsoever; and/or
 - (ii) they will take over and complete the remaining Works under the Contract (including maintenance and support services) in the event of any failure or default of the Contractor in performing its obligations under the Contract.

41B.4 Unfixed Materials, Goods, Plant and Equipment on Site

Unfixed Materials, Goods, Plant and Equipment stored off-Site and intended for incorporation into the Works therein, shall not be removed except for use upon the Works unless the E.R. has consented in writing to such removal. Where the E.R. has included the value of such items in any Interim Certificate in accordance with Clause 41.0, under which the Contractor has received payment, such items shall become the property of the Employer, but the Contractor shall remain responsible for any theft, loss, damage or deterioration to the same.

42.0 ADJUSTMENT OF CONTRACT SUM

42.1 Necessity for adjustment of Contract Sum

The Contract Sum in Clause 3.0 shall be adjusted before the Final Account is formalized.

42.2 Nature of the adjustments

The Contract Sum shall be adjusted to take account of the final amount to be added or deducted in respect of:

- (a) expense or loss due to fees and charges in relation to the supply of water, electricity, telephone, sewerage mains and/or other utilities under sub-clause 4.2;
- (b) Variations under Clause 39.0;
- (c) payment of Contingency Sums and Provisional Sums (as applicable) under Clause 27.0;
- (d) opening up work for inspection and testing of Materials, Goods, Plant and Equipment and executed Works under sub-clause 22.4(b);
- (d) loss and expense under Clause 57.0, and/or Section 29 CIPAA (if applicable) under Clause 57.7;
- (f) any direct payments made as a “principal” pursuant to Section 30 of CIPAA (if applicable) under Clause 41.10;
- (g) costs of disposal of antiquities, and fossils under Clause 59.0;
- (h) deductions permitted under Clause 44.0; and

- (i) any other costs or expenses and/or deductions expressly permitted under any other provision of the Contract.

42.3 E.R. to certify adjustments

Such sums as permitted and adjustments undertaken under sub-clause 42.2 shall be certified by the E.R.

43.0 FINAL ACCOUNT AND FINAL CERTIFICATE

43.1 Penultimate Certificate

- (a) The Contractor shall make an application to the E.R. for the Penultimate Certificate within 3 months after the issue of either the:
 - (i) Certificate of Practical Completion for the whole Works; or
 - (ii) the last of the Certificate of Sectional Completion where there is provision of Sectional Completion in the Contract.
- (b) The application for the Penultimate Certificate claim shall be accompanied by a Statement (called the "Statement at Completion") in the form and content prescribed by the E.R.
- (c) Without derogating from the generality of sub-clause 43.1(a) above, the Statement at Completion shall set out in detail the amounts to which the Contractor considers itself to be entitled to as set out in sub-clause 43.1(d) together with the following documents/information:
 - (i) all receipts, vouchers, invoices, and records.; and
 - (ii) all explanations and calculations; and
 - (iii) all supporting documents to substantiate or support the entitlements sought; and
 - (iv) such other information or details which the E.R. may require to evaluate the application and prepare the Penultimate Certificate.

- (d) The Statement at Completion shall state:
 - (i) the total value of all work done in accordance with the Contract up to the date stated in the Certificate of Practical Completion of the whole Works (or for the last Section of Works, as applicable);
 - (ii) any further sum which the Contractor considers to be due to it under the Contract; and
 - (iii) an estimate of any other amounts which the Contractor considers will become due to it under the Contract. Estimated amounts shall be shown separately in this Statement at Completion.
- (e) The amount indicated in the Statement at Completion shall include also:
 - (i) the corresponding amounts of the Sub-Contractors and/or Suppliers (if any); and
 - (ii) any claims under Clause 57.0.
- (f) Within 30 Days of receipt of the Contractor's application and Statement at Completion as adverted to in sub-clauses 43.1(a) to (e) above, the E.R. shall:
 - (i) proceed with its measurement (if applicable), valuation and certification in accordance with Clause 41.0; or
 - (ii) reject the Contractor's application with reasons for the rejection, should the Contractor fail to comply with sub-clauses 43.1(c) to (e).
- (g) If the E.R. proceeds to reject the Contractor's application pursuant to sub-clause 43.1(f)(ii), the E.R. shall stipulate a reasonable period not exceeding 30 Days for the Contractor to resubmit the Statement at Completion with the defaults/omissions suitably cured.
- (h) If the Contractor further defaults at the end of the period prescribed by the E.R. pursuant to sub-clause 43.1(g), the E.R. shall nevertheless, within a further 30 Day period make such assessment, valuation and certification in accordance with Clause 41.0 as shall be fair and reasonable on the basis of whatever information is available to it.

- (i) If the E.R. fails and/or neglects to respond after the periods stipulated in sub-clauses 43.1(f) and/or 43.1(h), it shall be deemed that the E.R. has no objections to the Contractor's application and Statement of Completion as originally submitted or as resubmitted (if applicable).

43.2 Final Claim Statement

- (a) The Contractor shall make an application to the E.R. for the Final Certificate within 1 month after the issue of either:
 - (i) the Certificate of Completion of Making Good Defects for the whole Works and/or the Maintenance Certificate under Clause 36.0,(whichever is later); or
 - (ii) the last Certificate of Completion of Making Good Defects and/or Maintenance Certificate (whichever is later) in the event of Sectional Completion.
- (b) The application for the Final Certificate shall be accompanied by a statement (called the "Final Claim Statement") in the form and content prescribed by the E.R.
- (c) The Final Claim Statement shall set out in full detail, the final amounts to which the Contractor considers itself to be entitled, including:
 - (i) the total value of all work done in accordance with the Contract following the issue of the Penultimate Certificate under sub-clause 43.1 and/or any other later payment certificate up to the date of issue of the Certificate of Completion of Making Good Defects and/or the Maintenance Certificate; and
 - (ii) any further sum which the Contractor considers to be due under the Contract; and
 - (iii) an estimate of any other amounts which the Contractor considers will become due to it under the Contract. Estimated amounts shall be shown separately in this Final Claim Statement.
- (d) The amount indicated in the Final Claim Statement shall include also:
 - (i) the corresponding amounts of the Sub-Contractors and/or Suppliers (if any); and
 - (ii) any claims under Clause 57.0.

- (e) In so far as the documents in support of any claim have not been previously provided pursuant to sub-clause 43.1(c), the Contractor shall provide such supporting documents with the Final Claim Statement. If the Contractor fails to provide such supporting documents, or the E.R. considers that the documents provided are inadequate, the E.R. may nevertheless make such assessment, valuation and certification as shall be fair and reasonable on the basis of the information available to it at that material time.
- (f) If the Contractor fails to submit the Final Claim Statement in the form and content as outlined in sub-clauses 43.2(b) to (d) and within the 1 month period stipulated in sub-clause 43.2(a), the E.R. may on the expiry of the 1 month period give notice in writing to the Contractor that if the default is not cured within a further 1 month period from the date of the written notice, the E.R. may proceed to prepare the Final Account (as defined in sub-clause 43.3) based on the information available to it in accordance with sub-clause 43.3)

43.3 Final Account

- (a) The E.R. shall not later than 3 months after the issue of the Certificate of Completion and Making Good Defects of either the:
 - (i) whole Works; or
 - (ii) the last Section of the Works, in the case of completion in Sectionsprepare and issue to the Contractor the Final Account.
- (b) The Final Account shall show:
 - (i) all adjustments expressly permitted under the Contract which the E.R. considers should be made to the Contract Sum; and
 - (ii) all amounts to which the E.R. considers the Contractor (including the Sub-Contractors and/or Suppliers, if any) is/are entitled under the express provisions of the Contract; and
 - (iii) all amounts to which the E.R. considers that the Employer is entitled under the express provisions of the Contract.

- (c) Within 1 month of receipt by the Contractor of the Final Account from the E.R., the Contractor shall notify the E.R. in writing as to whether or not the amounts set out in the Final Account are accepted by it. If the Contractor:
 - (i) does not accept the amount so stated in the Final Account, the Contractor shall submit its grounds of disagreement to the E.R. within the said 1 month period; and/or
 - (ii) does not notify the E.R. of its acceptance or rejection of the Final Account within the stipulated 1 month period, it shall be deemed that the Contractor has no objections to the said Final Account.
- (d) Upon receipt of any notice of disagreement from the Contractor pursuant to sub-clause 43.3(c), the E.R. may within a further 21 days:
 - (i) amend the amount disagreed and reissue to the Contractor a revised Final Account; or
 - (ii) if the E.R. decides not to amend or revise the Final Account, the E.R. shall inform the Contractor accordingly.

The provisions of sub-clause 43.3(c) shall apply to the revised Final Account.

43.4 Final Certificate

- (a) The E.R. shall issue a Final Certificate within 1 month:
 - (i) of acceptance in writing by the Contractor of the Final Account, or the revised Final Account, whichever is the later; or
 - (ii) after the expiry of the 1 month period following the receipt by the Contractor of the Final Account or the revised Final Account during which no notification of disagreement has been received from the Contractor; or
 - (iii) after the E.R. has informed the Contractor of the amendment, or revision to the Final Account and/or that it would not issue a revised Final Account (as the case may be) pursuant to sub-clause 43.3(d).
- (b) The Final Certificate shall stipulate the difference between:

- (i) the Contract Sum as set out in the Final Account (or, the Revised Final Account, as the case may be); and
- (ii) the cumulative amount so far certified for payment to the Contractor (whether, or not paid)

and the difference shall be the final balance due either from:

- 1. the Employer to the Contractor; or
- 2. the Contractor to the Employer

as the case may be, which shall thereupon become a debt payable by either Party.

- (c) It is a condition precedent to the payment of the final payment to the Contractor under the Final Certificate that the Contractor shall have satisfied the E.R. by means of a Statutory Declaration made by, or on behalf of the Contractor to the effect that:

- (i) all the workmen who have been employed by the Contractor on the Works including all workmen employed by its Sub-contractor (including "labour only" Sub-contractors) have received all wages due to them in connection with such employment, and that all dues or contributions under the laws relevant to the employment of workmen, have been paid in full; and
- (ii) all its Sub-contractors (including "labour only" Sub-contractors) have been paid in full (less any legally or contractually permitted set-offs/deductions).

- (d) The original copy of the Final Certificate shall be issued to the Contractor and the Employer. Copies of the said certificate shall be issued to:

- (i) All known Sub-Contractors to whose appointment the E.R. had formally consented;
- (ii) Insurance cover operators;
- (iii) Financial Institution(s) providing the Performance Security, and Design Bond.; and
- (iv) any other party or parties expressly designated by the Employer.

43.5 Time limit of Final Claim

Any claim under the Contract for work done or any other entitlements shall be made by the Contractor within the time period or periods stipulated in this Clause. The Contractor acknowledges and agrees that notwithstanding the provisions of any written or unwritten law, no claim thereafter from the Contractor will be entertained by the Employer.

44.0 DEDUCTION OF MONEY DUE TO CONTRACTOR

44.1 Right of Deduction

- (a) The Employer or the E.R. on its behalf shall be entitled to deduct any money owing from the Contractor to the Employer under the Contract from any sum which may become due or is payable by the Employer to the Contractor under:
 - (i) this Contract; or
 - (ii) any other Contract or Contracts to which the Employer and the Contractor are Parties thereto.
- (b) The E.R. in issuing any certificate under Clauses 41.0 and 43.0 shall have regard to any sum so chargeable against the Contractor.
- (c) Unless otherwise expressly provided in these Conditions, the Employer shall not be entitled to withhold or deduct any amount certified as due under any payment certificates by reason of any claims to set-off or counterclaims or allegation of defective Works, Materials or Goods or Plant or Equipment for any other reasons whatsoever which it may purport to excuse itself from making payments of the amount stated to be due in a payment certificate under Clause 41.0 and 43.0.

44.2 Employer's Other Rights Unaffected

Notwithstanding the above, this provision shall not affect any right or remedy to which the Employer may be entitled under the law for the recovery of such sums.

PART VIII: INDEMNITIES AND INSURANCE COVERS

45.0 INDEMNITY IN RESPECT OF PERSONAL INJURIES AND DAMAGE TO PROPERTY

45.1 Scope

The Contractor agrees with the Employer that -

- (a) it shall perform all of its obligations under the Contract at its own risk and releases, to the fullest extent permitted by law, the Employer and their agents and servants from all claims and demands of every kind resulting from any accident, damage, injury or death arising from the design and carrying out of the Works except where such accident, damage, injury or death is caused or contributed to by any act or omission or negligence of the Employer or its agents and servants. The Contractor expressly agrees that in the absence of any such act, omission or negligence as aforesaid, the Employer shall have no responsibility or liability whatsoever in relation to such accident, damage, injury or death.

- (b) it shall indemnify and keep indemnified the Employer from and against all actions, suits, claims or demands, proceedings, losses, damages, compensation, costs (including legal cost), charges and expenses whatsoever to which the Employer shall or may be or become liable in respect of or arising from -
 - (i) the negligent use, misuse or abuse by the Contractor or its personnel, servants, agents or employees appointed by the Contractor;
 - (ii) any loss or damage to property or injury of whatsoever nature or kind and howsoever or wherever sustained or caused or contributed to by carrying out of the Works by the Contractor to any person and not caused by the negligence or willful act, default or omission of the Employer, its agents or servants; or
 - (iii) any loss, damage or injury from any cause whatsoever to property or persons affected by the Works to the extent to which the same is occasioned or contributed to by the act, omission, neglect, breach or default of the Contractor or personnel, servants, agents or employees; and

- (c) the obligations under this clause shall continue after the expiry or earlier determination/termination of the Contractor's employment/the Contract in respect of any act, deed, matter or thing happening before such expiration or determination/termination.

45.2 Indemnification

The Contractor shall indemnify, protect and defend, at its own cost and expense, the Employer and its agents and servants from and against all actions, claims and liabilities arising out of acts done by the Contractor in the performance of the Contract.

46.0 INSURANCE COVER AGAINST PERSONAL INJURIES AND DAMAGE TO PROPERTY

46.1 Taking of Insurance Cover

- (a) Without prejudice to its liability to indemnify the Employer under Clause 45.0 hereof, the Contractor shall, as a condition precedent to the commencement of any work under the Contract, effect and maintain such insurance covers whether with or without an excess amount as specified in Appendix I hereto as are necessary to cover the liability of the Contractor and all Sub-contractors, whether novated or otherwise.
- (b) Such insurance cover shall be for the purpose of personal injuries or death, damage or loss to property, movable or immovable, arising out of, or in the course of, or by reason of the execution of the Works and caused by any negligence, omission, breach of contract or default of the Contractor or any Sub-contractor, whether novated or otherwise, or of any servants or agents of the Contractor or of any such Sub-contractor, whether novated or otherwise. Where an excess amount is specified in Appendix I, the Contractor shall bear the amount of such excess. The policy or policies of insurance cover shall contain a cross liability clause indemnifying each of the jointly insured against claims made on it by the other jointly insured.
- (c) Such insurance cover as referred to under sub-clause (a) hereof shall be effected with an insurance cover company or operator as approved by the Employer and maintained in the joint names of the Employer and Contractor and all Sub-contractors, whether novated or otherwise. Such insurance cover shall provide cover for any claim occasioned by the Contractor or any Sub-contractor in the course of any operations carried out by the Contractor or any Sub-contractor for the purpose of complying with its obligations under Clause 46.0 hereof.
- (d) The insurance cover policy shall be valid up to the end of the Defects Liability Period plus a further 3 months. If the Contractor is unable to complete by the Completion Date or complete the making good the Defects within such insured period, the Contractor shall ensure that the insurance cover is accordingly extended for the same period of

delay. The Contractor shall effect the said extension of the insurance cover not less than 1 month before the expiry of the insurance cover then in force.

46.2 Production of Policies

- (a) It shall be the duty of the Contractor to produce and to submit the original copy or copies of the relevant policy or copies of the original receipts in respect of the premiums paid, to the E.R. whether demanded by the latter or not. This shall be satisfactorily completed within 30 Days of the Date of Commencement of the Contract, failing which the Contractor shall be deemed to be in default.
- (b) The Contractor shall take reasonable steps to ensure that:
 - (i) a copy or copies of such policies are extended to all their Sub-Contractors and Suppliers, or
 - (ii) the said Parties have reasonable opportunity to access and inspect such policies.
- (c) The requirements as contained in sub-clauses 46.2(a) and (b) above shall equally apply to any extensions and/or endorsements to such policy or policies undertaken pursuant to any other provision or provisions of the Contract.

46.3 Default in Insuring

If the Contractor fails to effect or renew such insurances covers as are required to be effected and maintained under the Contract, the Employer or the E.R. on its behalf may effect or renew such insurance cover and shall be entitled to deduct a sum equivalent to the amount in respect of the premiums paid and 'On-cost' Charges (calculated by applying the 'Percentage for On-cost Charges' stated in Appendix I hereto to the premiums paid), from any money due, or to become due to the Contractor under the Contract, or to recover the same from the Performance Security, or as a debt due from the Contractor.

46.4 Cancellation of Insurance Cover

- (a) The Contractor shall ensure that any insurance cover policy effected shall only be cancelled by the insurer cover operator after the expiry of the period stated in the Appendix I from the date of receipt by the Employer of a written notice from the insurer cover operator advising of such impending cancellation provided that the Contractor has been issued with the Certificate of Completion and Making Good Defects and/or Maintenance Certificate in accordance with Clause 36.0.

- (b) The Contractor shall not at any time permit or cause to be done any act, matter or thing which may result in any insurance cover effected by virtue of the Contract being vitiated or rendered void or voidable or whereby the rate of the premium on any insurance cover effected shall be liable to be increased.

46.5 Loss or Damage Occasioned by Insured risk

- (a) In the event of any damage or loss occurring during the performance of the Contract, the Contractor shall repair, replace or make good such damage or loss from the amount of insurance cover claimed, if sufficient, or if insufficient, using its own resources.
- (b) Without derogating from the generality of the above, the Contractor shall undertake the following further obligations upon and in the event of the occurrence of any accident or incident causing such loss or damage:
 - (i) immediately notify the E.R. in writing of all relevant details pertaining to the said matter inclusive of, but not limited to the location, nature, extent of damage or loss.; and
 - (ii) cooperate fully with, and render all such necessary assistance and facilities as may be required by the E.R., the Employer, the insurance cover operators and/or their representatives and any other body appointed under the policy and/or the Contract.
- (c) The above-mentioned sub-clauses 46.5(a) and (b) shall apply *mutatis mutandis* for all insurances covers taken under Clauses 23.0, 47.0 and 49.0 and elsewhere in the Contract.

47.0 INDEMNITIES TO EMPLOYER IN RESPECT OF CLAIMS BY WORKMEN

47.1 Workmen Compensation

The Contractor shall be liable for and shall indemnify and keep indemnified the Employer and its officers or servants from all liabilities arising out of claims by any workman employed by the Contractor in and for the performance of the Contract for payment of compensation under or by virtue of the applicable law or any other law amending or replacing such law and from all costs and expenses incidental and consequential thereto.

47.2 Workmen Compensation Insurance Cover

The Contractor shall effect and maintain throughout the Contract Period a “Workmen Compensation Insurance cover” or any other applicable insurance cover for its personnel, servants, agents or employees required under the laws of the country where the Works are being undertaken.

47.3 Insurance Cover for Local Workmen not Subject to SOCSO (if applicable)

- (a) Without prejudice to its liability to indemnify the Employer under Clauses 45.0 and 46.0, the Contractor shall, as a condition precedent to the commencement of any work under the Contract, take out and maintain in the joint names of the Employer and the Contractor and shall cause all Sub-contractors to take out and maintain a similar insurance cover policy for local workmen who are not subject to registration under SOCSO (if applicable).
- (b) Such insurance cover policy shall be effected and maintained as necessary to cover all liabilities including common law liability in respect of any claim which may arise in the execution of the Works.
- (c) The insurance cover policy shall be valid up to the end of the Defects Liability Period plus a further 3 months. If the Contractor is unable to complete by the Completion Date or complete the making good the Defects within such insured period, the Contractor shall ensure that the insurance cover is accordingly extended for the same period of delay. The Contractor shall effect the said extension of the insurance cover not less than 1 month before the expiry of the insurance cover then in force.

47.4 Workmen’s Compensation Insurance Cover for Foreign Workers

- (a) Without prejudice to its liability to indemnify the Employer under Clauses 45.0 and 46.0, the Contractor shall, as a condition precedent to the commencement of any work under the Contract, take out and maintain in the name of the Contractor and shall cause all Sub-contractors to take out and maintain a similar insurance cover policy for all foreign workers employed on the works as required by the governing laws of the country where the Works are being undertaken.
- (b) Such insurance cover policy shall be effected and maintained as necessary to cover all liabilities including common law liability in respect of any claim which may arise in the course of the execution of the Works.

- (c) The insurance cover policy shall be valid up to the end of the Defects Liability Period plus a further 3 months. If the Contractor is unable to complete by the Completion Date or complete the making good the Defects within such insured period, the Contractor shall ensure that the insurance cover is accordingly extended for the same period of delay. The Contractor shall effect the said extension of the insurance cover not less than 1 month before the expiry of the insurance cover then in force.

47.5 Production of Policies

- (a) For all insurances covers taken under this Clause, it shall be the duty of the Contractor to produce and shall deposit the original copy or copies of the relevant policy or copies of the original receipts in respect of the premiums paid to the E.R. whether demanded or not. This shall be satisfactorily completed within 60 days of the Date of Commencement of the Contract, failing which the Contractor shall be deemed to be in default.
- (b) The requirements as contained in sub-clauses 47.5(a) above shall equally apply to any extensions and/or endorsements to such policy or policies undertaken pursuant to any other provision or provisions of the Contract.

47.6 Default in Insuring

If the Contractor fails to effect or renew such insurance covers as are required to be effected and maintained under the Contract, the Employer or the E.R. on its behalf may effect or renew such insurance cover and shall be entitled to deduct a sum equivalent to the amount in respect of the premiums paid and 'On-cost' Charges (calculated by applying the 'Percentage for On-cost Charges' stated in Appendix I hereto to the premiums paid), from any money due, or to become due to the Contractor under the Contract, or to recover the same from the Performance Security, or as a debt due from the Contractor.

47.7 Cancellation of Insurance Cover

The Contractor shall ensure that any insurance cover policy effected shall only be cancelled by the insurer cover operator after the expiry of the period stated in the Appendix I from the date of receipt by the Employer of a written notice from the insurer cover operator advising of such impending cancellation provided that the Contractor has been issued with the Certificate of Completion and Making Good Defects and/or Maintenance Certificate in accordance with Clause 36.0.

48.0 EMPLOYEES SOCIAL SECURITY ACT 1969 (IF APPLICABLE)

48.1 Registration with SOCSO

Without prejudice to its liability to indemnify the Employer under Clause 47.0, the Contractor shall register or cause to register all local workmen employed in the execution of the Works and who are subject to registration under the Employee's Social Security Scheme ("the SOCSO Scheme") in accordance with the Employee's Social Security Act 1969 or any subsequent modification or re-enactment of the said Act. For the purpose of this sub-clause, the term "local workmen" shall include workmen who are Malaysian citizens and those who have permanent resident status.

48.2 Contributions to SOCSO

The Contractor shall submit the Code Number and Social Security Numbers of all the workmen registered under the SOCSO scheme to the E.R. for verification. The Contractor shall make payment of all contributions from time to time on the first day on which the same ought to be paid and until the completion of the Contract and it shall be the duty of the Contractor to produce to the E.R. contribution statement or payment vouchers as evidence of payment of such contribution, whether demanded or not.

48.3 Default in Complying with SOCSO

If the Contractor fails to comply with the terms of this Clause, the Employer or the E.R. on its behalf may without prejudice to any other remedy available to the Employer for breach of any terms of the Contract:

- (a) withhold an amount from any money which would otherwise be due to the Contractor under the Contract and which in the opinion of the E.R will satisfy any claims for compensation by workmen that would have been borne by SOCSO Scheme had the Contractor not made default in maintaining the contribution; and/or
- (b) pay such contributions as have become due and remain unpaid and deduct the amount of such contributions including 'On-Cost' Charges (calculated by applying the Percentage of 'On-Cost' Charges stated in Appendix I to the contributions paid), from any money due or become due to the Contractor under the Contract, and failing which

such contributions shall be recovered from the Performance Security or as a debt due from the Contractor.

49.0 INSURANCE COVER OF WORKS

49.1 Taking of insurance cover

- (a) The Contractor shall, in the joint names of the Employer and the Contractor, and all Sub-contractors whether novated or otherwise, insure against loss and/or damage by fire, lightning, explosion, earthquake, volcanism, tsunami, storm, cyclone, tempest, flood, inundation, landslide, ground subsidence, existing underground cables and/or pipes or other underground facilities, bursting or overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped therefrom, strike, riot and civil commotion, malicious damage, trespass, cessation of work whether total or partial, vibration and weakening of support, all works executed and all unfixed Materials, Goods, Plant and Equipment delivered to, placed on or adjacent to the Works and intended thereof (but excluding temporary buildings, plant, tools and Contractor's Equipment owned or hired by the Contractor or any Sub-contractor, novated or otherwise) to the full value thereof (plus the sum to cover professional fees for reinstatement and the sum to cover the removal of debris as stated in the Appendix I) and shall keep such work, materials and goods so insured until the completion of the whole of the Works notwithstanding any arrangement for Sectional Completion or Partial Occupation by the Employer under the Contract. Such insurance cover policy or policies shall provide expressly for payment in the first place to the Employer of any insurance cover monies due under the policy or policies.
- (b) The said insurance cover with or without an excess clause as specified in Appendix I hereto shall be effected with an insurance cover company or operator approved by the E.R., and it shall be the duty of the Contractor to produce to the E.R. the said policy or policies and the receipts in respect of the premium paid. This shall be satisfactorily completed within 30 Days of the commencement of the Contract, failing which the Contractor shall be deemed to be in default. Where an excess clause is specified in Appendix I, the Contractor shall bear the amount of such excess.
- (c) The insurance cover policy shall be valid up to the end of the Defects Liability Period plus a further 3 months. If the Contractor is unable to complete by the Completion Date or complete the making good of the Defects within such insured period, the Contractor shall ensure that the insurance cover is accordingly extended for the same period of delay. The Contractor shall effect the said extension of the insurance cover not less

than 1 month before the expiry of the insurance cover then in force and produce the relevant copies and/or receipts or premiums paid and/or endorsements to the E.R. in line with sub-clause 49.1(b).

49.2 Default in Insuring

If the Contractor fails to effect or renew such insurance cover as are necessary under this clause, the Employer or the E.R. on its behalf may renew such insurance cover and pay the premium in respect thereof and deduct the amount so expended including 'On-cost' Charges (calculated by applying the 'Percentage of On-Cost Charges' stated in Appendix I to the premiums paid), from any money due or to become due to the Contractor under the Contract, and failing which such premium shall be recovered from the Performance Security or as a debt due from the Contractor.

49.3 Payment of Insurance Cover in the event of Any Loss/Damage

Upon the occurrence of any loss or damage to the Works or unfixed Materials, Goods, Plant and/or Equipment prior to the date the Works has been certified as practically completed by the E.R. in the Certificate of Practical Completion, the Contractor shall, notwithstanding that settlement of any insurance cover claim has not been completed, with due diligence restore, replace or repair the same, remove and dispose of any debris and proceed with the carrying out and completion of the Works. All money, if and when received from the insurance cover under this Clause shall be paid in the first place to the Employer and then (less any such amounts as are specifically required in Appendix I or elsewhere in the Contract Documents) be released to the Contractor by installments on the particular certificates for payment issued by the E.R., calculated as from the date of receipt of the money in proportion to the extent of the work of restoration, replacement or repair and the removal and disposal of debris previously carried out by the Contractor. The Contractor shall not be entitled to any payment in respect of the work of restoration, replacement or repair and the removal and disposal of debris other than the money received under the said insurance cover.

49.4 Cancellation of Insurance cover policy

The Contractor shall ensure that any insurance cover policy effected hereto shall only be cancelled by the insurer cover operator after the expiry of the period stated in Appendix I from the date of receipt by the Employer of a written notice from the insurer cover operator advising of such impending cancellation provided that the Contractor has been issued with the Certificate of Completion and Making Good Defects in accordance with Clause 36.0.

49A.0 INSURANCE COVER OF WORKS BY THE EMPLOYER (OPTIONAL)

49A.1 Taking of Insurance Covers

- (a) Without prejudice to the Contractor's liability to indemnify the Employer under Clause 45.0 hereof, the Employer shall, as a condition precedent to the commencement of any work under the Contract, take out and maintain in the joint names of the Employer, Contractor, Sub-contractors, and all interested parties a Contractor All Risk ("CAR") insurance cover policy for a value not less than the Contract Sum, plus the sum to cover professional fees for reinstatement and the sum to cover the removal of debris as stated in Appendix I .
- (b) Unless covered by the CAR insurance cover policy, the insurance cover shall have endorsements to cover against loss and/or damage by fire, lightning, explosion, earthquake, volcanism, tsunami, storm, cyclone, tempest, flood, inundation, landslide, ground subsidence, existing underground cables and/or pipes or other underground facilities, bursting or overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped therefrom, strike, riot and civil commotion, malicious damage, trespass, cessation of work whether total or partial, vibration and weakening of support.
- (c) Unless separately required by the Contractor at its own cost, the CAR insurance cover policy will exclude cover for Contractor's Plant, tools and Contractor's Equipment owned or hired by the Contractor or any Sub-contractor.
- (d) The Employer shall keep such Works so insured notwithstanding any arrangement for Sectional Completion under Clause 33.0 or Premature/Partial Possession under Clause 34.0.
- (e) The insurance cover policy shall be valid for the complete period stipulated in the Appendix I. If the Contractor is unable to complete by the Date for Completion or any extended date under Clause 31.0 or complete the making good the Defects within the Defects Liability Period under Clause 36.0, the Employer shall ensure that the insurance cover is accordingly extended for the same period of delay. The Employer shall effect the said extension of the insurance cover not less than 1 month before the expiry of the insurance cover currently in force.

- (f) Where deductibles are specified in Appendix I or in the insurance cover policy, the Contractor shall bear the amount of all deductibles. The insurance cover policy shall also include all relevant endorsements including but not limited to a cross liability clause indemnifying each of the jointly insured against claims made on it by the other jointly insured.

49A.2 Additional Risks Required by the Contractor

- (a) Any additional risks or endorsements which vary from those stated in Clause 49A.1 shall be specified in the Contract Documents, and the Employer shall ensure that the risks specified in the Contract Documents are covered by the CAR insurance cover policy.
- (b) If the Contractor, having regard to its indemnity to the Employer under Clause 45.0, desires to have further additional endorsements to the insurance cover in addition to the risk specified, the Contractor shall do so at its own cost.

49A.3 Maintenance of policy

The Employer shall maintain a proper policy against the aforesaid risks, and such policy and the receipt for the last premium paid for its renewal shall, upon a written request of the Contractor, be produced for its inspection at reasonable times.

49A.4 Failure of Employer to Insure

- (a) If the Employer at any time upon the written request of the Contractor pursuant to Clause 49A.3 above fails to produce any receipt showing such a policy as aforesaid to be effective then the Contractor may take out and maintain in the joint names of the Employer, Contractor, Sub-contractors and all interested parties, the CAR policy as required under the Contract.
- (b) The Contractor upon production of the receipt of any premium paid by it shall be entitled to have the amount added to the Contract Sum pursuant to Clauses 39.0 and 40.0.

49A.5 Application of Insurance Cover Claim Proceeds

- (a) Upon the occurrence of any loss and/or damage to the Works or unfixed Materials, Goods, Plant and Equipment prior to completion of the Works from any cause whatsoever notwithstanding that settlement of any insurance cover claim has not been completed, the Contractor shall with due diligence restore, replace or repair the same, remove and dispose of any debris and proceed with the carrying out and completion of the Works.
- (b) All money if and when received from the insurance cover operator under this Clause shall be paid in the first place to the Employer. The Employer shall retain the amount paid by the insurance cover operator in respect of professional fees for reinstatement and pay the balance to the Contractor and/or Sub-contractors by instalments under separate certificates issued by the E.R.
- (c) The Contractor shall not be entitled to any additional payments in respect of the restoration of the damaged work and replacement and repair of any unfixed Materials, Goods, Plant and Equipment, and the removal and disposal of debris, other than the monies received under the aforesaid insurance cover.

PART IX: SUSPENSION, DETERMINATION, TERMINATION AND FORCE MAJEURE

50.0 SUSPENSION

50.1 Types and scope of Suspension

- (a) The principal types of Suspension envisaged under the Contract are:
 - (i) the Employer ordered Suspension;
 - (ii) The Contractor requested Suspension; and
 - (iii) Mutually agreed Suspension;

For the avoidance of doubt, the Contractor's right to Suspension following the Employer's breach of its payment obligations is stipulated under Clause 41.0.

- (b) For each of the types of Suspension specified in sub-clause 50.1(a), the following scope may be covered:

- (i) part of the Works under the Contract; or
- (ii) the whole of the Works under the Contract, or
- (iii) the entire Contract, per se

50.2 Effect of the Suspension

- (a) The effect of sub-clauses 50.1(b)(i) and (ii) shall be that:
 - (i) merely all work-related activities, on-Site and off-Site shall stop or cease on a temporary basis, but
 - (ii) all other obligations and rights of the Parties' shall subsist during the period of Suspension

unless the Suspension Order under sub-clause 50.3 stipulates to the contrary.

- (b) Should the entire Contract be suspended further to sub-clause 50.1(b)(iii), there shall be a temporary moratorium of all facets, rights, duties and obligations under the Contract for the period of Suspension.

50.3 Employer ordered Suspension

- (a) The Employer ordered Suspension under this Clause shall be exercised by either:
 - (i) the Officer Named in Appendix I; or
 - (ii) if none is so named, the E.R.

called the authorized person.
- (b) In issuing the Suspension Order, the authorized person
 - (i) may exercise power to do so at such time and in such manner as the authorized person may, in its absolute discretion consider necessary; and
 - (ii) is not obliged to give any reason or reasons for so doing; and
 - (iii) may make any such consequential orders as it deems necessary to give effect to the Suspension Order.

- (c) The procedural requirements pertaining to an Employer ordered Suspension, as well as the consequential effects, are as stipulated in sub-clause 50.7 and 50.10 respectively.

50.4 Contractor requested Suspension

- (a) Unless otherwise provided for in the Contract, if the Contractor is of the opinion that one or more of the grounds as specified in sub-clause 50.4(b) has arisen which necessitates a Suspension under sub-clause 50.1(b), the Contractor shall immediately request the authorized person to issue a Suspension Order to that effect.
- (b) The grounds alluded to in sub-clause 50.4 (a) are:
 - (i) the necessity for the Contractor to reassess the design included in the Contractor's scope of work ;
 - (ii) the occurrence of adverse weather conditions seriously affecting the safety and/or quality of the Works;
 - (iii) a breakdown of the Contractor's quality control or quality assurance system; and
 - (iv) any other circumstance affecting the safety of the operations on Site.
- (c) The procedural requirements of the Contractor requested Suspension, as well as the consequential effects, are as stipulated in sub-clause 50.7 and 50.10 respectively.

50.5 Mutually Agreed Suspension

Notwithstanding sub-clauses 50.3 and 50.4, the parties can at any time mutually agree to suspend part of the Works or the whole Works or the Contract itself; such an agreement to be formalized under Clause 61.0.

50.6 Timing and Duration of Suspension

- (a) Suspension may be ordered at any time during the currency of the Contract up to either:
 - (i) the expiry of the Defects Liability Period; or
 - (ii) the issue of the Certificate of Completion and Making Good Defects, and/or
 - (iii) the issue of the Maintenance Certificate

whichever is later.

- (b) Unless otherwise stated in the Contract, the maximum duration of the Suspension ordered shall be 120 Days.

50.7 Procedural Requirements for Employer-Ordered Suspension

- (a) The Suspension Order issued pursuant to sub-clause 50.3 shall be in the form of an instruction in writing and shall stipulate the following essential matters:
 - (i) the scope of the Suspension ordered pursuant to sub-clause 50.1(b);
 - (ii) the date of the commencement of the Suspension ordered;
 - (iii) the duration of the Suspension period (if applicable); and
 - (iv) any other relevant matters necessary under the particular circumstances of the suspension ordered.
- (b) For emergency situations, the Suspension Order need not comply with the above requirements and shall nevertheless be of immediate effect.
- (c) Upon the receipt of the Suspension Order from the authorized person, the Contractor shall comply with the same by:
 - (i) undertaking the Suspension as ordered at such time, manner and duration as specified in the Suspension Order; and
 - (ii) duly protecting, storing and securing the Works or such parts of the Works against any deterioration, theft, vandalism, loss and damage as are instructed or considered reasonable by the Contractor; and
 - (iii) carrying out all other relevant activities to give full effect to the Suspension Order received.
- (d) Notwithstanding such Suspension, as ordered, the Contractor shall continue to perform all other obligations during the Suspension period which are not affected by the Suspension Order, including but not limited to effecting and maintaining the necessary insurance covers and the Performance Security.

50.8 Procedural Requirements for Contractor-Requested Suspension

- (a) Further to sub-clause 50.4(a), the Contractor shall submit a written request to the E.R. specifying the following:
 - (i) the reason(s) or ground(s) for such request;
 - (ii) the scope of Suspension requested;
 - (iii) the duration of Suspension required;
 - (iv) any other consequential matters necessary to enable the E.R. to make a considered decision.
- (b) Within the number of Days as mentioned in Appendix I of receipt of the Contractor's written request, the E.R. shall either:
 - (i) agree to the Contractor's request; or
 - (ii) reject the Contractor's request.
- (c) In the event option sub-clause 50.8(b)(i) is adopted, the requirements of sub-clauses 50.7(a) to (d) shall apply *mutatis mutandis*.
- (d) Should the Contractor's request be rejected pursuant to sub-clause 50.8(b)(ii), the Contractor may nevertheless be permitted to make a new request.
- (e) If the E.R. fails to respond as required under sub-clause 50.8(b), upon the expiry of the period so stipulated, it shall be deemed that it has no objections to the Contractor's request and the Contractor may proceed to undertake the Suspension that it had requested.

50.9 Procedure After the Issue of Suspension Order

- (a) Following the issue of a Suspension Order by the authorized person, the following may occur:
 - (i) The Suspension Order is lifted by the authorized person through an instruction to the Contractor to resume with the Work, or the Contract (as the case may be) before the stipulated Suspension period is over; or

- (ii) Upon the lapse of the Suspension period, the Contractor is instructed by the authorized person to resume with the Work or the Contract (as the case may be);
or
- (iii) The authorized person expressly extends the Suspension period further by a definite period either before the original Suspension period is over or upon its lapse; or
- (iv) The Suspension period lapses and the authorized person gives no instruction whatsoever to the Contractor.

(b) For sub-clauses 50.9(a)(i) and (ii), the following procedure shall apply:

- (i) the authorized person shall instruct the Contractor in writing to resume the execution of the Works, or with the Contract (as applicable);
- (ii) the said instruction shall stipulate the effective date of resumption of the execution of the Works or the Contract (as applicable) ;
- (iii) Upon receipt of the said instruction the Contractor shall resume with the execution of the Works or the Contract (as applicable) on the effective date;
- (iv) The Parties shall undertake a joint inspection of the Works to establish any deterioration, loss or Defects which has/have occurred during the Suspension period;
- (v) The E.R. shall issue the inspection report together with an instruction specifying:
 - 1. the list of Defects, losses or damages which the Contractor has to make good; and
 - 2. a period of time not exceeding 30 Days for the Contractor to make good the same.
- (vi) Upon receipt of the said instruction, the Contractor shall, within the stipulated period make good the Defects, losses or damages specified;

- (vii) The Contractor may also proceed with its claims (if any) pursuant to sub-clause 50.10.
- (c) In the event sub-clause 50.9(a)(iii) is relevant, the following shall apply:
- (i) The authorized person shall issue a fresh Suspension Order in compliance with sub-clause 50.7(a);
 - (ii) The maximum duration of the Suspension Order shall be as stipulated in sub-clause 50.6;
 - (iii) Only a single further Suspension Order shall be permitted, otherwise, the provisions of sub-clause 50.9(d) shall apply.
- (d) If sub-clause 50.9(a)(iv) occurs, the following shall apply:
- (i) This shall constitute "Prolonged Suspension";
 - (ii) The Contractor may serve a written notice on the E.R. for permission to recommence or resume with the execution of the suspended Works or Contract in whole or part (as applicable) within a stipulated period of receipt by the latter of the said notice;
 - (iii) Upon receipt of the Contractor's notice, the E.R. shall make a decision and respond appropriately within the period stipulated in the said notice;
 - (iv) Should the E.R.'s decision be in line with the Contractor's application, the Contractor shall resume with the execution of the suspended Work or Contract and the provisions of sub-clauses 50.9(b)(iii) to (vii) shall apply;
 - (v) However, if permission to proceed with the Works is not granted or should the E.R. not respond within the time stipulated in the Contractor's notice, the Contractor may within a further 28 Days, elect to exercise the options as listed in sub-clauses 50.9(d)(vi) to (vii); this being communicated to the E.R. in writing;
 - (vi) In case where the Suspension affects the whole or substantially the whole of the Works, the Contractor shall be entitled to:
 - 1. agree to continue with the execution of the Works, or the Contract, if and when the authorized person subsequently lifts the Suspension, in which case sub-clause 50.10 shall apply; or

2. terminate the Contract without prejudice to any other rights or remedies that the Contractor may have as a result of such termination.
- (vii) In the case where the Suspension affects only a part or Section of the Works or the Contract, the Contractor shall be entitled to:
1. agree to continue with the Works, or the Contract, if and when the authorized person subsequently lifts the Suspension, in which case sub-clause 50.10 shall apply; or
 2. request the E.R.'s instruction to omit the relevant part or Section. If the E.R. so agrees to such a request, then the relevant part or Section shall be duly omitted and deemed to be a Variation to the Contract. If the E.R. does not agree to such a request, the Contractor shall be entitled to claim for any loss and/or expense caused by, and in respect of such delay beyond the lapse of the original Suspension period.

50.10 Contractor's Entitlements

- (a) Unless the reason for the Suspension ordered by the authorized person is primarily due to the Contractor's default or as otherwise provided for in the Contract, the Contractor shall be entitled to the following:
 - (i) a commensurate extension of time to the Contract; and/or
 - (ii) reimbursement for the extra cost incurred in giving effect to the Suspension ordered.
- (b) For any claims for extension of time, the Contractor shall give notice for extension of time under Clause 31.0, and the provisions of this Clause shall accordingly apply.
- (c) For the entitlements in sub-clause 50.10(a)(ii) above, the Contractor may, subject to strict proof and mitigation, be able to claim the following costs:
 - (i) additional costs incurred in protecting, securing and maintaining the Works for the period of Suspension ordered;

- (ii) reasonable costs involved in the demobilization process following the Suspension ordered and remobilization (if applicable) upon the resumption of the execution of the Works or the Contract (as applicable);
 - (iii) additional costs, charges and/or premiums in extending the various insurance covers, performance security, guarantees, and warranties incurred due to the Suspension;
 - (iv) reasonable expenses incurred due to the Suspension of Sub-contracts and purchase orders, cancellation or postponement charges (if occurred), storage and warehousing charges during the Suspension period;
 - (v) reasonable compensation for the Contractor's maintenance of its organization, Contractor's Plant and Contractor's Equipment which have been committed to the Contract, or part of it affected by the Suspension;
 - (vi) additional costs incurred by the Contractor owing to the adverse effect of the Suspension Order on the Contractor's performance of the remainder of the Work (or, Contract) following the lifting of the Suspension, e.g. loss of productivity, inefficient sequencing of the Works, and abortive work; and
 - (vii) other additional costs, charges and/or expenses which can be proven to be attributable to the Suspension.
- (d) The Contractor shall not be entitled to such extension and/or costs as stipulated in paras 50.10(a) to (c) if:
- (i) the Contractor fails to take the measures as stipulated in sub-clause 50.7(c)(ii) and (iii);
 - (ii) the Contractor fails to take all the necessary measures to mitigate the delay and/or costs, and losses.;
 - (iii) the Suspension is either requested by the Contractor pursuant to sub-clause 50.4 or is necessary by reason of a default on part of the Contractor (and/or its Sub-contractors);
 - (iv) the Suspension is necessary for the proper execution of the Works;

- (v) the Suspension is necessary for the safety of the whole or part of the Works;
 - (vi) the Suspension is necessary by reason of adverse weather conditions;
 - (vii) the Suspension is necessary by reason of direction and/or order of any Appropriate Authority or Authorities; and
 - (viii) the Suspension is necessitated by the operation of any law, by-law, and regulations.
- (e) In seeking any claim pursuant to this Clause, the following procedural rules shall apply:
- (i) The Contractor shall, as a condition precedent, notify the E.R. of its intention to make a claim;
 - (ii) The notice must be in writing and must be made within 30 days after the lapse of the Suspension period, or the date of the lifting of the Suspension Order;
 - (iii) The notice shall specify:
 - 1. the event(s) giving rise to the claim and its consequences;
 - 2. the costs and/or time claimed; and
 - 3. any other relevant information.
 - (iv) Within a further 30 Days of the giving of the said notice (or at such time as mutually agreed to by the parties), the Contractor shall submit to the E.R. all relevant records and documents to substantiate the claim;
 - (v) Within 30 Days of the receipt of the Contractor's claim together with the relevant records and supporting documents, the E.R. shall:
 - 1. approve the claim; or
 - 2. request for further particulars; or
 - 3. reject the claim with reasons.
 - (vi) If there is a request for further particulars under sub-clause 5.10(e)(v)2, the Contractor shall submit these within 14 Days of the receipt of the E.R.'s request; failing which it shall be deemed that the Contractor has abandoned its claim;

- (vii) Should the claim be rejected pursuant to sub-clause 5.10(e)(v)3, the Contractor may resubmit or file its appeal with the Employer.
- (viii) If the E.R. fails to respond as required under sub-clause 5.10(e)(v), upon the expiry of the 30 Day period, it shall be deemed that the E.R. has no objections to the Contractor's claim and due effect shall then be given to it by the Employer.

51.0 DETERMINATION DUE TO THE CONTRACTOR'S DEFAULT

51.1 Determination by the Employer

- (a) Without prejudice to any other rights or remedies which the Employer may possess, the Employer may determine the employment of the Contractor in the event of:
 - (i) the Contractor's default in performing its obligations under the Contract; and/or
 - (ii) the Contractor's bankruptcy or insolvency; and/or
 - (iii) any corruption on the Contractor's part.
- (b) Any determination of the employment of the Contractor undertaken by the Employer under the Contract shall be in line with the provisions of this Clause, and any other Clause(s) expressly stipulated in the Contract.

51.2 Determination due to Performance Defaults

- (a) Pursuant to sub-clause 51.1(a)(i), the Employer may determine the employment of the Contractor if the Contractor defaults in any one or more of the following:
 - (i) if without reasonable cause, the Contractor fails to commence the Works in accordance with the Contract within the time period stipulated in Appendix I; or
 - (ii) if the Contractor fails to provide the Performance Security Deposit in accordance with Clause 13.0; or

- (iii) if without reasonable cause, the Contractor wholly or substantially suspends or abandons the carrying out of the Works before the original Date for Completion or any extended date under Clause 31.0; or
 - (iv) if the Contractor fails to proceed regularly and diligently with the Works; or
 - (v) if the Contractor persistently refuses or neglects to comply with an E.R.'s Instruction which the E.R. is empowered to give under the Contract; or
 - (vi) if the Contractor fails to execute the Works substantially in accordance with the Contract, or
 - (vii) if the Contractor fails to comply with the provisions of Clause 17.0; or
 - (viii) if the Contractor fails to comply with the representations, warranties and undertakings made pursuant to Clause 11.0; or
 - (ix) if the Contractor refuses or neglects to comply with a written notice from the E.R. to remove and replace any defective Work or improper Materials, Goods, Plant, or Equipment; or
 - (x) if the Contractor commits breach of any material term or condition of the Contract; or
 - (xi) if permitted under any other Clause(s) of the Contract.
- (b) For the avoidance of doubt:
- (i) the question as to whether the Contractor has acted with reasonable cause in sub-clause 51.2(a)(i) shall be decided by the E.R.;
 - (ii) in sub-clause 51.2(a)(iii) the Contractor shall be considered not to have proceeded "regularly and diligently" with its Works if at any time during the currency of the Contract (or within any extended time granted under Clause 31.0), the Contractor's actual physical progress is at least 10% behind its planned/projected physical progress in the accepted programme (under Clause 30.0) as determined by the E.R.; and
 - (iii) the phrase "persistently" as used in sub-clause 51.2(a) shall mean more than twice.

51.3 Procedure for Determination due to Performance Default

- (a) Upon the occurrence of any one or more of the defaults under sub-clause 51.2(a), the E.R. may give a notice to the Contractor (called “the Default Notice”) to this effect.
- (b) The Default Notice under sub-clause 51.3(a) shall:
 - (i) be in writing;
 - (ii) be issued by the E.R.;
 - (iii) state that it is a notice under sub-clause 51.3;
 - (iv) specify the alleged default (called “the specified Contractor’s default”);
 - (v) require the Contractor to end and/or remedy the specified Contractor’s default, or to show cause in writing why the Employer should not exercise its right to determine the Contractor’s employment under sub-clause 51.0;
 - (vi) specify the date by which the Contractor shall end and/or remedy the specified Contractor’s default, or show cause (which date shall not be less than 14 days after the date of receipt by the Contractor of the Default Notice); and
 - (vii) be issued in accordance with Clause 67.0; and
 - (viii) be copied to the Employer and any other authorized party or persons.
- (c) If by the date specified in the Default Notice under sub-clause 51.3(b)(vi), the Contractor either:
 - (i) satisfactorily ends or remedies the specified Contractor’s default(s); or
 - (ii) shows reasonable cause to the E.R.’s satisfaction,

the E.R. shall confirm this in writing to the Contractor and the Employer within 14 Days of the occurrence of sub-clause 51.3(c)(i) or (ii), whichever is applicable.
- (d) If by the date specified in the Default Notice under sub-clause 51.3(b)(vi), the Contractor either fails to:

- (i) satisfactorily end or remedy the specified Contractor's default(s); or
- (ii) show reasonable cause to the E.R.'s satisfaction.

then the Employer may within, a further 14 Days of the expiry of the said specified date, by notice in writing to the Contractor either:

- 1. omit from the Contractor's scope of work under the Contract the part of the Work remaining to be completed (called an omission Variation); or
- 2. determine the Contractor's employment under the Contract (called the "Determination Notice").

(e) If either:

- (i) the Contractor pursuant to sub-clause 51.3(c)(i) ends, or remedies the specified Contractor's default; or
- (ii) the Employer does not issue a Determination Notice under sub-clause 51.3(d)

and the Contractor repeats the specified Contractor's default(s) (whether previously repeated or not) then:

- 1. upon, or within a reasonable time after such repetition, the Employer without prejudice to any other rights or remedies, may by a further written notice determine the employment of the Contractor under the Contract; and
- 2. such determination shall take effect on the date of receipt of such further notice by the Contractor.

(f) The Determination Notices under sub-clauses 51.3(d) and (e), shall be issued in accordance with sub-clause 51.5(b); which provision shall apply *mutatis mutandis*.

(g) If the Employer exercises its right under sub-clause 51.3(d) to omit from the Contractor's scope of work:

- (i) the Contractor shall not be entitled to any further payment in respect of the Work omitted unless a payment becomes due under sub-clause 51.8; and

- (ii) the provisions of Clause 39.0 and 40.0 shall apply;
- (h) Where the Employer issues a Determination Notice under sub-clause 51.3(d) and (e) the provisions of sub-clauses 51.5 to 51.7 shall apply.

51.4 Determination due to Bankruptcy or Insolvency

Pursuant to sub-clause 51.1(a)(ii), the Employer may determine the employment of the Contractor in the event, the Contractor:

- (a) commits an act of bankruptcy, or becomes bankrupt; or
- (b) becomes insolvent; or
- (c) compounds with or makes a composition arrangement with its creditors; or
- (d) being a company, is having a winding-up order made or (or except for purposes of reconstruction or amalgamation) a resolution for voluntary winding up passed; or
- (e) having a liquidator, or receiver or manager of its business or undertaking duly appointed; or
- (f) having possession taken by, or on behalf of creditors, or the holders of any debentures secured by a floating charge or of any property comprised, in, or subject to the said floating charge.

51.5 Determination due to Corruption

- (a) The Employer shall be entitled to determine the employment of the Contractor under the Contract if the circumstances under sub-clause 51.5(b) apply.
- (b) Pursuant to sub-clause 51.5(a), the circumstances entitling the Employer to carry out the determination shall be:
 - (i) if the Contractor gives, or offers to give any person any bribe, gift, gratuity or commission as an inducement or reward -

1. for doing, or forbearing to do any action in relation to the Contract, or in any other Contract with the Employer, or
 2. for showing, or forbearing to show favour, or disfavour to any person in relation to the Contract or any other Contract with the Employer.
- (ii) the Contractor shall have committed any offence(s) under the governing laws applicable to the circumstances stipulated in sub-clause 51.5(b)(i).

51.6 Procedure for Determination due to Bankruptcy or Insolvency and/or Corruption.

- (a) Upon the occurrence of any one or more of the events or defaults under sub-clauses 51.4 or 51.5(b), the Employer may immediately determine the Contractor's employment under the Contract by issuing a Determination Notice.
- (b) Where the Employer shall issue a Determination Notice under sub-clause 51.6 (a), the provisions of sub-clauses 51.7 to 51.9 shall apply.

51.7 The Determination Notice

- (a) The Determination Notice under sub-clauses 51.3 and 51.6 shall:
- (i) be in writing;
 - (ii) be issued by the Employer;
 - (iii) state that it is a notice under sub-clause 51.3 or 51.4 or 51.5(as applicable);
 - (iv) specify the alleged default (called "the specified Contractor's default");
 - (v) be issued in accordance with Clause 67.0 (Notices); and
 - (vii) shall be copied to the Insurance cover operators, the issuers of the Performance Security Deposit and other party/parties identified by the Employer.
- (b) The determination of the Contractor's employment under the Contract shall take effect on the date of receipt by the Contractor of the Determination Notice.

- (c) Following the determination of the Contractor's employment under sub-clauses 51.3 or 51.4 or 51.5 (as applicable); the provisions of sub-clauses 51.8 and 51.9 shall apply.

51.8 Procedure Following Determination

- (a) Following the receipt of a Determination Notice under sub-clauses 51.3 or 51.6, the Contractor shall immediately:
 - (i) cease all work both on-Site and off-Site; and
 - (ii) demobilize, namely remove all Contractor's Personnel, Contractor's Plant, and Contractor's Equipment from the Site, save for those stipulated in sub-clause 51.7(b); and
 - (iii) hand back possession of Site to the Employer.
- (b) The procedural requirements pertaining to:
 - (i) sub-clause 51.8(a)(i) and (ii) are specified in sub-clause 51.9; and
 - (ii) sub-clause 51.8(a)(iii) are stipulated in this sub-clause 51.8.
- (c) The E.R. shall within 14 Days of the receipt by the Contractor of the Determination Notice under sub-clauses 51.3 or 51.4 or 51.5 (as applicable), give a written notice to the Contractor to jointly inspect and record the extent of:
 - (i) the Works executed; and
 - (ii) the Materials, Goods, Plant and Equipment delivered to the Site.

The Contractor shall afford all necessary assistance to the E.R. to perform this task.

- (d)
 - (i) On the completion of the said joint inspection and recording, it shall be dated and signed-off, or endorsed by the E.R. and the C.R. (or, in its absence, the Contractor's authorized representative);
 - (ii) Such record shall form the basis for the valuation of the Works executed and Materials, Goods, Plant and Equipment delivered to the Site by the Contractor up to the date of the determination;

- (iii) The Contractor shall be furnished with a copy of such record within 14 Days of its completion.
- (e) (i) Should the Contractor, fail to turn up for the joint inspection and recording after having been so notified by the E.R. pursuant to sub-clause 51.8(c), the E.R. shall nevertheless proceed with the inspection and recording “ex-parte” and the Contractor shall be deemed, for the purposes of this Clause, to have consented to the results of such an inspection and recording;

- (ii) In the event, following the completion of the inspection and recording, the Contractor either fails to:

1. sign off, or endorse; or
2. signify its acceptance.

of such record, the said record shall, upon the expiry of a further 14 Days be deemed to be a true record of the joint inspection and recording for the purposes of the Contract.

- (iii) If upon receipt of the copy of the joint inspection and recording report under sub-clause 51.8(d)(iii), the Contractor gives written notice of its objections (containing full particulars and reasons) to the E.R. within 7 Days of such receipt, the E.R. shall within a further 7 Days either:

1. appropriately revise, amend and reissue the said record to the Contractor;
or
2. reject the Contractor’s objections and maintain/confirm its earlier record that was issued to the Contractor.

Should the latter option be exercised, the Contractor may refer the matter for dispute resolution under Clause 58.0, but the said record will be deemed to be a true record of the joint inspection for the purposes of the Contract.

- (iv) However, if the E.R. fails and/or neglects to respond as required under sub-clause 51.8(e)(iii) within the time period so stipulated, upon the lapse of the said period, it shall be deemed that the E.R. has accepted the Contractor’s objections and shall thereupon give due effect to the same.

51.9 Rights and duties of Employer and Contractor

- (a) In the event of the determination of the Contractor's employment under sub-clause 51.3 or 51.4 or 51.5, whether or not the validity of such determination is contested by the Contractor, the respective rights and duties of the Parties shall be as stipulated in sub-clauses 51.9(b) to (g).
- (b) The Employer shall be entitled to repossess the Site and call upon the Performance Security or forfeit the Performance Guarantee Sum. The Contractor shall, pursuant to sub-clauses 51.8(a) immediately:
 - (i) cease all operations on the Works, and
 - (ii) remove all its personnel and workmen from the Site, and
 - (iii) return possession of Site to the Employer.

leaving any Contractor's Plant, Contractor's Equipment, Temporary Works, temporary buildings, structures, tools and all unfixed Materials, Goods, Plant and Equipment left on the Site, except only such as the Contractor may at anytime be specifically instructed by the E.R. to remove from the Site.

- (c) If the Contractor fails to comply with the E.R.'s Instruction to remove the:
 - (i) Contractor's Plant, Contractor's Equipment, Temporary Works, temporary buildings, structures, and tools; and
 - (ii) all unfixed Materials, Goods, Plant and Equipment.

that are not subject to the provisions of sub-clauses 51.9(d) within 21 Days after such instruction has been issued by the E.R. pursuant to sub-clause 51.9(b), the Employer may without liability:

- 1. remove and sell any of the same which are deemed the property of the Employer under the Contract; and
 - 2. apply the proceeds of the sale in, or towards the satisfaction of any sums due or becoming due to the Employer from the Contractor under the Contract.
- (d) The Employer may carry out and complete the remaining Works itself or through the employment of any other Person(s). The Employer or such other Person(s) may use any Contractor's Plant, Contractor's Equipment, Temporary Works, temporary

buildings, structures, tools and any unfixed Materials, Goods, Plant and Equipment left on the Site:

- (i) which are deemed the property of the Employer under the Contract; and/or
- (ii) in respect of which the Employer has exercised its rights under the Contract to take over the hire of such Contractor's Plant or Contractor's Equipment or Temporary Works.

and may purchase all other Materials, Goods, Plant and Equipment necessary for the carrying out and the completion of the remaining Works.

- (e) (i) The Contractor, if so required by the Employer or E.R., shall within 21 Days of the date of determination, assign to the Employer without payment, the benefit of any agreement for the:

- 1. supply of any Materials, Goods, Plant and Equipment; and/or
- 2. execution of any Work for the purposes of the Contract

to the extent that the same is assignable.

- (ii) In any event, the Employer shall have the power, but shall not be obliged to pay any Supplier or Sub-contractor, whether novated or directly engaged by the Contractor, for any:

- 1. Materials, Goods, Plant and Equipment; and/or
- 2. work executed

for the purpose of the Contract (whether before or after the date of the determination) for which the Contractor has failed to make payment. The Contractor shall allow or pay to the Employer all such payments made under this sub-clause 51.9(e).

- (f) The E.R. shall, as soon as may be practicable but not more than 120 Days after such repossession of the Site by the Employer pursuant to this sub-clause 51.7, ascertain what amounts (if any) have at the time of such repossession, been reasonably earned by or would reasonably accrue to the Contractor in respect of:

- (i) work then properly done by the Contractor under the Contract;

- (ii) the value of any unfixed or partially fixed Material, Goods, Plant and Equipment;
 - (iii) the value of any Contractor's Plant, Contractor's Equipment, Temporary Works, temporary buildings, structures or tools which have been deemed to become the property of the Employer under the Contract; and
 - (iv) the amount received from any proceeds of sale under sub-clause 51.9(c).
- (g) (i) Until after the completion of the Works under sub-clause 51.9(d), the Employer shall not be liable and/or bound by any provision in the Contract to make any further payment to the Contractor, excluding payments which have been certified and were due for payment under the Contract but not yet paid when the employment of the Contractor was determined (after taking into account any set-offs and/or deductions to which the Employer was entitled under the Contract).
- (ii) Upon the completion of the whole Works (inclusive of the issue of the Certificate of Completion and Making Good Defects and/or the Maintenance Certificate), an account taking into consideration:
1. The value of the Works carried out by the Contractor until the date of determination; and
 2. all costs incurred by the Employer to complete the Works including loss and/or expense suffered by the Employer.

shall be incorporated in a final account prepared in accordance with sub-clause 43.3.

52.0 DETERMINATION BY THE CONTRACTOR

52.1 Determination by the Contractor

- (a) Without prejudice to any other rights or remedies which the Contractor may possess, the Contractor may determine its employment in the event of:
- (i) the Employer's default in performing its obligations under the Contract; and/or

- (iii) the Employer's bankruptcy or insolvency.

52.2 Determination due to Employer's performance defaults

The Contractor may determine its own employment under the Contract if:

- (a) the Employer fails or neglects to pay the Contractor the amount due on any Interim or Penultimate Certificate (less any deduction, set off and/or Liquidated Damages to which the Employer is entitled to make under the Contract), within the period of honouring certificates;
- (b) the Employer improperly or fraudulently interferes with or influences or obstructs the issue of any Certificate by the E.R, or there is fraudulent collusion between the Employer and the E.R;
- (c) the Employer fails to appoint a succeeding or replacement E.R. in accordance with Clause 6.0; or
- (d) before the Date of Practical Completion or Sectional Completion (as applicable), the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of time exceeding the period of Suspension stated in Clause 50.0 by virtue of sub-clause 51.9(vi)2; and
- (e) the Employer fails to give the Contractor access to and possession of the whole Site beyond the date or period of revision of the same as stated in sub-clause 29.6(a) by virtue of sub-clause 29.6(c)(ii);
- (f) the Contractor not having received in due time necessary E.R's Instruction (including those for or in regard to the expenditure of Contingency Sums and Provisional Sums(if applicable)) for which the Contractor had specifically applied in writing to the E.R.. The Contractor's application must be submitted to the E.R. in sufficient time before the commencement of construction of the affected works, to enable the E.R. to issue the necessary E.R.'s Instruction within a period which would not materially affect the progress of the affected works, having regard to the Completion Date. Provided always that the E.R.'s Instruction was not required as a result of any negligence, omission, default and/or breach of contract by the Contractor;

- (g) the Employer commits a breach of any material term or condition of the Contract; or
- (h) permitted under any other Clause(s) of the Contract.

52.2 Determination of Own Employment

- (a) Upon the occurrence of any default under Clause 52.1, and if the Contractor decides to determine its own employment, then the Contractor shall give to the Employer a written notice specifying the default; (called the “Default Notice”). The form, content and mode of service of the said Default Notice shall be in accordance with those stated in sub-clause 51.3 with suitable modifications to cater for the nature and requirements of the instant determination; and
- (b) If the Employer continues with such default for 14 Days from the receipt of such written notice, then the Contractor may, within 14 Days from the expiry of the said 14 Days, by a further written notice to the Employer (called the “Determination Notice”), and forthwith determine its own employment under the Contract. Provided always that such notice shall not be given unreasonably or vexatiously.
- (c) The requirements of sub-clause 51.7 vis-à-vis the Determination Notice shall apply mutatis mutandis.

52.3 Determination due to Bankruptcy or Insolvency

- (a) In the event of the Employer:
 - (i) commits an act of bankruptcy or becomes bankrupt; or
 - (ii) becomes insolvent; or
 - (iii) compounds with or makes a composition or arrangement with its creditors, or
 - (iv) being a company, having a winding-up order made or (except for purposes of reconstruction or amalgamation) a resolution for voluntary winding up passed, or

- (v) having a liquidator or receiver or manager of its business or undertaking duly appointed, or
- (vi) having possession taken by or on behalf of creditors, or the holders of any debentures secured by a floating charge or of any property comprised in or subject to the floating charge,

the Contractor may immediately determine its employment under this Contract by issuing a Determination Notice to the Employer.

- (b) Where the Contractor shall issue a Determination Notice under sub-clause 52.3(a), the provisions of sub-clauses 52.2(c), 52.4 to 52.6 shall apply.

52.4 Rights and Duties of Parties upon Determination

Upon such determination under Clause 52.2 or 52.3, the following shall be the respective rights and duties of the Parties:

- (a) the Contractor shall within 14 Days or within such longer period as may be agreed in writing by the E.R., demobilize and remove from the Site all its temporary buildings, and tools, Contractor's Personnel, Contractor's Plant, Contractor's Equipment, Materials and Goods and those of its Sub-contractors and/or Suppliers; and
- (b) the Contractor shall, within 14 Days or within such longer period as may be agreed in writing by the E.R., vacate the Site and return possession of the Site to the Employer. If so required by the Employer or by the E.R., the Contractor shall within fourteen 14 Days of the date of determination, assign to the Employer or such other Person as the Employer may instruct, the benefit of any agreement for the continuation of the hire of any Contractor's Plant and Contractor's Equipment already on the Site. In this regard, the Contractor shall, before entering into such agreement, ensure that such agreement is assignable; and
- (c) If so required by the Employer or E.R., the Contractor shall, within fourteen 14 Days of the date of determination, assign to the Employer or such other Person as the Employer may instruct, the benefit of any agreement for the supply of Materials, Goods, Plant or Equipment and/or for the execution of any work for the purposes of this Contract to the extent that the same is assignable. In this regard, the Contractor shall, before entering into such agreement, ensure that such agreement is assignable.

- (d) The Contractor shall submit to the E.R. all plans, drawings, designs, calculations, specifications, manuals, records, reports, documents, latest as-built drawing (if any), and any other information as the E.R. may require in relation to the Works as at the date of the determination, and
- (e) The Employer shall allow or pay to the Contractor the total value of work properly executed, and the value of Materials, Goods, Plant and/or Equipment supplied including any direct loss and/or expense reasonably suffered by the Contractor arising from and/or caused by such determination.

52.5 Joint Inspection and Records of Works

- (a) Within fourteen 14 Days of the determination of its own employment, the Contractor shall give a written notice to the E.R., or the E.R. may give notice fixing the time and date of inspection on Site to jointly record the extent of the Works executed and the Materials, Goods, Plant and Equipment delivered to the Site. The Contractor shall provide all necessary assistance to the E.R. to perform their task.
- (b) If the Contractor fails to give a notice under sub-clause 52.5(a) within the stipulated time or fails to attend the joint inspection at the time and date as instructed by the E.R., or the Contractor refuses or fails to cooperate with the E.R. for the purposes of conducting the site inspection, the E.R. shall nevertheless proceed to carry out the joint inspection on Site to record the extent of the Works executed and the Materials, Goods, Plant and Equipment delivered to the Site by the Contractor.
- (c) Within twenty-eight 28 Days of the completion of the joint inspection under sub-Clauses 52.5(a) or 52.5(b), the E.R. shall complete the record and forward a copy thereof to the Contractor. Such record shall form the basis for the evaluation of the value of the Works properly executed, and Materials, Goods, Plant and Equipment delivered to the Site by the Contractor up to the date of determination.

52.6 Settlement of Account upon Determination

- (a) The Contractor shall within 120 Days after the determination of its own employment, submit to the E.R. its final claim containing the total value of work properly executed, the value of Materials, Goods, Plant and Equipment supplied and any direct loss and/or expense reasonably suffered by the Contractor caused by such determination.

- (b) Within 120 Days after receiving the said final claim from the Contractor, the E.R. shall assess and prepare a final cost account taking into account the final claim submitted by the Contractor and all deductions, set off and Liquidated Damages (if any) which the Employer is expressly entitled under the Contract.
- (c) If the Parties agree with the final cost account presented by the E.R., then the following provisions shall apply:
 - (i) if the amount in the final cost account entitled to by the Contractor exceeds the sums paid to the Contractor (less any deductions, set off and Liquidated Damages which the Employer is expressly entitled under the Contract), the balance shall be a debt payable to the Contractor by the Employer within the period of honouring certificates from the date of the agreement of the Parties with regard to the final cost account,
 - (ii) if, on the other hand, the amount in the final cost account entitled by the Contractor is less than the said total amount payable to the Contractor, the difference shall be a debt payable to the Employer by the Contractor.
- (d) If either Party has any dispute on any item or amount in the final cost account, then the following provisions shall apply:
 - (i) the Party disputing the final cost account shall by written notice to the other Party (with a copy to the E.R.) set out any disagreement thereof complete with particulars within 30 Days of the date of receipt of the final cost account from the E.R.,
 - (ii) within 30 Days from the date of receipt of the notice of dispute, the E.R. shall decide either to amend or not to amend the final account, and provide reasons for its decision. The E.R. may also request any necessary further particulars, but the E.R. shall nevertheless give its decision within the stipulated 30 Days period,
 - (iii) any Party disagreeing with the E.R.'s decision under Clause 52.6(c)(ii) shall refer the dispute to arbitration under Clause 58.0.

52.7 Contractor's other Rights and Remedies Not Prejudiced

The provisions of Clause 52.0 are without prejudice to any other rights and/or remedies which the Contractor may possess under the Contract and/or the law.

53.0 DETERMINATION BY CONVENIENCE

53.1 Employer's right to Determine

(a) The Employer shall, in addition to its rights under any other provision of the Contract and/or the law, have the sole discretion to determine the employment of the Contractor under the Contract:

- (i) in whole; or
- (ii) in part,

whenever the E.R. and/or the Employer shall decide that such determination is in the best interest of the Employer.

(b) The Employer shall not undertake the determination under this Clause 53.0 unreasonably and/or vexatiously either:

- (i) in order to execute the Works itself; or
- (ii) to arrange for the Works to be executed by another Person, or third party; or
- (iii) for any other purpose considered to be improper under the law.

53.2 Procedure for Determination

(a) The determination under this Clause shall be communicated to the Contractor by a notice (called the "Notice of Determination for Convenience").

(b) The Notice of Determination for Convenience shall:

- (i) be issued by the Employer;
- (ii) be in writing;

- (iii) stipulate that it is made pursuant to this Clause 53.0;
- (iv) specify the date upon which such determination becomes effective (which shall not be less than 30 days of the date of issue of the notice);
- (v) stipulate any incidental or follow-up work to be undertaken by the Contractor after the determination;
- (vi) be copied to the E.R., the insurance cover operators, the issuer of the Performance Security and any other authorized parties/persons; and
- (vii) be served in accordance with sub-clause 67.1

53.3 The Contractor's Duties post Determination

- (a) Upon receipt of such Notice of Determination of Convenience from the Employer, the Contractor shall either:
 - (i) immediately; or
 - (ii) upon such other date as is specified in the Notice of Determination For Convenience.

undertake the procedures as stipulated in sub-clauses 53.3(b) and (c).

- (b) The procedures adverted to in sub-clause 53.3(a) shall be, the Contractor shall:
 - (i) cease all work under the Contract on the date and to the extent specified in the Notice of Determination For Convenience, which shall include, but be not limited to such work for the purpose of protecting, making safe or tidying up such part of the Works as may already have been executed, or may be in the course of execution;
 - (ii) demobilize by immediately removing all the Contractor's Personnel, Contractor's Plant and Contractor's Equipment from the Site;
 - (iii) cancel all orders for Materials, Goods, Plant and Equipment and place no further orders or Sub-contracts except as may be necessary for:

1. completion of any part of the Work under the Contract that has been excluded under the Notice of Determination for Convenience (if applicable); and/or
 2. executing the work as specified in the Notice of Determination For Convenience pursuant to sub-clauses 53.2(b)(v) and 53.3(b)(i).
- (iv) complete the performance of that part of the Work that has excluded in the Notice of Termination for Convenience (if applicable);
- (v) transfer title to the Employer and deliver up as directed by the E.R. the:
1. completed, or partially completed Works;
 2. delivered, or partially delivered Materials, Goods, Plant and Equipment;
 3. completed, or partially completed designs, plans, drawings, calculations, schedules, information, data and other deliverables/documents under the Contract prepared by the Contractor, or its Sub-contractors in connection with the Contract; and
 4. all documents supplied to the Contractor by the Employer or E.R. in connection with the Contract.

For the avoidance of doubt, this requirement shall not apply for items for which the Contractor has not been paid as at the date of the determination by the Employer.

- (vi) if the E.R. so instructs in writing, assign to:
1. the Employer, or
 2. at the Employer's direction, to its nominees,

the benefit of any agreement which the Contractor may have entered into for the purpose of, or connected with the performance of the Works, or that part in respect of which the Contractor's employment has been determined and the Contractor shall ensure that any Sub-contract entered into by it contains an express right of assignment to the Employer and any nominee;

- (vii) handback possession of Site to the Employer to enable the Employer, or its nominees to take over the Works, Plant and/or Equipment so far completed and installed, including the Materials and Goods already delivered to the Site; and
- (viii) remove from the Site any Contractor's Equipment, Contractor's Plant, temporary buildings, Temporary Works, structures, tools, Goods, materials except for only such as the Contractor is instructed in the Notice of Determination for Convenience to leave on the Site.
- (c) Except for the above, the provisions of sub-clause 51.7(b) to (e) shall apply *mutatis mutandis*.

53.4 Payment following Determination

- (a) If the Contractor's employment is determined pursuant to this Clause, the Contractor shall be paid in accordance with the provisions of sub-clause 53.4(b) to (d).
- (b) Within 60 Days of the date of issue of the Notice of Determination for Convenience, the E.R. shall prepare a Final Account for the Works that had been completed up to the date of such determination and issue it to the Contractor and the Employer.
- (c) The Final Account shall include:
 - (i) the amount due to the Contractor shown in any unpaid Interim Certificate issued pursuant to Clause 41.0;
 - (ii) for work properly executed (inclusive of any Materials, Goods, Plant and Equipment delivered to Site) prior to the effective date of determination, the amount of which would have been payable if the Contractor's employment had not been determined and the Contractor had been entitled to, and had made an application for an Interim Certificate on the date of termination;
 - (iii) the cost of Materials, Goods, Plant and Equipment reasonably ordered for the Contract which shall have been delivered to the Contractor, or of which the Contractor is legally liable to take delivery (such items becoming the property of the Employer upon payment being made by it);

- (iv) the reasonable cost of removal from the Site of all the Contractor's items as stipulated in sub-clause 53.3(b)(viii);
 - (v) the reasonable cost of demobilization and/or repatriation of the Contractor's Personnel pursuant to sub-clause 53.3(b)(ii) in relation to the Contract at the time of such determination; and
 - (vi) a sum to be certified by the E.R. being the amount of any expenditure reasonably incurred by the Contractor in complying with the Notice of Determination For Convenience which shall not have been covered by the payments in the other sub-clauses of this Clause 53.0.
- (d) For the avoidance of doubt, the Contractor shall be entitled to the reimbursement of reasonable loss (including loss of profit), expense, compensation or damage other than that stipulated in sub-clause 53.4(c) subject to strict proof of the same; and
 - (e) For the purposes of this Clause, the provisions of sub-clause 51.7(d) and (e) shall apply *mutatis mutandis*.

54.0 MUTUAL TERMINATION

54.1 Circumstances When Applicable

- (a) If any circumstance arises during the currency of the Contract which:
 - (i) under the law governing the Contract, renders the Contract legally frustrated, and/or
 - (ii) renders it impossible for the Employer, or the Contractor with the express concurrence of the Employer to proceed with the execution of the Works,

the Contract shall be deemed to be mutually terminated upon the service of a written notice by the Employer or the Contractor to that effect.
- (b) In amplification of the above, both Parties may at any time during the currency of the Contract mutually agree to terminate the Contract. Such mutual termination shall be in an express form and shall take effect on the date stipulated in the said agreement.

54.2 Procedure Following Termination

- (a) Upon the termination of the Contract pursuant to this Clause, the Contractor shall:
 - (i) carry out any protection works or any other Works instructed by the E.R.; and
 - (ii) shall within 30 Days from the date of written notice (under sub-clause 54.1(a)) or written agreement (under sub-clause 54.1(b)) remove from the Site all the Contractor's Plant and Contractor's Equipment (except those required for the protection of the works) and Site facilities so as to leave the Site in a clean and tidy condition; and
 - (iii) return possession of Site back to the Employer.
- (b) In the event the Contractor fails to comply with sub-clause 54.2(a)(ii) above, the Employer:
 - (i) may sell, or otherwise dispose off such items as it deems fit, and
 - (ii) shall retain any costs or expenses incurred in connection with the sale of the items and/or their disposal from the proceeds of the said sale before paying the balance (if any) to the Contractor.
- (c) Save for the above, sub-clauses 51.6 and 51.7 shall apply *mutatis mutandis*.

54.3 Payment to the Contractor

- (a) Upon the termination of the Contract pursuant to this clause, the Employer shall pay the Contractor (in so far as such amounts or items have not already been covered by payments on account made to the Contractor) the following:
 - (i) the value of all work properly carried out by the Contractor up to the date of the termination; and
 - (ii) such sums as listed in sub-clause 54.3(b) below.
- (b) The sums to be paid to the Contractor in addition to sub-clause 54.3(a)(i) shall be:

- (i) the amounts payable in respect of any preliminary items so far as the Works or service comprised therein have been:
 - 1. fully and properly carried out, or performed; and
 - 2. a proper portion of any such items which have been partially carried out or performed.
- (ii) the cost of Materials, Goods, Plant and Equipment reasonably ordered for the Works;
 - 1. which have been delivered to the Contractor, or
 - 2. of which the Contractor is legally liable to accept delivery (such Materials, Goods, Plant and Equipment becoming the property of the Employer upon payment for the same being made to the Contractor).
- (iii) a sum, being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works in so far as such expenditure has not been recovered by any other payments referred to in this Clause; and
- (iv) the reasonable costs under sub-clause 54.2(a) of:
 - 1. any protection Works; and
 - 2. removal of the Contractor's Plant, Contractor's Equipment and Site facilities.

54.4 Payment where Sectional Completion achieved

- (a) If upon the termination of the Contract under this Clause, any Section or part of the Works has been:
 - (i) completed in accordance with Clause 33.0, or
 - (ii) is completed so far as to be beneficially usable by the Employer;

the E.R. may at its discretion and in lieu of the Contractor's obligations under Clause 36.0 exercise the option stipulated in sub-clause 54.4(b).

- (b) Pursuant to sub-clause 54.4(a), the E.R. may allow against the sum due to the Contractor further to sub-clause 54.3(b), the cost (assessed by the E.R.) of repair, rectification and making good for which the Contractor would have been liable under Clause 36.0 had it continued to be applicable.

54.5 Application of Final Account and Final Certificate

In the event of the Contract being terminated pursuant to this Clause, Clause 43.0 shall apply in such manner as if the date of termination was the date of issue of the Final Certificate.

54.6 Saving provision

Save as aforesaid, the Contract shall continue to have full force and effect.

55.0 SURVIVING RIGHTS

- (a) Any determination of the Contractor's employment under the Contract and/or any mutual termination undertaken by the Parties shall not affect the liability of either Party for any of its acts or omissions during the period of the Contract, and
- (b) Both Parties shall thereafter continue to be so liable and:
 - (i) shall keep the other Party indemnified; and
 - (ii) hold harmless the other Party in respect of any claims arising therefrom.

56.0 FORCE MAJEURE

56.1 Definition of Force Majeure

- (a) In this Clause, "Force Majeure" means, an exceptional event or circumstance:
 - (i) which is beyond a Party's control;
 - (ii) which such Party could not reasonably have provided against before entering into the Contract;

- (iii) which, having arisen, such Party could not reasonably have avoided or overcome; and
 - (iv) which is not substantially attributable to the other Party.
- (b) Force Majeure may include, but is not limited to exceptional events or circumstances of the kind listed below so long as conditions in sub-clause 56.1(a) are satisfied:
 - (i) war (whether declared or not), hostilities, invasion, act of foreign enemies;
 - (ii) insurrection, revolution, rebellion, military or usurped power, civil war, terrorism;
 - (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Sub-contractors; and
 - (iv) munitions of war, explosive materials, nuclear explosion, ionizing radiation or contamination by radioactivity or chemical contamination unless caused by the negligence, act, omission or default of the Contractor's Personnel, or its agents;
 - (v) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
 - (vi) natural catastrophic including but not limited to earthquakes, typhoons, tsunami, volcanic activity or any operation of the forces of nature.

56.2 Effect of Force Majeure

Neither the Employer nor the Contractor shall be considered to be in default, or in breach of its obligations under the Contract (or any part thereof) to the extent that the performance of such obligations is prevented by any circumstance which arises after:

- (a) the date of Letter of Acceptance; or
- (b) the date when the Contract becomes effective,

whichever is the earlier:

56.3 Notice of Force Majeure

- (a) If either Party considers that any circumstance of Force Majeure as stipulated in sub-clause 56.1 has occurred which has affected or may affect the performance of its obligations under the Contract, the Party shall immediately notify the other Party.
- (b) The notice adverted to in sub-clause 56.3(a) shall:
 - (i) be in writing; and
 - (ii) be given within 14 Days after the Party becomes aware, or should have become aware, of the relevant circumstance constituting Force Majeure.
- (c) The notice shall stipulate the following contents as a minimum:
 - (i) the relevant circumstance or circumstances constituting Force Majeure; and
 - (ii) the particular obligation, or obligations the performance of which is, or will be prevented; and
 - (iii) the full particulars of the consequences; and
 - (iv) any other details/information that may be relevant to the issue.

56.4 Duty to Mitigate Delay

- (a) Each Party shall at all times use all reasonable endeavours to mitigate any delay in the performance of the Contract as a result of Force Majeure.
- (b) If the Contractor considers that it can take reasonable steps pursuant to its duty to mitigate delay, but these will incur additional costs, the Contractor shall not take such steps unless instructed to do so by the E.R.
- (c) If the Contractor incurs additional costs in complying with the E.R.'s instructions pursuant to sub-clause 56.4(b), the amount involved shall be certified by the E.R. and added to the Contract Sum.

56.5 Cessation of Force Majeure

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

56.6 Post Notification Procedures

- (a) Upon receipt of the Notice pursuant to sub-clause 56.3 above, both Parties shall, within a further 14 Days, come to a mutual agreement as to whether a Force Majeure circumstance has occurred.
- (b) If such mutual agreement is not reached, the E.R. shall then after a further 7 days determine if a Force Majeure circumstance has occurred or not. The E.R.'s decision shall be communicated to the Contractor in writing.
- (c) Upon receipt of the E.R.'s decision further to sub-clause 56.6(b), the Contractor shall within 7 days either:
 - (i) accept the decision, in which case it shall be bound by and give effect to the decision; or
 - (ii) disagree with the decision.
- (d) Failure of the Contractor to respond within the time period stipulated in sub-clause 56.6(c) above shall mean that the Contractor has accepted the decision.
- (e) Should the Contractor disagree with the decision, the E.R.'s decision shall prevail, and the Contractor shall nevertheless be entitled to pursue the matter pursuant to Clause 58.0.

56.7 Consequence of Force Majeure

- (a) The consequences of Force Majeure may be:
 - (i) of a temporary nature; or
 - (ii) severe, or a continuing nature
- (b) If the consequences of Force Majeure are of a temporary nature and:
 - (i) of which notice has been given pursuant to sub-clause 56.3; and
 - (ii) which, either has been mutually agreed to be a Force Majeure circumstance further to sub-clause 56.6(a) or has been decided by the E.R. to constitute such a circumstance pursuant to sub-clause 56.6(c) to (e).

and the Contractor suffers delay, and/or additional costs by reason of such circumstance, the Contractor shall be entitled to:

1. an extension of time for any such delay, if completion is, or will be delayed under Clause 31.0; and/or
 2. additional costs under Clause 57.0.
- (c) If the consequences of Force Majeure are severe, or of a continuing nature, meaning:
- (i) if the execution of substantially all the Works in progress is prevented for a continuous period of 90 Days by reason of Force Majeure of which notice has been given under sub-clause 56.3, or
 - (ii) for multiple periods which total more than 120 days due to the same notified Force Majeure circumstance,
- 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 received by the other party and the Contractor shall proceed in accordance with sub-clause 54.2. Upon such termination, the Contractor shall be paid in accordance with sub-clause 54.3.
- (d) Neither Party shall be entitled to rely upon this Clause 56.0 if both Parties reasonably determine or in the event such determination is not reached if the E.R. decides pursuant to sub-clause 56.6 that a circumstance of Force Majeure has not occurred.
- (e) For the avoidance of doubt, the Parties shall continue to perform those parts of their obligations not affected, delayed or interrupted by a circumstance of Force Majeure and such obligations shall, pending the outcome of this clause continue in full force and effect.

56.8 Release from Performance

If the Contract is terminated by a circumstance of Force Majeure pursuant to this Clause:

- (a) all rights and obligations of the Parties under the Contract shall immediately terminate; and
- (b) neither Party shall have any claim against the other Party; and
- (c) neither Party shall be liable to each other except for:

- (i) any rights and liabilities accruing prior to the circumstance of the Force Majeure; and
- (ii) any rights and liabilities stipulated in this Clause and/or elsewhere in the Contract.

56.9 Force Majeure Affecting Sub-Contractor

If any Sub-Contractor is entitled under any Contract or agreement relating to the Works under the Contract for relief from Force Majeure on terms additional to, or broader than those specified in this Clause, such additional or broader Force Majeure circumstances shall not excuse the Contractor's non-performance nor entitle it to relief under this clause.

56.10 Where E.R.'s Performance Affected

The provisions of this Clause 56.0 shall also apply to circumstances where the E.R. is prevented from performing any of its duties and obligations under the Contract by reason of Force Majeure.

PART X: CLAIMS AND DISPUTE RESOLUTION

57.0 CLAIMS FOR LOSS AND EXPENSE

57.1 The Contractor's Right to Claim

- (a) Where the regular progress and/or completion of the Works, or any Section of the Works has been materially affected by any of the Employer Risk Events as stipulated in sub-clause 57.2 and the Contractor has incurred direct loss and/or expense which could not be reimbursed by a payment under any other provision in the Contract, the Contractor may make a claim for such direct loss and/or expense, provided the provisions of this Clause 57.0 are fulfilled to the satisfaction of the E.R.
- (b) For the avoidance of doubt:
 - (i) the term "direct loss and/or expense" as used in the Contract shall mean and be limited to the following:
 - 1. the direct relevant costs of specialist input, manpower/labour, Materials, Goods, Plant and Equipment actually incurred on or off the Site (as

applicable) in so far they would not otherwise have been incurred, and which were not, and should not have been provided for by the Contractor; and

2. costs of an overhead nature actually and necessarily incurred on or off the Site (as applicable), but in either case, only in so far they would not otherwise have been incurred, and which were not, and should not have been provided for by the Contractor; and
 3. the amount equivalent to the percentage stated in Appendix I of such cost referred to in 1 and 2 above, such amount shall be deemed to be inclusive of any profits, head office of other administrative overheads, financing charges (including foreign exchange losses) and any other reasonable costs, loss or expense as actually and/or directly incurred.
- (ii) the Contractor's entitlement to compensation for such direct loss and/or expense is set out exclusively in this Clause 57.0. To this effect, the Contractor is not entitled to claim for any adjustment to the Contract Sum, or make claim for payment under the Contract, or otherwise at law arising out of, or in connection with an extension of time to the Date for Completion or delay costs if that claim is not expressly permitted under this Clause 57.0.
- (iii) Nothing in this Clause 57.0 shall oblige the Employer to pay extra costs for the delay and/or direct loss and/or expense which have already been included in the valuation of a Variation under Clause 40.0, or any other payment under the Contract.
- (iv) The Contractor shall not be entitled to any such direct loss and/or expense where the event arises from, or is necessitated by, or is intended to cure any default or breach of contract by the Contractor, its Sub-contractors whether novated or otherwise.

57.2 Employer Risk Events

- (a) The Employer Risk Events for which the Contractor may make a claim under this clause are as stipulated in Clause 31.4 (b)2:

- (b) For the avoidance of doubt, the Contractor's right to seek compensation for direct loss and/or expense shall be limited to an Employer Risk Event as set out in sub-clause 31.4(b)2 and no other, unless the Parties mutually agree to otherwise;
- (c) Unless expressly provided for otherwise in the Contract:
 - (i) compensation for direct loss and/or expense shall not be paid for anything other than such loss and/or expense actually suffered and mitigated by the Contractor subject to strict proof; and
 - (ii) if the Contractor incurs direct loss and/or expense that are caused both by an Employer Risk Event and a Neutral Event , then the Contractor shall only be entitled to recover compensation if it is able to separate and prove the loss and/or expense caused by the Employer Risk Event from that caused by the Neutral Event.

57.3 Notice of Claim

- (a) The Contractor may make a claim for direct loss and/or expense provided the Contractor complies with the provision of this sub-clause and sub-clauses 57.4 and 57.5;
- (b) The Contractor shall give written notice to the E.R. of its intention to claim for such direct loss and/or expense within 30 Days after the event giving rise to its claim (the Employer Risk Event) has first arisen;
- (c) The notice shall:
 - (i) specify the event relied upon and its consequence;
 - (ii) the appropriate contract reference(s) to such event which is/are relevant to the claim;
 - (iii) an estimated value of its claim duly supported with all relevant calculations, documents, and records.;
 - (iv) any other information, or details which will enable the E.R. to make a considered decision under sub-clause 57.6.
- (d) The giving of such written notice shall be a condition precedent to any entitlement to direct loss and/or expense that the Contractor may have under the Contract;

- (e) The fact that the Contractor does not, or may not know whether the valuation of a Variation has been agreed, or whether the E.R. has decided to include in any Interim Certificate and/or Penultimate Certificate any amount in respect of any claim shall not excuse the Contractor from the requirement to give a notice under this sub-clause.

57.4 Contemporary Records

- (a) The Contractor shall keep such contemporary records as may be reasonably necessary to support any claim for direct loss and/or expense that it may subsequently wish to make;
- (b) For the purpose of this clause, the term “contemporary records” shall include all books, reports, papers, records, vouchers and information relevant to the claim being pursued;
- (c) Without necessarily admitting the Employer’s liability, the E.R. may, on receipt of a notice under sub-clause 57.3:
 - (i) inspect such contemporary records; and
 - (ii) instruct the Contractor to keep such further records which the E.R. considers to be material to the claim of which notice has been given.
- (d) The Contractor shall provide unrestricted access to, and permit the E.R. to inspect such contemporary records and shall supply the E.R. with copies of these records as and when the E.R. so requests. All such contemporary records shall remain available in accordance with this sub-clause until all claims have been satisfactorily resolved through dispute resolution under Clause 58.0;
- (e) The Contractor shall use all reasonable means to ensure that all such contemporary records in the possession, custody, or control of Sub-contractors and/or Suppliers (whether novated or otherwise) that are material to the claim are similarly available.

57.5 Substantiation of Claim

- (a) Within 30 Days, or such other time as may be expressly agreed to by the E.R., of the Contractor giving written notice under sub-clause 57.3, the Contractor shall submit to the E.R.:

- (i) complete particulars of its claim for direct loss and/or expense together with all necessary calculations to substantiate the claim;
 - (ii) all contemporary records relevant to substantiate the claim; and
 - (iii) any other information, or record necessary to enable the E.R. to properly evaluate the submitted claim.
- (b) For the avoidance of doubt, the detailed particulars submitted by the Contractor pursuant to sub-clause 57.5(a) shall adequately substantiate the Contractor's claim including showing the nexus between the Employer Risk Event relied on, and the amount of direct loss and/or expense so claimed.
- (c) Where the event giving rise to the claim has a continuing effect:
 - (i) such submission and account shall be considered to be interim; and
 - (ii) the Contractor shall, at such intervals as the E.R. may expressly require, submit such further interim submissions and accounts giving the accumulated amount of the claims and any further grounds upon which they are based.
- (d) Further to sub-clause 57.5(c), within 30 Days of the ending of the effects resulting from the event, the Contractor shall submit to the E.R. a final account of the claim supported with the details stipulated in sub-clause 57.5(a).
- (e) If the Contractor fails to substantiate its claims (as stipulated in this sub-clause) to the satisfaction of the E.R. within:
 - (i) the stated time; or
 - (ii) such longer period as may be agreed in writing by the E.R.,

it shall be considered that the Contractor has waived its rights for direct loss and/or expense.

57.6 Ascertainment/Payment of the Claim

- (a) Subject to the Contractor complying with sub-clauses 57.3 to 57.5, the E.R. shall proceed with the ascertainment of the Contractor's claim in line with the provisions of this sub-clause.

- (b) If the Contractor shall have complied with sub-clause 57.3 (Notice of Claim), but fails to supply the E.R. with adequate substantiation of the whole amount claimed:
 - (i) the E.R. shall be entitled to make such assessment, valuation, or opinion as shall be fair and reasonable on the basis of the information made available to it; and
 - (ii) the Contractor shall only be entitled to payment in respect of such part of the amount as may have been substantiated to the satisfaction of the E.R.
- (c) The E.R. in ascertaining the tenability of the Contractor's claim for direct loss and/or expense shall be bound by the following principles:
 - (i) liability for compensation must first be established showing the nexus between the Employer Risk Event relied on and the delay, or prolongation suffered by the Contractor; and
 - (ii) once it is established that compensation for the delay or prolongation is due, the evaluation of the sum due shall be made by reference to the period when the effect of the Employer Risk Event was felt and not by reference to the extended period at the end of the Contract.
- (d) Within 30 Days, or such other time as may be mutually agreed to by the parties, of the receipt by the E.R. of the Contractor's substantiations under sub-clause 57.5(a), (c) or (d) (as applicable), the E.R. shall:
 - (i) certify such amount in respect of any claim for direct loss and/or expense as the E.R. may consider due to the Contractor; or
 - (ii) reject the Contractor's claim in writing with reasons.

If the E.R. fails and/or neglects to respond either way, upon the lapse of the said 30 Days period, it shall be deemed that the E.R. has no objections to the said claim which shall be accordingly given effect to by the Parties in the relevant subsequent payment certificate.

- (e) Pursuant to sub-clause 57.6(d)(i), any amount so ascertained shall be added to the Contract Sum, and if an Interim Certificate and/or Penultimate Certificate is issued after the date of ascertainment and certification, such amount shall be included in the said

certificate. The inclusion by the E.R. in any such certificate of any amount in respect of any claim for direct loss and/or expense or any payment by the Employer in respect of any such amount shall not:

- (i) prejudice the Employer's right to dispute the Contractor's entitlement to the amount certified either:
 - 1. in principle, or
 - 2. as to its quantification, or
 - 3. from referring such dispute for decision pursuant to Clause 58.0; or
 - (ii) be taken into account by the E.R. or any arbitration (or other tribunal) in deciding whether the Contractor shall repay to the Employer the whole or any part of such amount.
- (f) Further to sub-clause 57.6(d)(ii), if the Contractor is not satisfied with the E.R.'s decision to reject its claim, the Contractor, may if it so desires, proceed to have the dispute resolved under Clause 58.0.

57.7 Loss and/or Expense Incurred Pursuant to Section 29 of CIPAA (if applicable)

- a) If the Contractor has incurred loss and/or expense through exercising its right to suspend or reduce the rate of progress of performance of the works under Section 29 of CIPAA, the Contractor may make a claim for such loss and/or expenses. The following provisions shall apply:
 - (i) the Contractor shall, as soon as practicable but not later than 28 Days after the date of resumption of performance or the rate of progress performance of the works under Section 29(4)(d) of CIPAA, send to the E.R. relevant particulars of its claim for its loss and/or expense together with all necessary calculations and particulars to substantiate its claims,
 - (ii) if the Contractor fails to submit the required particulars in Clause 57.7 a)(i), or within such longer period as may be agreed in writing by the E.R., it shall be deemed that the Contractor has waived its rights under this Contract and/or the law to any such loss and/or expense;
- b) if the E.R. is of the opinion that the particulars submitted by the Contractor are insufficient to enable the E.R. to decide on the claim for such loss and/or expense, the

E.R. shall within 14 Days from the date of receipt of Contractor's particulars, inform the Contractor of any deficiency in its submission and require the Contractor to provide such further particulars within such period of time as may be stated by the E.R. in writing. If the Contractor fails to submit the required further particulars within the time as instructed by the E.R., the E.R. shall value the Contractor's claim for such loss and/or expenses based on whatever information which is available to it and ascertain the amount (if any) entitled by the Contractor within 42 Days thereof.

- c) Clause 57.4 on Contemporary Records shall equally apply to any claim by the Contractor under this Clause 57.7.
- d) If the E.R. is of the opinion that the Contractor has submitted sufficient particulars for its determination, the E.R. shall determine and ascertain the amount (if any) of such loss and/or expense within 42 Days of receipt of the particulars from the Contractor under Clause 57.7 a). The E.R. shall set out the details of its determination. Any amount so ascertained shall be added to the Contract Sum, and if an Interim or Penultimate Certificate is issued after the date of ascertainment, such amount shall be included in the said certificate.
- e) In the event that the Adjudication Decision to which the subject claim made by the Contractor relates, is subsequently set aside by the Court or superseded by a final decision of the Court or arbitration, the Contractor shall not be entitled to any such loss and/or expense and the Employer shall be entitled to recover from the Contractor any amount of such loss and/or expense paid by the Employer as a debt, or by deducting from any monies due or to become due to the Contractor under this Contract, or recover from the Performance Security.

58.0 ARBITRATION

58.1 Agreement to refer Disputes or Differences to Arbitration

- (a) Any dispute, controversy or claim arising out of or relating to this Contract, or the breach, termination or invalidity thereof shall be settled by arbitration by a sole arbitrator agreed between the Parties and in default of agreement, to be appointed by the appointing authority named in Appendix I in accordance with the Arbitration Rules stipulated also in the said Appendix I.
- (b) The seat of arbitration shall be as stated in Appendix I.

58.2 Powers of Arbitrator

The Arbitrator shall, without prejudice to the generality of its powers, have power:

- (a) to rectify the Contract so that it accurately reflects the true agreement made by the Employer and the Contractor,
- (b) to direct such measurements and/or valuations as may in its opinion be desirable in order to determine the rights of the Parties,
- (c) to ascertain and award any sum which ought to have been the subject of or included in any certificate,
- (d) to open up, review and revise any certificate, opinion, decision, requirement, or notice,
- (e) to determine all matters in dispute submitted to it in the same manner as if no such certificate, opinion, decision, requirement or notice had been given, and
- (f) to award interest (including pre-award interest) from such dates at such rates and with such rests as it deems fit:
 - (i) on the whole or part of any amount awarded by it in respect of any period up to the date of the award;
 - (ii) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.

58.3 Commencement of Arbitration

- (a) Unless otherwise agreed in writing by the Parties, such arbitration shall be commenced after the Date of Practical Completion or alleged Date of Practical Completion of the Works, or determination or alleged determination of the Contractor's employment under the Contract, or termination or alleged termination of the Contract under the law, or abandonment or alleged abandonment of the Works except on:
 - (i) the question of whether or not the issuance of an instruction is empowered by these Conditions of Contract,

- (ii) any dispute or difference under Clause 57.0,
 - (iii) whether or not a certificate has been improperly withheld or otherwise not in accordance with these Conditions of Contract, or
 - (iv) whether or not a payment to which the Contractor may claim to be entitled has been properly withheld in accordance with these Conditions of Contract.
- (b) The obligations of the Parties and the E.R. shall not be altered by reason of any arbitration being conducted during the progress of the Works.

58.4 E.R. as Witness

Nothing shall disqualify the E.R. from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute referred to arbitration.

58.5 Arbitrator's Award to Be Final and Binding

The award of such arbitrator shall be final and binding on the Parties.

59.0 MEDIATION

59.1 Right to Refer to Mediation

Notwithstanding Clause 58.1, the Employer and the Contractor, or either or them, may refer their dispute as to any matter arising under or out of or in connection with the carrying out of the Works and whether in contract or in tort, or as to any direction or instruction or certificate of the E.R. or as to contents of or granting or refusal of or reasons for any such direction, instruction or certificate, for mediation in accordance with the Rules for Mediation as stated in Appendix I.

59.2 Prior Reference to Mediation Does Not Prejudice the Parties Rights to Arbitration

For the avoidance of doubt, prior reference of the dispute to mediation under Clause 59.1 shall not be a condition precedent for its reference to arbitration by either the Contractor or the Employer, nor shall any of their rights to refer the dispute to arbitration pursuant to Clause 58.0 be in any way prejudiced or affected by this Clause.

59.3 Reference of Disputes to Mediation at Any Time

The Party may refer any dispute for Mediation pursuant to Clause 59.1 at any time, whether before or during any arbitration proceeding under Clause 58.0, or any litigation or other proceeding in relation to any dispute between the Parties arising from and/or in connection with the Works and/or the Contract.

PART XI: MISCELLANEOUS

60.0 ANTIQUITIES AND FOSSILS

60.1 Property of Discovery

All fossils, coins, antiquities, and other objects of interest, or value which may be found on the Site, or in excavating the same during the progress of the Works shall become the absolute property of the Employer subject to the applicable laws.

60.2 Duties of Contractor upon discovery

Upon discovering of such an object, the Contractor shall immediately:

- (a) not disturb the object and shall cease work, if and so far as the continuance of the Work would endanger the object, or prevent, or impede its excavation, or its removal;
- (b) take all reasonable steps which may be necessary to preserve the object in the exact position and condition in which it was found; and
- (c) notify the E.R. of the discovery and precise location of the object.

60.3 E.R.'s duties upon Notification

- (a) Upon the receipt of the Contractor's notice under sub-clause 60.2(b), the E.R. shall issue instructions in regard to what is to be done concerning the object reported by the Contractor.
- (b) Without prejudice to the generality of its power, the E.R. may require the Contractor to permit the examination, excavation, or removal of the object by a third party. Any such third party shall for the purpose of Clause 46.0 be deemed to be a Person for whom the Employer is responsible and not to be a Sub-contractor of the Contractor.

60.4 Contractor's Claims

If compliance with the provisions of sub-clauses 60.1 and 60.2, or with an instruction issued under sub-clause 60.3 has involved the Contractor in any:

- (a) delay; and/or
- (b) direct loss and/or expense,

then the Contractor:

- (a) may make a time related claim under Clause 31.0; and/or
- (b) may make a claim for direct loss and/or expense pursuant to Clause 57.0.

61.0 AMENDMENT

61.1 Formalities

No modification, amendment, variation, or waiver of any of the provisions of the Contract shall be effected unless:

- (a) made by mutual consent; and
- (b) made in writing by way of the supplementary agreement specifically referring to the Contract; and
- (c) duly signed by both Parties.

61.2 Effect of Amendment

The provisions in respect of such modification, amendment, or variation under sub-clause 61.1 shall:

- (a) be supplemental to; and
- (b) be read,

as an integral part of the Contract which shall remain in full force and effect as between both Parties.

62.0 SEVERABILITY

62.1 Extent of Clause

If any provision of the Contract:

- (a) is held to be illegal, or
- (b) is invalid,

under any laws or regulations effective and applicable during the term of the Contract, then the stipulations of sub-clause 62.2 shall apply.

62.2 Effect of invalidity/illegality

The effect of sub-clause 62.1 shall be:

- (a) such provision shall be fully severable; and
- (b) the Contract shall be construed as if such illegal, or invalid provision had never comprised as part of the Contract; and
- (c) the remaining provisions in the Contract shall remain in full force and effect and shall not be affected by the illegal, or invalid provision, or by its severance from the Contract.

63.0 STAMP DUTY AND COSTS

The Contractor shall bear:

- (a) the proper Stamp Duty (if any); and
- (b) all legal costs and fees; and

- (c) all other incidental costs and fees

in the preparation and execution of the Contract.

64.0 SUCCESSORS BOUND

The Contract shall be binding upon the respective successors in title of the Parties.

65.0 CONFIDENTIALITY

65.1 Duty not to Disclose

- (a) The Contract inclusive of all drawings, records, data, books, reports and all matters pertaining hereto shall be considered as confidential matter and shall not be disclosed to any third party without the Employer's prior written agreement except as provided for in sub-clause 65.1(b).
- (b) The exceptions to sub-clause 65.1(a) are:
 - (i) where the disclosure of such information is necessary for the purpose of raising finance to undertake the obligations of the Contractor under the Contract; or
 - (ii) where the disclosure of such information is made to the Contractor's consultants, auditors, or advisors; or
 - (iii) where disclosure of such information is required by law, or by any government agency, or for the performance of any obligations under the Contract; or
 - (iv) where the information has entered the public domain.

65.2 Disclosure to Third Parties

Where information has been disclosed to third parties pursuant to sub-clause 65.1, the Contractor undertakes to ensure that such third parties shall not disclose the information to any other third party.

65.3 Surviving Rights

The restrictions contained in this Clause 65.0 shall survive the termination of the Contract and shall continue to bind the Contractor without limit in point of time.

66.0 COMPLIANCE WITH THE LAW

66.1 Laws Applicable

- (a) The Contract shall be governed by and construed in accordance with the laws as stated in Appendix I; and
- (b) The Parties irrevocably agree to submit to the exclusive jurisdiction of the Courts of country as stipulated in Appendix I.

66.2 Statutory Requirements

- (a) In the context of this Clause, the phrase "Statutory Requirements" shall mean any law, regulation, or by-law, or any order, or directive issued by any public authority or public services company relating to the Works or, in the case of public authority or public service company, with those systems the same are, or will be connected.
- (b) The Contractor shall comply in all respects including the giving of all notices and paying of all fees required by the Statutory Requirements defined in sub-clause 66.1(a) above.

66.3 Documents Evidencing Approvals of Authorities

- (a) The Contractor shall submit to the E.R. copies of documents issued to the Contractor by all relevant municipal, public authorities, public services companies or other statutory authorities in respect of the Works under the Contract, in particular, any Approvals of Work.
- (b) The copies of documents shall be in the form and quantity as directed by the E.R.
- (c) All such documents shall be submitted to the E.R. at least 7 Days prior to the commencement of the particular work involved, unless the E.R. has expressly agreed to a different time for submission.

66.4 Default in Submitting Copies of Approvals

- (a) Should the Contractor fail to comply with the provisions of sub-clause 66.3 above, the following sanctions may be imposed on it:
 - (i) The Contractor shall not be permitted to commence with the relevant portion of the Work or Works involved; or
 - (ii) The E.R. may exercise its powers under Clause 50.0; and/or
 - (iii) The E.R. shall seek indemnification under sub-clause 66.5 for all penalties and/or liabilities imposed on the Employer due to the Contractor's breach of any Statutory Requirements.
- (b) The sanctions stipulated in sub-clause 66.4(a) above shall be in addition to any other rights or remedies the Employer may have against the Contractor under the law.

66.5 Indemnification of the Employer

The Contractor shall keep the Employer fully indemnified against all penalties and/or liabilities of every kind for the Contractor's breach of any such Statutory Requirements.

66.6 Delay in Granting of Approvals

- (a) The Contractor is fully responsible for the obtaining of all relevant approvals in respect of the Works to be undertaken under the Contract.
- (b) The Employer shall not be liable in any way whatsoever for any delay or default by any Authority to grant the relevant approvals in respect of the Works to be taken under the Contract.
- (c) Consequent to the above, the Contractor acknowledges that, except as provided elsewhere in the Contract, the Contractor shall not be entitled to make any claim in respect of:
 - (i) failure to comply with this Clause 66.0; and/or
 - (ii) default or delay by any authority to grant the necessary licenses, consents or approvals.

(d) The scope of the claim referred to in sub-clause 66.6 (c) above shall include, but be not limited to:

- (i) a Variation; and/or
- (ii) an extension of time; and/or
- (iii) direct loss and/or expense.

66.7 Changes in Statutory Requirements

(a) If a Statutory Requirement relating to the Works is imposed or changed and necessitates:

- (i) a Variation to the Works;
- (ii) a change to the Temporary Works, Contractor's Plant, Contractor's Equipment or method of work as may be specified in the Contract;
- (iii) a change, being the provision or expansion of services of a municipal, public or statutory authority in connection with the Works or Temporary Works; or
- (iv) an increase or decrease in a fee, or charge, or payment of a new fee, or charge or tax,

and has effect after the 14th day prior to the issue of the Letter of Acceptance and could not have been reasonably anticipated by the Contractor at that prior date, then to the extent that such change caused the Contractor to incur more or less cost than otherwise would have been incurred, the provisions of sub-clause 66.7(b) below will apply.

(b) Further to sub-clause 66.7 (a)

- (i) the difference shall be valued under Clause 40.0; and
- (ii) if there is any delay caused to the Contractor, the provisions of Clause 31.0 shall apply.

(c) The pre-conditions to the exercise of sub-clause 66.7 (b) shall be:

- (i) The Contractor's notification to the E.R. in writing of the relevant change or changes in Statutory Requirements; and
- (ii) The E.R.'s issuance of a written instruction in relation thereto within 7 Days of receipt of the Contractor's notification; and
- (iii) satisfaction by the Contractor of the relevant requirements of the applicable clauses i.e. Clause 31.0 and 40.0.

66.8 Inconsistencies with Statutory Requirements

- (a) The Contractor shall so soon as is practicable but not later than 14 Days after the date of issue of:
 - (i) the Letter of Acceptance; or
 - (ii) any E.R.'s instruction.

give a written notice of any inconsistency or inconsistencies between the Contract Documents or subsequent documents or E.R.'s instructions and any Statutory Requirements.
- (b) The Contractor's notice given under sub-clause 66.8(a) shall be issued to the E.R. at least 14 Days before the commencement of the execution of the affected works.

66.9 Contractor's Notice

- (a) All Contractor's notices issued under this Clause inclusive of sub-clauses 66.7(c) and 66.8(a) shall:
 - (i) be in writing; and
 - (ii) be in a form as specified by the E.R.
- (b) For the notice given pursuant to sub-clause 66.7(c) it shall state:
 - (i) the change involved; and
 - (ii) the reason for the change.
- (c) For the notice given in furtherance to sub-clause 66.8(a), it shall stipulate:
 - (i) the inconsistency or inconsistencies discovered;
 - (ii) the contractual effects (if any) of the above.

66.10 E.R.'s Default in Instructing Contractor

- (a) If the E.R. does not issue any instruction to the Contractor within 7 Days from receipt of the Contractor's Notice, the Contractor shall proceed with the Works required to conform to the Statutory Requirements.
- (b) Any changes so necessitated shall be deemed to be a Variation required by the E.R.

67.0 NOTICES

67.1 Service of Notices or Documents under Contract

Unless otherwise specifically provided under these Conditions, any written notice or other document to be given under the Contract shall be given or sent by:

- (a) hand, in which case, the notice or document shall be deemed to have been duly served at the time of delivery,
- (b) ordinary mail or registered post, in which case, the notice or document shall be deemed to have been duly served after three (3) Days of posting,
- (c) facsimile and/or electronic transmission, in which case, it shall be deemed to have been duly transmitted at the time of successful transmission, or
- (d) any other means as mutually agreed to in writing by the Parties.

67.2 Service of Notices or Documents under CIPAA (if applicable)

Unless otherwise expressly agreed by the Parties in the Contract, service of any notices or documents under CIPAA shall only be effected in accordance with any of the modes provided in Sections 38(a), 38(b) and 38(c) of CIPAA.

67.3 Written Communication

All written communication shall be sent to the address stated in the Articles of Agreement unless otherwise notified in writing.

68.0 INTELLECTUAL PROPERTY RIGHTS

68.1 Inclusion in the Contract Sum

Unless otherwise stipulated in the Contract, all royalties or other sums payable in respect of the supply and use in executing the Works of any articles, designs, processes, inventions, drawings, or other copyrights shall be deemed to have been included in the Contract Sum.

68.2 Indemnity to Employer

- (a) The Contractor shall indemnify the Employer against:
 - (i) any claim for the infringement of any letters patent, copyright, or registered designs by the use of any Contractor's Plant, Contractor's Equipment, or of information supplied under the Contract; and
 - (ii) all costs and damages the Employer may incur in any action, or proceeding for which such infringements, or for which the Employer may become liable.
- (b) If the Employer's use, or possession of any Contractor's Plant, Contractor's Equipment, or work is likely to constitute an infringement, then the Contractor shall promptly and its own expense, procure for the Employer the right to continue using and possessing the same, or modify, or replace the same so as to avoid the infringement (in which event, the Contractor shall compensate the Employer for the amount of any direct loss or damage sustained or incurred by the Employer during such modification, or replacement).

68.3 Vesting of Copyright

- (a) The copyright and all other proprietary rights whatsoever in the Works and other material developed and supplied by the Contractor to, or under the Contract shall vest in, and shall be the sole property of the Employer.
- (b) The Contractor shall not:
 - (i) during, or at any time after completion of the Works; or
 - (ii) after the expiry of the Contract, or
 - (iii) after the determination of the Contractor's employment; or
 - (iv) after the termination of the Contract, or

(v) abandonment of the Works,

in any way question, or dispute such ownership of the Employer.

(c) For the avoidance of doubt, the proprietary rights in the Works shall vest in the Employer free and clear of all liens, claims and encumbrances on the Works.

69.0 WAIVER

69.1 Condonation of Breaches

The condonation by the:

- (a) Employer; or
- (b) E.R.

of any breach or breaches by the:

- (a) Contractor; or
- (b) any of its Sub-contractors (whether novated or otherwise),

of any of the provisions of the Contract, shall in no way prejudice, or affect, or be considered as a waiver of the Employer's rights, powers and remedies under the Contract in respect of such and/or any other breach or breaches.

69.2 Failure to Enforce

Any failure by the:

- (a) Employer; or
- (b) E.R.

to enforce at any time, any of the provisions of the Contract shall not be construed as a waiver of its right to enforce the breach of such provision, or any other provision in the Contract, or as a waiver of any continuing, succeeding or subsequent breach of any provision or other provision of the Contract.

APPENDIX I TO THE CONDITIONS OF CONTRACT

*Clause/
Sub-clause*

1.1(aj)	Details of the E.R.	:	..... .....
2.1	Contract Period	:	..... (Days/Weeks/Months)
2.2	Date of Commencement of Contract Period	:	.....
	Date of Ending of Contract Period	:	.....
7.1(a)	Officer(s) empowered to take action on behalf of the Employer in respect of Clauses 35.0, 51.0, 53.0, 54.0 & 58.0	:	..... ..... .....
7.1(b)	Financial Limit of the E.R.	:	RM.....
8.4(c), 8.5(b) & 12.3(c)	Percentage of "On-Cost Charges"	:%
13.2(a)	Form of Performance Security	:	.....
13.3	Value of Performance Security	:	RM.....
13.4	Duration of the Performance Security	:	..... months
14.3(a)	Value of Design Guarantee Bond	:	RM.....

16.1(b)(i) Technical and/or professional qualifications required of the Contractor's Representative (C.R.) :

Clause/
Sub-clause

16.1(b)(ii) Language competency of the Contractor's Representative(C.R.) :

16.6(c)(iii) Amount to be deducted for the period the Contractor's Representative is absent from Site : RM..... per Day

21.7(d) Percentage of "On-Cost" charges :%

23.11(b)(ii) Total Amount Insured for Loss or Damage to Property & Death : RM.....

23.11(c)(i) Total Amount Insured for Third Party Property Damage : RM.....

(ii) Total Amount of Third Party Vehicle Insurance cover : RM.....

29.2(a)(ii) Date of Commencement :

29.3(a)(i) Date of Site Possession :

30.5(b)(i) Amount to be deducted from interim Payment certificates for default in submitting programme :% of amount due to Contractor

32.1 Date for Completion :

33.2 Sectional Completion

Identification of Section or Part	Date of Commencement (sub-clause 29.2(a)(ii))	Date of Possession (sub-clause 29.4)(a)(ii))	Date for Completion (sub-clause 33.2)	Liquidated and Ascertained Damages (sub-clause 35.1(a))

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Clause/
Sub-clause

- 35.1(a)(i) Liquidated Damages
at the rate of : RM.....per.....
- Limit of Liquidated Damages (if none
Is stated there is no cap to the Liquidated
Damages) :% of the Contract Sum
- 36.3(b)(i) Defects Liability Period (if none
stated, then the Period is 24 months) :months
- 36.7(b)(i) Percentage of "On-Cost" Charges :%
- 36.8(c) Period for Contractor to replace
affected part or parts (if none stated,
then the period is 14 Days) :Days
- 36.12 (b) Maintenance Period (if none stated
Then, the Period is 24 months) :months
- 39.7(c) Percentage of "On-Cost" Charges :%
- 41.2(a) Intervals at which Contractor
to submit application for payment :
- 41.3(a)(i) Details on Stage Payment for the
Works, or any part of the Works
(if applicable) :
- 41.3(a)(iii) Percentage of Value of unfixed
& Materials, Goods, Plant or Equipment
- 41.4(f) "on Site" included in the Certificate :%

41.3(a)(iv) Percentage of Value of unfixed
& Materials, Goods, Plant or Equipment
41.4(g) "off-Site" included in the Certificate
(if applicable) :%

*Clause/
Sub-clause*

41.4(c) Minimum value of work to be executed
including unfixed Materials, Goods, Plant,
Equipment delivered to Site (and/or "off-Site"
if permitted) before First Interim
Certificate will be issued : RM.....

41.4(d) Minimum value of work to be executed
including unfixed Materials, Goods, Plant,
Equipment delivered to Site (and/or "off-Site"
if permitted) before subsequent Interim
Certificates will be issued : RM.....

41.7(a) Period of honouring payment Certificate
(if none stated, then within 60 Days
of the issue of the Certificate) :Days

41.9(a) Percentage of Certified Value
Retained (if none stated is 10% of
the value of work executed and
unfixed Materials, Goods, Plant,
Equipment on Site (or "off-Site" if
permitted) included in the Certificate
subject to the limit of the Retention
Amount) :%

Limit of Retention Amount (if none
Stated is 5% of the Contract Sum) :%

41A.0 Advance Payment : Applicable/Not Applicable *

41A.1(b) Percentage of Builder's Work :%

41A.1(c)	Maximum Limit of Advance Payment :	RM.....
41B.0	Unfixed Materials, Goods, Plant, Equipment stored Off-Site :	Applicable/Not Applicable *
<i>Clause/ Sub-clause</i>		
41B.1	Percentage of value of Unfixed Materials, Goods, Plant, Equipment Stored "off-Site" included in the Interim Certificate :%
46.1(a)	Minimum Insurance cover for any one accident or series of accidents arising out of one event :	RM.....
46.1(b)	Amount of excess :	RM.....
46.1(c)	Duration of cover :	.....
46.3	Percentage of "On-Cost" Charges :%
46.4	Minimum period of notice for cancellation :	..... Days
47.3(c)	Duration of cover :	.....
47.4	Minimum period of notice for cancellation :	..... Days
47.4(c)	Duration of Cover :	.....
47.6	Percentage of "On-Cost Charges" :%
47.7	Minimum period of notice for cancellation :	..... Days
48.2	SOCSSO Scheme registration number :	.....

48.3(b) Percentage of "On-Cost" Charges :

*Clause/
Sub-clause*

49.1(a) Percentage to cover Professional fees
for reinstatement (if none stated is a
sum equivalent to 1% of the Contract
Sum) : RM.....

Amount for Removal of Debris (if none
stated is a sum not less than the
equivalent of 1% of the Contract Sum) : RM.....

Total Amount Insured : RM.....

Duration of cover :

49.1(b) Amount of excess : RM.....

49.2 Percentage of "On-Cost" Charges :%

49.4 Minimum period of notice for
cancellation : Days

49A.0 Insurance cover of Works by the Employer: Applicable/Not Applicable *

49A.1 Total Amount Insured: RM.....

Insurance cover deductible
amount (if none stated, shall not be
less than RM50,000.00) : RM.....

Percentage to cover Professional fees
for reinstatement (if none stated is a sum
equivalent to 1% of the Contract Sum): RM.....

Amount for removal of Debris (if none
stated is a sum not less than the

equivalent of 1% of the Contract Sum): RM.....

Duration of cover:.....

Clause/

Sub-clause

50.3(a)(i) Officer empowered to order
Suspension (authorized person):.....

50.8(b) Number of days for E.R. to respond
to Contractor's request (if none
stated, then the period shall be 14 Days):.....Days

51.2(a)(i) Maximum period for the Contractor
to commence work:Days

57.1(b)(i)3. Percentage of costs to be added as
part of the direct loss and/or expense :%

58.1(a) Default Appointing Authority : Director of the Asian International Arbitration
Centre.....

Applicable Arbitration Rules :AIAC Arbitration
Rules.....

(b) Seat of Arbitration : Kuala Lumpur, Malaysia

59.1 Applicable Mediation Rules : AIAC Mediation Rules

66.1(a) Governing/Applicable Laws :

(b) Country of Courts having jurisdiction :

66.7(a) Date of Issue of Letter of Acceptance/
Award :

(* delete as appropriate)

