

Dated _____

CHINA POWER HUB GENERATION COMPANY (PVT.) LIMITED

(as Owner)

and

ZHEN HUA ENGINEERING COMPANY LIMITED

(as Supply Contractor)

JETTY PROCUREMENT AND SUPPLY CONTRACT

for the procurement, manufacture, supply, testing and delivery of imported materials required for
a ship unloading jetty for a coal-fired power station located in Hub, Tehsil Gaddani, District
Lasbella, Balochistan, Pakistan

**MAYER • BROWN
JSM**

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SECTION 1 – CONTRACT AGREEMENT

This **PROCUREMENT AND SUPPLY CONTRACT** (the "**Contract**") is made and entered into at Beijing, the People's Republic of China, on _____ 2016 by and between:

China Power Hub Generation Company (Pvt.) Limited, a company duly organized and existing under the laws of Pakistan, having its registered office located at 11th Floor, Ocean Tower, G-3, Block 9, Main Clifton Road, Karachi, the Islamic Republic of Pakistan (hereinafter called the "**Owner**", which expression shall include its successors and permitted assigns) of the one part;

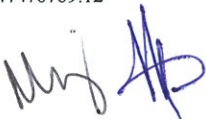
and

Zhen Hua Engineering Company Limited, a limited liability company duly organised and existing under the laws of Hong Kong, the People's Republic of China, with its principal office at 19 Floor, China Harbour Building, 370-374, King's Road, North Point, Hong Kong, the People's Republic of China (hereinafter called the "**Supply Contractor**", which expression shall include its successors and permitted assigns) of the other part,

The Owner and the Supply Contractor are herein individually referred to as "**Party**" and collectively referred to as the "**Parties**".

RECITALS

- (A) The Owner is planning to build, own and operate a 2x660 MW Coal Fired Electric Power Station to be constructed at Hub, Balochistan, Pakistan.
- (B) The Owner desires to build, own and operate a Jetty (as defined in the Conditions of Contract set out in Section 2 ("**Conditions of Contract**") for the Power Station to be located in Hub, Tehsil Gaddani, District Lasbela, Balochistan, Pakistan (the "**Project**").
- (C) The Owner has entered into the Power Purchase Agreement with the power purchaser, and shall enter into other project documents including the Finance Documents to facilitate the Project.
- (D) The Owner expects to finance the construction of the Jetty and the Power Station on a limited-recourse basis through credit facilities with domestic and international financial institutions.
- (E) The Owner desires that the Jetty be designed and engineered, and be constructed using plant and materials supplied by experienced and competent contractors.
- (F) The Supply Contractor is inter alia in the business of supplying plant and materials for state of the art jetties and other marine facilities.



NOW THEREFORE, in consideration of the promises, conditions and the mutual covenants set forth in this Contract, the Owner and the Supply Contractor hereby agree as follows:

1. In this Contract, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract except as set out below:

"Contract Price" means a fixed lump sum contract price of US\$102,067,635 (United States Dollars one hundred and two million, sixty-seven thousand six hundred and thirty-five only) as detailed in Schedule 4 (*Price and Payment*).

2. The Contract comprises the following documents which shall be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- a) Section 1 – the Contract Agreement;
- b) Section 2 –the Conditions of Contract; and
- c) the Schedules.

3. In consideration of the Contract Price to be paid by the Owner to the Supply Contractor, the Supply Contractor hereby covenants with the Owner to execute the Works and remedy any defects therein, in conformity with the terms and conditions of this Contract.

4. The Owner hereby covenants to pay the Supply Contractor, in consideration of the supply of all materials to be imported into Pakistan that are necessary for the Works and the remedying of defects therein, the Contract Price which shall be payable at the times and in the manner prescribed by this Contract.



Executed by the Owner and the Supply Contractor as a contract on the date first set out above.

For and on behalf of:

**CHINA POWER HUB
GENERATION COMPANY
(PVT.) LIMITED** through its
authorised signatory

}



SIGNATURE

[Handwritten signature]
.....
[Handwritten signature]

Name: Zhao Yonggang
Designation: Chief Executive Officer

in the presence of:
signature of WITNESSES

SIGNATURE

1- Name: *Mujtaba h. Raza*
NIC No: *37104 1861 964 1*

Mujtaba
.....

2- Name: *A. Z. SIDDIQUI*
NIC No: *92000-0512211-3*

A. Z. Siddiqui
.....

Mir *[Handwritten signature]*

[Handwritten mark]

For and on behalf of:

SIGNATURE

ZHEN HUA ENGINEERING
COMPANY LIMITED through its
authorised signatory

}

唐巧良

Name: Tang Qiaoliang
Designation: Chairman

in the presence of:
signature of WITNESSES

SIGNATURE

1- Name: Qiao Chunsheng
NIC No: PE0120682

乔春生

2- Name:

NIC No: Ding Wen
PO16386501

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SECTION 2 – CONDITIONS OF CONTRACT

1. GENERAL PROVISIONS

1.1 Definitions

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

"**Advance Payment**" means the advance payment to the Supply Contractor of 10% of the Contract Price.

"**Advance Payment Bond**" means the bond in the form set out in Schedule 6 (*Advance Payment Bond*), issued by either any one of the offshore Lenders, or, a reputable bank or financial institution in the People's Republic of China with an operational branch or corresponding bank in Karachi and reasonably acceptable to the Owner with a credit rating of not less than A (Standard and Poor's) or A1-2 (Moody's).

"**Applicable Licences**" means the Contractor Licences and the Owner Licences.

"**Applicable Law**" means any law, statute, order in council, by-law, rule, regulation, ordinance, order, code, treaty, convention, judgment, decree, injunction, permit, decision, constitution, legislation or other legislative decision of any central, provincial or local government, authority, agency, court, regulatory body or other body having jurisdiction over this Contract, the Works, the Jetty, the Site and the Parties, as in effect from time to time.

"**Appointed Subcontractors**" means a Subcontractor designated in Schedule 13 (*Appointed Subcontractors*) for the relevant part of the Works set out in Schedule 13 (*Appointed Subcontractors*) or such other Subcontractor of equivalent capability as the Owner shall approve in its reasonable discretion.

"**Bonds**" means each and any of the Advance Payment Bond and the Performance Bond.

"**Business Day**" means:

- (a) in relation to any day for payment of an amount denominated in US Dollars, a day (other than Sunday) when banks in New York and Karachi are open for general business; and
- (b) in relation to any other day, a day when banks in the Country are open for business.

"**Certificate of Payment**" means either an Interim Payment Certificate or a Final Payment Certificate.

"**Change in Law**" has the meaning given in Clause 13.7 (*Adjustments for Changes in Legislation*).



"**China**" means the People's Republic of China.

"**Commencement Date**" means the date of fulfilment or waiver of the last of the conditions precedent pursuant to Clause 1.6 (*Contract Effectiveness*).

"**Commissioning Certificate**" means the certificate issued pursuant to Clause 9.3.3 (*Commissioning Certificate*).

"**Commissioning Tests**" means the commissioning tests to be carried out by the Owner's contractors in the Country as part of the Tests on Completion, as more particularly described in Schedule 5 (*Required Performance Levels and Tests on Completion*).

"**Contract**" has the meaning given in Clause 2 of the Contract Agreement.

"**Contract Agreement**" means the contract agreement set out in Section 1.

"**Contract Date**" means the later of the date of execution of the Contract and such time the Owner receives all corporate approvals required to execute the Contract, as confirmed by the Owner in writing to the Supply Contractor.

"**Contract Price**" has the meaning given in Clause 1 of the Contract Agreement.

"**Contractor's Documents**" means the calculations, computer programmes and other software, drawings, manuals, models, plans, specifications, graphs, sketches and other documents of a technical nature supplied by the Supply Contractor under the Contract, as described in Clause 5.2 (*Contractor's Documents*).

"**Contractor Licences**" has the meaning given in Clause 1.13 (*Compliance with Laws*).

"**Contractor's Personnel**" means the Contractor's Representative and all personnel whom the Supply Contractor utilises for the execution of the Works, who may include the staff, labour and other employees of the Supply Contractor and of each Subcontractor, and any other personnel assisting the Supply Contractor in the execution of the Works.

"**Contractor's Representative**" means the person named by the Supply Contractor in the Contract or appointed from time to time by the Supply Contractor pursuant to Clause 4.3 (*Contractor's Representative*), who acts on behalf of the Supply Contractor.

"**Cost**" means reasonable, direct and proper costs, losses and expenditure reasonably, directly and properly incurred by the Supply Contractor subject to the following:

- (a) in respect of the Supply Contractor's internal costs, shall be determined in accordance with the schedule of rates set out in Schedule 4 (*Price and Payment*); and
- (b) save as stated in (a) above, shall not include (i) any sum which is not expenditure incurred towards third parties (ii) any allowances or contingency sums for the Supply Contractor's profit (or loss of profit) on unperformed Works; or (iii) any



liquidated damages, default interest, penalties and extra costs or similar charges which the Supply Contractor is contractually obliged to pay to Subcontractors.

"Country" or "Pakistan" means the Islamic Republic of Pakistan.

"Dangerous Substances" means any natural or artificial substance (whether in the form of solid, liquid or gas, alone or in combination with each other or any other substance) or radiation capable of causing harm to man or any other living organism, or capable of damaging the environment or public health or welfare, including controlled, special, hazardous, toxic or dangerous waste, and whether or not subject to regulation, licensing or permitting under any Applicable Law or otherwise.

"Default Interest Rate" means simple interest calculated at the monthly rate of 0.45% per month.

"Defect" means any error, deficiency, omission, non-conformity or other defect or damage in or to the Works or any part thereof or any spare part (including in any design, engineering, materials or workmanship), and any failure of the Works or any spare part to comply with the Contract and the Supply Contractor's warranty of the Works set forth in Clause 4.1.6, together with any damage arising therefrom.

"Defects Liability Period" means for all or any part of the Works, a period of 24 months from the date of taking over as stated in the relevant Taking Over Certificate or such later period as may be substituted in respect of any part of the Works pursuant to Clause 11.3 (*Extension of Defects Liability Period*).

"Delay Liquidated Damages" has the meaning given in Clause 8.7 (*Liquidated Damages for delay*).

"Delay Event" has the meaning given in Clause 8.4.1 (*Extension of Time for Completion*).

"Direct Agreement" means an agreement in a form reasonably required by the Lenders and agreed between the Lenders and the Supply Contractor.

"Dispute" means any claim, dispute or difference of any kind whatsoever arising between the Parties in connection with or arising out of the Contract including any question regarding its existence, validity or termination or the execution of the Works, whether during the progress of the Works or after their completion and whether before or after the abandonment or breach of the Contract or the termination of the Supply Contractor's engagement hereunder.

"Dispute Resolution Procedure" means the procedure for resolving Disputes, described in Clause 20.2 (*Dispute Resolution Procedure*).

"Early Works" has the meaning given to it in Clause 8.1B.

"Final Completion" has the meaning set forth in Clause 10.4 (*Final Completion*).

"Final Completion Certificate" means a certificate based on the form set out in Schedule 10 (*Progress Certificates*) and issued pursuant to Clause 10.4.2 (*Final Completion*).

"Final Payment Certificate" means the payment certificate issued pursuant to Clause 14.14 (*Issue of Final Payment Certificate*).

"Final Statement" means the statement defined in Clause 14.11 (*Application for Final Payment Certificate*) in the form set out in Schedule 10 (*Progress Certificates*).

"Finance Documents" means any and all loan contracts, notes, deeds, indentures, guarantee agreements (including pledge and security documents), terms of record or disclosure, subordinate contracts, contracts between creditors, deeds of trust, letters of credit, subscription and interest contracts and other documents relating to construction, medium and long-term financing from Lenders, including any change, amendment, extension, renewal recuperation or refinancing thereof.

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

"Governmental Authority" means any federal, provincial, state, municipal, local, territorial, or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, court, tribunal or administrative body, domestic or foreign having jurisdiction over any part of the Jetty, any part of the Works, the Site or the Parties.

"Gross Negligence" means acts or omissions seriously departing from the standard of care which would be expected of a reasonable contractor exercising Prudent Contractor Practice, taking into account the degree of lack of care, the seriousness of the loss or damage reasonably foreseeable as a result of the relevant act or omission, and the degree of likelihood of such loss or damage arising and shall include recklessness.

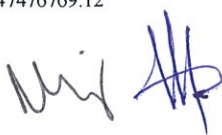
"ICC" means the International Chamber of Commerce.

"Intellectual Property Right" means any copyright, patent, design, database right, trade mark, trade name, right to sue for passing off or unfair competition or any other legally protected registered or unregistered intellectual property right.

"Interface Works" means any works being or to be carried out at or connecting with the Site by the Owner, any Public Sector Entity or any Interface Works Contractors, including those works specified in Schedule 20 (*Interface Works*).


"Interface Works Contractors" means any third party contractors, consultants or service providers engaged by or on behalf of the Owner or a Public Sector Entity.

"Interim Payment Certificate" means a payment certificate issued pursuant to Clause 14 (*Contract Price and Payment*), other than the Final Payment Certificate, and in the form set out in Schedule 9 (*Form of Interim Payment Certificate*).



"**Jetty**" means the unloading jetty, suitable for the docking of any marine vessel within the specification limits, more particularly described in the Owner's Requirements, together with all other permanent works and related facilities located on, under or around the Site, as described in the Owner's Requirements and to be constructed at the Site by the Owner's contractors in the Country using Plant and Materials supplied by the Supply Contractor from outside of the Country, in accordance with the requirements of the Contract.

"**Latent Defect**" means any Defect which becomes apparent after the expiry of the Defects Liability Period which a reasonable examination by the Owner prior to expiry of the Defects Liability Period would not have disclosed.

"**Latent Defects Period**" means, in respect of any part of the Works, the period commencing on the date of expiry of the Defects Liability Period for that part of the Works and continuing until the date which is six years after the ~~Taking Over Date~~ ^{date of Taking Over} 

"**Lender**" means any person, company, bank or other financial institution (and their successors and assignors) at any time providing finance in connection with the Project.

"**Lenders' Representative**" means the person notified by the Owner to the Supply Contractor as being the representative of all the Lenders (and the identity of such person may change from time to time as notified to the Supply Contractor by the Owner).

"**Licence**" means any permit, consent, approval, authorisation, agreement, no objection certificate, waiver or licence which must be obtained from any person (including both private persons and Public Sector Entities) in order for the Works to be performed and for any goods to be transported, imported or exported.

"**Licensing Matrix**" means the matrix of Licences set out in Schedule 12 (*Licensing Matrix*).

"**Lien**" means any mortgage, lien, pledge, claim, charge, lease, easement, security interest or encumbrance of any kind.

"**Limited Notice to Proceed**" means a notice given by the Owner to the Supply Contractor pursuant to Section 8.1A (*Limited Notice to Proceed*) requiring the commencement of the LNTP Works from the date specified therein.

"**LNTP Price**" has the meaning given to it in Clause 8.1A.2 (*Limited Notice to Proceed*).

"**LNTP Works**" means those works set out in Schedule 23 (*LNTP Works*) which are to be carried out by the Supply Contractor upon the issuance of a Limited Notice to Proceed within the timeframe set out in Schedule 23 (*LNTP Works*) and/or such notice.

"**Long Stop Date**" has the meaning given to it in Clause 8.1.2 (*Commencement of Works*).

"**Management Committee**" has the meaning given in Clause 20.2 (*Dispute Resolution Procedure*).

"**Manuals**" means operating and maintenance manuals and training materials as more particularly described in the Owner's Requirements.

"**Materials**" means things of all kinds (other than Plant) to be procured from outside of the Country, shipped to the Port of Import and intended to form or forming part of the Jetty.

"**Milestone**" has the meaning given in Schedule 3 (*Project Milestones and Project Milestone Payments*).

"**Notice to Proceed** or "**NTP**" means a notice issued by the Owner to the Supply Contractor in accordance with Clause 8.1 (*Commencement of Works*) directing the Supply Contractor to commence and complete all Works not previously authorised by the Owner.

"**Operator**" means the party nominated in writing to the Supply Contractor by the Owner from time to time, to be appointed as operator of the completed Jetty following Taking Over.

"**Organisation Chart**" means the organisation chart set out at Schedule 2 (*Organisation Chart*), as amended pursuant to Clause 6.12 (*Key Personnel and Organisation Chart*) from time to time.

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

"**Owner Licences**" means the Licences set out in Schedule 12 (*Licensing Matrix*) to be obtained by the Owner pursuant to Clause 1.13 (*Compliance with Laws*).

"**Owner's Personnel**" means the Owner's Representative, the assistants referred to in Clause 3.2 (*Other Owner's Personnel*) and all other staff, labour and other employees of the Owner and of the Owner's Representative, and any other personnel notified to the Supply Contractor, by the Owner or the Owner's Representative, as Owner's Personnel.

"**Owner's Representative**" means the person named by the Owner in the Contract or appointed from time to time by the Owner pursuant to Clause 3.1. (*The Owner's Representative*), who acts on behalf of the Owner.

"**Owner's Requirements**" means the documents specified as such in Schedule 1 (*Owner Requirements*) and any additions and modifications to such document made in accordance with the Contract. Such document specifies the purpose, scope, and/or design and/or other technical criteria, for the Works.

"**Payment Certificate**" means a payment certificate issued pursuant to Clause 14 (*Contract Price and Payment*).

"**Performance Bond**" means the bond in the form set out in Schedule 7 (*Performance Bond*), issued by either any one of the offshore Lenders, or, a reputable bank or financial institution in the People's Republic of China with an operational branch or corresponding



bank in Karachi and reasonably acceptable to the Owner with a credit rating not less than A (Standard and Poor's) or A1-2 (Moody's).

"Performance Certificate" means a certificate based on the form set out in Schedule 10 (*Progress Certificates*) and issued pursuant to Clause 11.9 (*Performance Certificate*).

"Performance Security" means the Bonds.

"Performance Tests" means the performance tests to be carried out as part of the Tests on Completion to determine whether the Required Performance Levels have been attained, as more particularly described in Schedule 5 (*Required Performance Levels and Tests on Completion*).

"Plant" means the apparatus, machinery and vehicles to be procured from outside of the Country, shipped to the Port of Import and intended to form or forming part of the Jetty.

"Port of Import" means Karachi Port Trust, Port Qasim or Karachi Airport or any airport in the Country or all of them.

"Power Purchase Agreement" means the power purchase agreement with respect to the Project entered into between the Owner and the Power Purchaser, as may be amended from time to time.

"Power Purchaser" means Central Power Purchasing Agency (Guarantee) Limited, a guarantee limited company incorporated under the laws of Pakistan with its principal office at 6th Floor, Shaheed-e-Millat Secretariat, Jinnah Avenue, Blue Area, Islamabad, the Islamic Republic of Pakistan and its legal successors and assignees.

"Power Station" means the coal-fired power station consisting of two units of 660MW each to be located in Hub, Tehsil Gaddani, District Lasbella, Balochistan, Pakistan, and all ancillary facilities other than the Jetty.

"Power Station EPC Contract" means all contracts, other than this Contract, related to the construction of the Power Station (including any contract for Interface Works).

"Practical Completion" means that the Works have been completed to the extent described in Clause 9.1 (*Practical Completion*) and that the Supply Contractor has, in relation to the Works, performed such obligations as are expressly stated in Clause 9.1 (*Practical Completion*) to be pre-conditions to Practical Completion.

"Practical Completion Certificate" means a certificate based on the form set out in Schedule 10 (*Progress Certificates*) and issued pursuant to Clause 9.1.3 (*Practical Completion*).

"Programme" means the execution schedule for the performance of the Works to be prepared and updated from time to time by the Supply Contractor in accordance with Clause 8.3 (*Programme*).

"**Project**" has the meaning given to it in the recitals of the Contract Agreement.

"**Project Documents**" means the:

- (a) Power Purchase Agreement;
- (b) the Power Station EPC Contract; and
- (c) the policies of insurance required to be maintained by the Parties pursuant to the Contract,

(each, a "**Project Document**").

"**Prudent Contractor Practice**" means those reasonable and prudent applicable engineering codes and standards, practices, methods, equipment, specifications and standards of performance and safety (as the same may change from time to time) conforming to Applicable Laws and generally used by professional organisations performing design, procurement and engineering services, as the case may be, in the international design, procurement and engineering industries in relation to projects of the same or substantially similar scale, nature and complexity as the Jetty.

"**Public Sector Entity**" means any national, federal, regional, state, municipal or local government, and any division, ministry, department, agency or other emanation of any of the same, including any court, commission, board, branch or similar authority of such government and any body empowered to grant, withdraw or determine the terms and conditions of any Licence.

"**Punch List**" means a schedule of items which have not been completed but which do not affect the safe and reliable testing and commercial operation of the Works and which are to be completed, corrected, fixed or repaired by the Supply Contractor at its own expense as a condition to obtaining the Final Completion Certificate.

"**Punch List Retention**" has the meaning given to it in Clause 9.7.4 (*Creation of Punch List*).

"**Remedial Work**" means all works (including those that are described in Clause 7.6 (*Remedial Work*)) and all works to redesign, repair, rectify, replace or otherwise make good a Defect or a Latent Defect as well as any damage to the Jetty or Works caused by a Defect or a Latent Defect and all works to rectify Punch List items.

"**Required Performance Levels**" means the performance levels specified as such in Schedule 5 (*Required Performance Levels and Tests on Completion*).

"**Section**" means a part of the Works specified in the Owner's Requirements as a Section (if any).

"**Security Replacement Event**" means in respect of any of the Bonds, a matter analogous to those described in Clause 15.2.1(v) occurring in respect of the issuing entity or

Guarantor (as the case may be) or such entity suffering a drop in its credit rating to less than A1–2 credit rating by Moody's or A credit rating by Standard and Poor's, or the Bond becoming invalid or unenforceable.

"Shipping Documents" has the meaning given in Clause 17.8.4 (*Exported Plant and Materials*).

"Site" means the places where the Jetty is to be constructed as more particularly described in Schedule 18 (*The Site*), and any other places as may be specified in the Contract as forming part of the Site.

"Site Surveys" means all the surveys of the Site, made available to the Supply Contractor by the Owner's contractors in the Country.

"Spare Parts" has the meaning given to it in Clause 7.9 (*Spare Parts*).

"Subcontract" means any contract between the Supply Contractor and a Subcontractor.

"Subcontractor" means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor in accordance with the terms hereof, for a part of the Works and the legal successors in title to each of these persons.

"Supply Contractor" means the persons named as contractor in the Contract Agreement and the legal successors in title to this persons.

"Taking Over" means the time when taking over of the Works occurs in accordance with the provisions of Clause 10.1 (*Taking Over of the Works*).

"Taking Over Certificate" means a certificate issued pursuant to Clause 10 (*Owner's Taking Over*), in the form set out in Schedule 10 (*Progress Certificates*).

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of them).

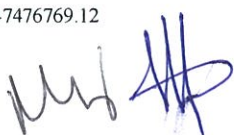
"Tests on Completion" means the tests which are specified in Schedule 5 (*Required Performance Levels and Tests on Completion*) or agreed by both Parties or instructed as a Variation, and which are to be carried out by the Owner's contractors in the Country.

"Time for Completion" means 27 months after the date of issuance of the Limited Notice to Proceed, as such date may be extended subject to the conditions of this Contract.

"US Dollars" or "US\$" means the lawful currency of the United States of America.

"Variation" means any change to the Owner's Requirements or the Works, which is instructed or approved as a variation pursuant to Clause 13 (*Variations and Adjustments*).

"Wilful Misconduct" means any:



(a) reckless act or omission in breach or disregard of the provisions of this Contract;
or

(b) intentional omission or failure to perform any provision of this Contract,

by the Supply Contractor's directors or executive personnel or the Contractor's Personnel in circumstances where those persons know or ought to have known that the Owner will suffer loss or damage.

"Works" means the Plant, Materials and Spare Parts to be delivered and works to be carried out by the Supply Contractor outside of the Country under and in accordance with the requirements of this Contract (as more particularly specified in Schedule 1 (*Owner Requirements*)), including the LNTP Works and the Early Works, together with the supply of all items and carrying out of all works outside of the Country required during the Defects Liability Period and the Latent Defects Period.

1.1. Headings

1.1.1 The headings are made for reference only and are not part of these Conditions of Contract, and shall not be taken into consideration in their interpretation.

1.2 Interpretation

1.2.1 In the Contract, except where the context requires otherwise:

- (i) "day" means a calendar day, "month" means a calendar month, and "year" means 365 days;
- (ii) a time of day is a reference to Pakistan Standard Time (PKT);
- (iii) "document" includes any document in electronic format stored on a medium acceptable to the Owner;
- (iv) words indicating one gender include all genders;
- (v) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (vi) reference to an "Schedule" or "Clause" shall be taken to mean a reference to an Schedule attached to or clause contained in these Conditions;
- (vii) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (viii) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and

- (ix) "include", "included" and "including" shall be construed without limitation.

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

1.3 Communications

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

- (i) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any systems of electronic transmission approved by the Owner; and
- (ii) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract.

However:

- (a) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
- (b) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

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

1.3.3 Notwithstanding the foregoing, any notice received after 5pm shall be deemed to be given at 9am on the following Business Day.

1.4 Law and Language

1.4.1 The Contract and any non-contractual obligations arising out of, or in connection with it, shall be governed by the laws of England and Wales and the ruling language of this Contract shall be English, regardless of any translations that may be made for the convenience of the Parties.

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

1.4.3 The language for communications shall be English.

1.5 Priority of Documents

1.5.1 If either Party discovers any conflict or inconsistency within or between any of the documents forming the Contract referred to in Clause 2 of the Contract



Agreement, even if resolved by the priority listing set out in that Clause, then the Party discovering the said conflict or inconsistency shall give notice to the other Party as soon as possible. If the said conflict or inconsistency is not resolved by the said priority listing, then the Owner shall instruct the Supply Contractor as to the resolution of the same which:

- (i) if the relevant conflict or inconsistency is between the Owner's Requirements and Applicable Laws, shall be instructed as a variation pursuant to Clause 13 (*Variations and Adjustments*); and
- (ii) in all other circumstances, shall be implemented by the Supply Contractor at its own cost.

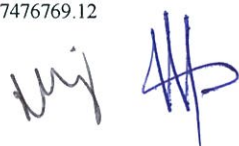
1.6 Contract Effectiveness

1.6.1 The Contract shall be binding on the Parties from the Contract Date and subject to Clause 1.6.2, shall come into full force and effect on the date on which the last of the conditions precedent set out below has been satisfied in full or waived by the Owner (the "**Commencement Date**"):

- (i) the Supply Contractor has provided the Performance Security required pursuant to Clause 4.2 (*Performance Security*);
- (ii) the Supply Contractor has provided to the Owner a legal opinion in relation to the capacity and authorisation of the Supply Contractor to enter into the Contract and confirming that its obligations under this Contract are legal, valid, binding and enforceable, such opinion to be issued by an internationally reputable law firm in form and substance satisfactory to the Lenders; and
- (iii) the Owner has issued a Notice to Proceed.

1.6.2 Notwithstanding Clause 1.6.1, the following provisions shall come into full force and effect from the Contract Date:

- (i) Clause 1 (*General Provisions*);
- (ii) Clause 2 (*The Owner*);
- (iii) Clause 3 (*The Owners Administration*);
- (iv) Clause 8.1.2 (*Commencement of Works*);
- (v) Clause 13 (*Variations*);
- (vi) Clause 15 (*Termination by Owner*);
- (vii) Clause 16 (*Suspension and Termination by Contractor*);



- (viii) Clause 17 (*Risk and Responsibility*);
- (ix) Clause 20 (*Claims, Disputes and Arbitration*); and
- (x) Clause 21 (*Miscellaneous*),

together with all other provisions of the Contract, to the extent applicable to the LNTP Works and Early Works.

1.6.3 The Owner shall notify the Supply Contractor of the date on which or by which it requires the Supply Contractor to comply with any or all of the conditions precedent specified in Clause 1.6.1 and provided the Owner has given the Supply Contractor not less than seven days notice of such requirement, the Supply Contractor shall comply with the terms of any such notice.

1.6.4 The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract shall be borne by the Owner.

1.7 Assignment

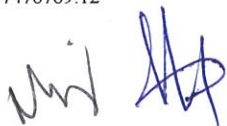
1.7.1 Except as provided in Clauses 1.7.2 and 1.7.3, neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract.

1.7.2 The Owner shall be entitled, without the consent of the Supply Contractor, to assign, pledge, charge or otherwise encumber its rights and transfer any of its obligations arising under the Contract to any Lenders. Any such assignment, pledge, charge or encumbrance shall include the right to make second or subsequent assignments, pledges, charges or encumbrances and freely to enforce the same by way of sale or otherwise. The Supply Contractor hereby gives its consent for the assignment or pledge of rights and the assumption of obligations arising under this Contract in accordance with this Clause 1.7. The Supply Contractor shall provide the Owner with such assistance as the Owner may from time to time reasonably request in relation to the Owner's financing arrangements with actual or potential Lenders and shall reasonably co-operate with the Owner to that end.

1.7.3 The Owner may assign, transfer or novate the Contract in accordance with the provisions set out in the Direct Agreement, provided that such assignment, transfer or novation does not affect the rights of the Supply Contractor under the Contract.

1.8 Care and Supply of Documents

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



- 1.8.2 The Supply Contractor shall keep, at its main place of business, a copy of the Contract, publications named in the Owner's Requirements, the Contractor's Documents, and Variations and other communications given under the Contract. The Owner's Personnel shall have the right of access to all these documents at all reasonable times.

1.9 Confidentiality

- 1.9.1 Each Party shall keep confidential and shall not, without the written consent of the other Party, divulge to any third party the terms and conditions of the Contract, or any documents or other information furnished directly or indirectly by the other Party in connection with the Contract or the Works which is identified in writing at the time of such disclosure as being confidential or proprietary, irrespective of whether such information has been furnished prior to the making of the Contract or at any time thereafter (including following termination of the Contract).
- 1.9.2 Subject to Clause 1.12 (*Confidential Details*), either Party shall be entitled to disclose the terms and conditions of the Contract and any documents and other information acquired by it under or pursuant to the Contract without the prior written consent of the other Party if such disclosure is made in good faith:
- (i) to the extent required by Applicable Laws or relevant Public Sector Entities;
 - (ii) to the extent required by the rules of a relevant and recognised stock exchange;
 - (iii) to any insurer under a policy of insurance issued pursuant to the Contract;
 - (iv) to any of its affiliates;
 - (v) to its directors, employees and officers;
 - (vi) to any Subcontractor to the extent it is for the furtherance of the performance of that Party's obligations under the Contract;
 - (vii) to outside consultants or advisers engaged by or on behalf of the disclosing Party and acting in that capacity in connection with the Project (including insurance, accounting, tax, technical and legal advisers);
 - (viii) to the Lenders or any prospective Lenders and to any affiliate, agent, trustee, outside consultants, adviser or representative of the Lenders or any prospective Lenders;
 - (ix) to the Power Purchaser and the Operator;

- (x) to Interface Works Contractors, to the extent necessary for them to cooperate and co-ordinate Interface Works with the Works; or
- (xi) to those contractors which the Owner or the Operator proposes to retain to operate and maintain the Jetty (and any affiliates of such contractors),

provided that in the case of the persons mentioned in Clauses 1.9.2(iii) to (xi) (excluding Clause 1.9.2(v)) the disclosing Party shall have first obtained the person's agreement in writing to be bound by the same obligations of confidence as are created by the terms of this Clause 1.9. To the extent disclosure is required in Clauses 1.9.2(i) and (ii), the disclosing Party shall prior to such disclosure use reasonable efforts to provide the other Party with advance notice of the information to be disclosed and make every effort to secure confidential treatment and minimisation of the proprietary information to be provided.

1.9.3 The obligations of a Party under this Clause 1.9 shall not apply to information and documents which:

- (i) now or hereafter have entered the public domain through no fault of that Party; or
- (ii) otherwise lawfully become available to that Party from a third party under no obligation of confidentiality.

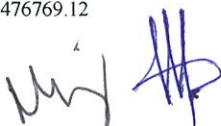
1.9.4 No public announcement concerning the existence, subject matter or any term of the Contract will be made by or on behalf of the Supply Contractor without the prior written approval of the Owner (such approval not to be unreasonably withheld).

1.10 Owner's Use of Contractor's Documents

1.10.1 As between the Parties, the Supply Contractor shall retain the copyright and other Intellectual Property Rights in the Contractor's Documents and other design documents made by (or on behalf of) the Supply Contractor.

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

- (i) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works;
- (ii) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, commissioning, operating, maintaining, altering, adjusting, extending, upgrading, replacing, repairing, demolishing and specifying interfaces with the Works;



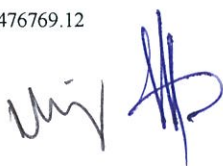

- (iii) in the case of Contractor's Documents which are in the form of computer programmes and other software, permit their use on any computer on the Site and other places as determined by the Owner during the design of the Works, including replacements of any computers supplied by the Supply Contractor; and
 - (iv) assign to the Owner all rights to any software to be used for the operation, maintenance, repair or alteration of the Works.
- 1.10.3 The Supply Contractor shall acquire for itself from all relevant third parties such rights as are necessary in order for the Supply Contractor to be able to comply with its obligations under this Clause 1.10.
- 1.10.4 The Supply Contractor shall execute or procure the execution of such documents and do all such things as may be necessary or reasonably desirable to give effect to the provisions of this Clause 1.10.
- 1.10.5 The Contractor's Documents and other design documents made by (or on behalf of) the Supply Contractor shall not, without the Supply Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Owner for purposes other than those permitted under this Clause 1.10.
- 1.10.6 The Owner shall be entitled to use any Contractor's Documents for contracting in connection with the Interface Works.
- 1.10.7 The Owner shall own the whole content of any databases or their parts generated during performance of the Works under this Contract.

1.11 Supply Contractor's Use of Owner's Documents

- 1.11.1 As between the Parties, the Owner shall retain the copyright and other Intellectual Property Rights in the Owner's Requirements and other documents made by (or on behalf of) the Owner. The Supply Contractor may, at its cost, copy, use, and obtain communication of these documents for the purposes of the Contract.
- 1.11.2 They shall not, without the Owner's consent, be copied, used or communicated to a third party by the Supply Contractor, except as necessary for the purposes of the Contract.

1.12 Confidential Details

In relation to documents or information other than Contractor's Documents (which are subject to the provisions of Clause 1.10 (*Owner's Use of Contractor's Documents*)) that the Owner, the Owner's Representative and/or the Lenders' Representative may reasonably require in order to verify the Supply Contractor's compliance with the Contract and/or to enable the Owner to complete, commission, operate, maintain, alter, adjust, extend,



replace, upgrade, repair, demolish and specify interfaces with the Works, the Supply Contractor shall:

- 1.12.1 in respect of such information or documents which have not been expressly notified to the Owner prior to the date of this Contract as being confidential in nature, disclose and provide such documents or information to the Owner on the same basis as the Supply Contractor Documents are given under Clause 1.10 (*Owner's Use of Contractor's Documents*); and
- 1.12.2 in respect of such information or documents which have been expressly notified to the Owner prior to the date of this Contract as being confidential in nature, disclose such information or documents to the Owner, the Owner's Representative and/or the Lenders' Representative on the Supply Contractor's or the relevant Subcontractor's premises in accordance with Clause 7.3.1 (*Inspection*).

1.13 Compliance with Applicable Laws

- 1.13.1 The Supply Contractor shall, in all matters arising in the performance of the Contract, comply with the provisions of Applicable Laws and Applicable Licences. Unless otherwise stated in this Contract, the Supply Contractor shall give all notices, pay all Taxes and fees and obtain and maintain all Licences, other than the Owner Licences, as required by the Applicable Laws in relation to the design, execution and completion of the Works and the remedying of any defects (including any described in Schedule 12 (*Licensing Matrix*) as being the responsibility of the Supply Contractor) (the "**Contractor Licences**"); and the Supply Contractor shall indemnify and hold the Owner harmless against and from the consequences of any failure on its part to do so. The Supply Contractor shall obtain all Contractor Licences within a reasonable time, taking into account the times for delivery of the Plant and Materials. Notwithstanding the generality of the foregoing and the approval of any subcontractor/vendor under this Agreement by the Owner, the Supply Contractor shall ensure that any imports are imported from such sources which are not banned under the Import and Export (Control) Act 1950, including any applicable import policy orders issued thereunder.
- 1.13.2 The Owner shall obtain and maintain the Owner Licences. Subject to the provisions of Clause 5.2 (*Contractor's Documents*) and the Owner's Requirements, the Supply Contractor shall promptly provide Contractor's Documents required for such Licences to be obtained by the Owner.
- 1.13.3 If any Licence is required and is not specified in Schedule 12 (*Licensing Matrix*), the Supply Contractor shall obtain them on its own name or, if under applicable Law any such Licence is obtainable exclusively in the Owner's name, on the Owner's behalf (and such authorisation is automatically provided under this clause), or if required by any of Public Sector Entity or any responsible body, on the basis of a power of attorney to be provided by the Owner.

1.13.4 Each Party shall bear its own expenses in connection with performing the obligations specified above and shall provide reasonable assistance to the other Party to enable it to comply with its authorisation, permitting, licensing or approval obligations under this Contract.

1.13.5 The Supply Contractor shall be liable:

- (i) to ensure that the Works as a whole shall be duly licensable and shall be liable to ensure that Licences and/or underlying documentation referred to above are correct and appropriate for the intended purpose under the Licensing Matrix in carrying out the Works in accordance with the Owner's Requirements and all other respective regulations of the Contract and the relevant Laws; and
- (ii) for the sufficiency and completeness of the Licences and accompanying documentation and their compliance with the Owner's Requirements, applicable Laws and the provisions of this Contract and shall be liable for the Works carried out based on the Licences obtained by the Owner as if they were obtained by the Supply Contractor.

1.14 [Not Used]

1.15 **Prior Work**

Where either the Owner or the Supply Contractor have effected any design, services or works in furtherance of the Works prior to the Commencement Date or the Contract Date, such activities shall be deemed to have been carried out pursuant to, and shall be subject to the requirements of, this Contract and the warranties and undertakings set out in this Contract shall apply to such activities (without prejudice to the generality of such warranties and undertakings).

2. **THE OWNER**

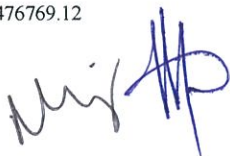
2.1 [Not Used]

2.2 [Not Used]

2.3 [Not Used]

2.4 **Owner's Claims**

2.4.1 If the Owner considers itself to be entitled to any payment under any Clause or otherwise in connection with the Contract, and/or to any extension of the Defects Liability Period, it shall give notice and particulars to the Supply Contractor. However, notice is not required for payments due to the Owner for any services requested by the Supply Contractor.




- 2.4.2 The notice shall be given as soon as practicable after the Owner became aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Liability Period shall be given before the expiry of such period.
- 2.4.3 The particulars shall specify the relevant Clause of the Contract or other basis of the claim, and shall include substantiation of the amount and/or extension of the Defects Liability Period to which the Owner considers himself to be entitled in connection with the Contract. The Owner shall then proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine (i) the amount (if any) which the Owner is entitled to be paid by the Supply Contractor, and/or (ii) the extension (if any) of the Defects Liability Period in accordance with Clause 11.3 (*Extension of Defects Liability Period*). A failure of the Owner to observe the rules under this Clause 2.4 shall not affect or prejudice in any manner the Owner's relevant potential claim and shall have no adverse effect on Owner's right to obtain any remedy or compensation for claims made under the Contract.
- 2.4.4 The Owner may set off against or deduct the amount agreed or determined pursuant to Clause 2.4.3 from any moneys due, or to become due, to the Supply Contractor. The Owner shall only be entitled to set off against or make any deduction from an amount due to the Supply Contractor, or to otherwise claim against the Supply Contractor, in accordance with this Clause or with Clauses 14.7.4(i) and/or 14.7.4(ii) (*Timing of Payments*).

3. THE OWNER'S ADMINISTRATION

3.1 The Owner's Representative

- 3.1.1 The Owner may appoint an Owner's Representative to act on its behalf under the Contract. In this event, it shall give notice to the Supply Contractor of the name, address, duties and authority of the Owner's Representative.
- 3.1.2 The Owner's Representative shall carry out the duties assigned to it, and shall exercise the authority delegated to it, by the Owner. Unless and until the Owner notifies the Supply Contractor otherwise, the Owner's Representative shall be deemed to have the full authority of the Owner under the Contract, except that:
- (i) the Owner's Representative shall be required to obtain the approval of the Owner before exercising a specified authority, as the Owner may notify the Supply Contractor in writing from time to time;
 - (ii) the Owner's Representative shall have no authority to amend the Contract;
 - (iii) the Owner's Representative shall have no authority to waive any duties, obligations or responsibilities of the Supply Contractor under the Contract;



- (iv) irrespective of any other provision to the contrary, the Owner's Representative shall not be authorised to exercise the Owner's rights in respect of Clause 8 (*Commencement, Delays and Suspension*), Clause 13 (*Variations and Adjustments*), Clause 15 (*Termination by Owner*) and Clause 19 (*Force Majeure*).

3.1.3 Save for in the event of an emergency, if the Owner wishes to replace any person appointed as Owner's Representative, the Owner shall give the Supply Contractor not less than 14 days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

3.2 Other Owner's Personnel

3.2.1 The Owner or the Owner's Representative may, unless provided otherwise in the Contract, from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, an employee of an affiliate and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall not take effect until a copy of it has been received by the Supply Contractor.

3.2.2 Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Clause 1.4 (*Law and Language*).

3.3 Delegated Persons

All these persons including the Owner's Representative and assistants to whom duties have been assigned or authority has been delegated pursuant to this Clause 3, shall only be authorised to issue instructions to the Supply Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a delegated person, in accordance with the delegation, shall have the same effect as though the act had been an act of the Owner. However:

3.3.1 it shall not relieve the Supply Contractor from any responsibility it has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances;

3.3.2 any failure to reject any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Owner to reject the Works; and

3.3.3 if the Supply Contractor questions any determination or instruction of a delegated person, the Supply Contractor may refer the matter to the Owner, who shall promptly confirm, reverse or vary the determination or instruction.



3.4 Instructions

- 3.4.1 The Owner may issue to the Supply Contractor instructions which may be necessary for the Supply Contractor to perform its obligations under the Contract. Each instruction shall be given in writing and shall state the obligations to which it relates and the Clause (or other term of the Contract) in which the obligations are specified. If any such instruction constitutes a Variation in the reasonable opinion of the Owner, Clause 13 (*Variations and Adjustments*) shall apply.
- 3.4.2 The Supply Contractor shall take instructions from the Owner, or from the Owner's Representative or an assistant to whom the appropriate authority has been delegated under this Clause.
- 3.4.3 The Supply Contractor shall promptly inform the Owner whether and to what extent such instruction could have a negative effect on performance of its obligations under the Contract (including delay or damage to the Works).

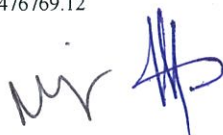
3.5 Determinations

- 3.5.1 Whenever these Conditions provide that the Owner shall proceed in accordance with this Clause 3.5 to agree or determine any matter, the Owner shall consult with the Supply Contractor in an endeavour to reach agreement. If agreement is not achieved within 21 days, the Owner shall, within a further 21 days, make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.
- 3.5.2 The Owner shall give notice to the Supply Contractor of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination, unless such determination is overturned in any dispute resolution. If the Supply Contractor gives notice, to the Owner, of its dissatisfaction with a determination within 14 days of receiving it, either Party may then refer the dispute to the Management Committee in accordance with Clause 20.2 (*Dispute Resolution Procedure*).
- 3.5.3 Performance of the Contract by the Supply Contractor shall continue with due diligence during any dispute or referral to the Management Committee or otherwise unless the Owner shall order the suspension thereof or the Contract is terminated in accordance with its terms.

4. THE CONTRACTOR

4.1 Supply Contractor's General Obligations

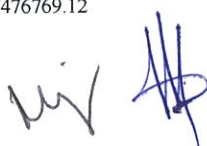
- 4.1.1 The Supply Contractor shall design, execute and complete the Works and remedy any Defects or Latent Defects in the Works in accordance with the Contract. When completed, the Works shall be fit for the purposes for which the Works are intended as defined in the Contract.



- 4.1.2 The Supply Contractor shall provide the Plant and Materials and Contractor's Documents as specified in the Contract, and all Contractor's Personnel, consumables and other materials, things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of Defects.
- 4.1.3 The Works shall include any work which is necessary to satisfy the Owner's Requirements, or is implied by the Contract, and all works and items which (although not mentioned in the Contract) are required to be supplied from outside of the Country so that the Owner and its contractors in the Country can complete an integrated and fully functional Jetty meeting the requirements of the Contract.
- 4.1.4 [Not Used]
- 4.1.5 The Supply Contractor shall, whenever required by the Owner, submit details of the arrangements and methods which the Supply Contractor proposes to adopt for the execution of the Works and supply of the Plant and Materials. No significant alteration to these arrangements and methods shall be made without this having previously been notified and reviewed and approved by the Owner.
- 4.1.6 The Supply Contractor warrants to the Owner that the Works:
- (i) shall upon Taking Over be in compliance with and be operable in compliance with all Applicable Laws and Applicable Licences;
 - (ii) shall comply with all requirements necessary for maintaining guarantees and warranties provided by subcontractors in respect of Plant and Materials; and
 - (iii) will be free of any Defect and will comply with the Supply Contractor's warranty of the Works set out in Clauses 4.1.6(i) and (ii) throughout the respective Defects Liability Period and also free of any Latent Defects throughout the respective Latent Defects Period.

4.2 Performance Security

- 4.2.1 Subject to Clause 4.2.2, the Supply Contractor shall, by the issuance of the Limited Notice to Proceed, deliver to the Owner the duly executed Advance Payment Bond and Performance Bond and as a condition precedent to the entitlement of the Supply Contractor to receive any payment from the Owner (including the Advance Payment/s and any Milestone) and no payment shall be due or payable until this Clause is satisfied.
- 4.2.2 If the Supply Contractor opts not to receive the Advance Payment, the requirement for the submission of the Advance Payment Bond will be waived by the Owner, save that in lieu of the provision of the Advance Payment Bond pursuant to Clause 4.2.1, the Supply Contractor will be required to submit an



undertaking (in a form acceptable to the Owner) of its intention to commence the Works without receiving the Advance Payment, at the time of submission of the Performance Bond.

4.2.3 The Bonds shall be provided as security for any and all of Supply Contractor's obligations and liabilities under the Contract. The circumstances in which the Owner may make a claim up to the full amount available under the Bonds provided pursuant to this Contract include:


- (i) failure by the Supply Contractor to pay the Owner an amount due, as either agreed by the Supply Contractor or determined under Clause 2.4 (*Owner's Claims*) or Clause 20 (*Claims, Disputes and Arbitration*);
- (ii) where the Owner has become entitled to carry out all or any part of the Works or remedy any Defects in addition to or instead of the Supply Contractor;
- (iii) failure by the Supply Contractor to remedy a default after receiving the Owner's notice requiring the default to be remedied;
- (iv) circumstances which entitle the Owner to termination under Clause 15.2 (*Termination by Owner*), irrespective of whether notice of termination has been given; and
- (v) circumstances identified in Clause 4.2.6.

4.2.4 Subject to Clause 4.2.5, the periods of cover to be maintained and maximum amounts available under the Bonds (or any replacement thereof pursuant to Clauses 4.2.5(i), and, in relation to the Performance Bond, Clause 4.2.5(ii)) shall be as follows:

- (i) under the Advance Payment Bond, from the date of issue until the date falling two months after the date of issue of the Taking Over Certificate, initially the equivalent of 5% of the Contract Price, and then, from the earlier of the Commencement Date or 30 June 2017, for an aggregate amount equivalent to 10% of the Contract Price; and
- (ii) under the Performance Bond, from the date of issue until the date falling two months after the later of the end of the Defects Liability Period and the issue of the Performance Certificate (as applicable), initially the equivalent of 10% of the Contract Price and then, from the Commencement Date, 20% of the Contract Price, provided that:
 - (a) after the ^{date of} Taking Over ~~Date~~, the Supply Contractor may reduce the value of the Performance Bond to an amount equivalent to 15% of the Contract Price; and

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- date of ^{7/1} 
- (b) if, at the time that is 24 months after the Taking Over Date, the Defects Liability Period in respect of any part of the Works has not yet expired, the Supply Contractor may reduce the value of the Performance Bond to an amount equivalent to 150% of the value of the works and materials required to rectify any Defects covered by the remaining balance of the Defects Liability Period.

4.2.5 The Bonds shall be provided in the respective forms set out in Schedule 6 (*Advance Payment Bond*) and Schedule 7 (*Performance Bond*), subject to the following:

- (i) the Bonds shall be provided for the periods of cover set out in this Clause 4.2. If any Bond is issued with a fixed expiry date (including where such date is provided for in the relevant form and such expiry date may occur prior to the end of the period of cover provided for in this Clause 4.2), the Supply Contractor shall ensure that the expiry date under the Bond is extended to the end of the relevant period or deliver a replacement Bond to cover such period issued by an entity meeting the requirements of Clause 4.2.1 and previously approved by the Owner, such approval not to be unreasonably withheld or delayed and otherwise on the same terms as the replaced Bond. Such extended or replacement Bond shall be delivered duly executed to the Owner no later than 30 days before the relevant expiry date. Any expiry date under a Bond or an extension or replacement thereof shall be without prejudice to existing claims made under the Bond; and
- (ii) in the event of a Variation under Clause 13 (*Variations and Adjustments*), which results in an increase or decrease in the Contract Price by an amount equal to or greater than 5% (either by itself or when aggregated with all Variations since any previous adjustment to the amount of the Performance Bond), the maximum amounts available under the Performance Bond pursuant to this Clause 4.2 shall be increased or decreased accordingly, and the Supply Contractor shall deliver a replacement Performance Bond to cover such increased or decreased maximum amount issued by an entity meeting the requirements of Clause 4.2.1 and previously approved by the Owner, such approval not to be unreasonably withheld or delayed and otherwise on the same terms as the replaced Performance Bond. Such replacement Performance Bond shall be delivered duly executed to the Owner no later than 30 days following the Variation.

4.2.6 If the Supply Contractor fails to provide an extension to a Bond or replacement Bond pursuant to Clause 4.2.5 35 days before the relevant expiry date, the Owner shall have the right to call the outstanding balance of the Bond after giving the Supply Contractor five days' prior written notice and use and apply the same as security for compliance by the Supply Contractor with its obligations and liabilities under the Contract. The Owner shall be entitled to

make deductions against any amounts so held in respect of any claim for which it would have been entitled to call against an extended or replacement Bond (had the Supply Contractor provided the same pursuant to Clause 4.2.5), but shall otherwise return to the Supply Contractor the remaining balance of such amounts (without any interest) if the Supply Contractor provides the relevant extended or replacement Bond or, if no extended or replacement Bond is provided, following the end of the relevant period of cover prescribed in Clause 4.2.4.

4.2.7 All fees, Taxes and expenses associated with procuring, preparing, completing and stamping (if applicable) each of the Bonds shall be paid by the Supply Contractor.

4.2.8 The Owner shall return each Performance Security to the Supply Contractor promptly upon the earlier of:

- (i) its respective expiration date;
- (ii) its replacement pursuant to Clause 4.2.5; and
- (iii) in the case of the Advance Payment Bond, within 30 days of the Advance Payment being fully repaid to the Owner, or, in the case of the Performance Bond, within 30 days of the issuance of the Performance Certificate.

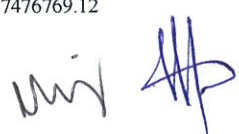
4.2.9 If a Security Replacement Event occurs and the Supply Contractor fails within 20 days of such Security Replacement Event becoming known to provide acceptable replacement security (such replacement security and its issue to be subject to the Owner's prior written approval), then the Owner shall be entitled to terminate the Contract forthwith on written notice to the Supply Contractor in accordance with Clause 15.2 (*Termination by Owner*).

4.3 Contractor's Representative

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

4.3.2 Unless the Contractor's Representative is named in the Contract, the Supply Contractor shall, prior to the issuance of the Limited Notice to Proceed, submit to the Owner for consent the name and particulars of the person the Supply Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Supply Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

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



- 4.3.4 The Contractor's Representative or its deputy shall supervise all work by the Contractor's Personnel and shall receive on behalf of the Supply Contractor all decisions given to the Supply Contractor by the Owner or the Owner's Representative. The Contractor's Representative shall not be employed by the Supply Contractor to do work under contracts with others without the prior approval of the Owner.
- 4.3.5 The Contractor's Representative shall, on behalf of the Supply Contractor, receive instructions under Clause 3.4 (*Instructions*).
- 4.3.6 The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Owner has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.
- 4.3.7 The Contractor's Representative and all these persons shall be fluent in the language for communications defined in Clause 1.4 (*Law and Language*).
- 4.3.8 [Not Used].

4.4 Subcontractors

- 4.4.1 The Supply Contractor shall not subcontract the whole of the Works.
- 4.4.2 The Supply Contractor shall be responsible for the acts, defaults, omissions and/or neglects of any Subcontractor, its agents or employees, as if they were the acts, defaults, omissions and/or neglects of the Supply Contractor.
- 4.4.3 The Supply Contractor shall be entitled to subcontract to any Appointed Subcontractor the relevant part of the Works set out against their name in Schedule 13 (*Appointed Subcontractors*) without obtaining the prior consent of the Owner. For all other Subcontractors:
- (i) the Supply Contractor shall not be required to obtain consent to Subcontractors, with a subcontract or a series of subcontracts with a combined value of less than 2% of the Contract Price provided the Supply Contractor notifies the Owner of the identity of each such Subcontractor prior to their commencing any Work;
 - (ii) the prior written consent of the Owner shall be obtained for all other proposed Subcontractors and the Owner shall have absolute discretion to approve or reject such Subcontractors; and
 - (iii) in respect of those Subcontractors referred to in Clause 4.4.3(ii) the Supply Contractor shall give the Owner not less than 28 days' notice of the intended date of the commencement of each Subcontractor's work.



- 4.4.4 The Supply Contractor shall be entitled to subcontract any part of the Works to any of its affiliates subject to the Owner's prior consent. Any Subcontractor of the Supply Contractor is not entitled to further subcontract the whole or substantially the whole of the relevant part of the Works without prior consent of the Owner.
- 4.4.5 The Supply Contractor shall ensure and be responsible that all the Subcontractors have all Licences needed for carrying out the subcontracted Works. The Owner or Owner's Representative shall in no case be liable for expenses related to obtaining such authorisations, licences, consents, approvals and permits.
- 4.4.6 No entitlement to an adjustment to the Contract Price and/or extension of the Time for Completion shall arise from the Owner's objection to the appointment of a Subcontractor.
- 4.4.7 [Not Used].
- 4.4.8 The Supply Contractor shall procure that any Subcontracts between the Supply Contractor and its Subcontractors must contain provisions to the effect that in the event of termination of this Contract, all Subcontracts shall be assignable to the Owner at the Owner's option (or any transferee and assignee of the Owner).

4.5 Appointed Subcontractors

The Supply Contractor shall only employ an Appointed Subcontractor for each relevant part of the Works set out in Schedule 13 (*Appointed Subcontractors*).

4.6 Co-operation

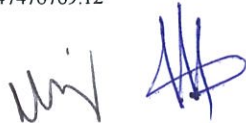
4.6.1 The Supply Contractor shall accommodate:

- (i) the Interface Works; and
- (ii) such further Interface Works by Interface Works Contractors as the Owner may reasonably request.

The Supply Contractor shall not, by complying with this Clause 4.6.1, become entitled to any Variation, adjustment to the Contract Price, extension of the Time for Completion or other relief (other than under Clauses 8.4.1(xiii) and 8.4.4).

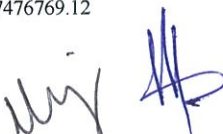
4.6.2 The Supply Contractor shall be responsible for the following tasks in relation to the Interface Works performed by any Interface Works Contractors:

- (i) liaison and co-ordination of the Works with Interface Works, and the sharing of technical documents, as reasonably requested by the Owner;



- (ii) advising the Owner on whether the programme of the Interface Works Contractors will enable the Interface Works to be completed within the times necessary to enable the Supply Contractor to execute the Works under the Contract in accordance with the Contract and the Programme and for the Owner to meet its obligations pursuant to any agreement with an Interface Works Contractor and, if not, make recommendations or suggestions as to how the programmes of the Interface Works Contractors or the Programme may be adjusted to enable each of the Parties to meet their respective obligations;
- (iii) examining the interface between the plans, designs, specifications and drawings prepared for the Interface Works of the Interface Works Contractors and the plans, designs, specifications and drawings prepared for the Works by the Supply Contractor, and advising whether the same are inconsistent at their interface or are otherwise incompatible or likely to interfere with the Works and the Owner's Requirements. In such cases, the Supply Contractor shall supply the Owner with details of any such incompatibility or inconsistency or likely interference and make recommendations as to how the same may be remedied;
- (iv) advising the Owner on whether the progress of the Interface Works Contractors is in accordance with their programmes (to the extent that the Supply Contractor becomes aware of the same), whether any delays have arisen or are likely to arise (to the extent that the Supply Contractor becomes aware of the same) and whether such progress or any such actual or likely delays may impede the Supply Contractor's execution of the Works in accordance with the Programme. In such event, the Supply Contractor shall supply the Owner with full details of any such matters and where appropriate recommendations as to how the same may be remedied; and
- (v) [Not Used]
- (vi) using all reasonable endeavours in conjunction with the Owner and in working with the Interface Works Contractors to resolve any actual or potential difficulties arising out of the progress of the Interface Works of the Interface Works Contractors, the interface between the Interface Works and the Works and any interference between the Interface Works and the Works.

4.6.3 The Supply Contractor shall supply promptly such further information and documents as the Owner may require to simplify any of the foregoing. The Supply Contractor shall be responsible for the accuracy of all documents which it may furnish to the Interface Works Contractors concerning the Works including in particular data as to the requirements of the Works and the interface between the Works and the Interface Works.



4.7 [Not Used]

4.8 [Not Used]

4.9 Quality Assurance

4.9.1 The Supply Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Owner shall be entitled to audit any aspect of the system.

4.9.2 Details of all procedures and compliance documents shall be submitted to the Owner for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Owner, evidence of the prior approval by the Supply Contractor itself shall be apparent on the document itself.

4.9.3 Compliance with the quality assurance system shall not relieve the Supply Contractor of any of its duties, obligations or responsibilities under the Contract.

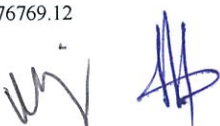
4.10 Site Data

4.10.1 The Owner shall have made available to the Supply Contractor for its information, prior to the issuance of the Limited Notice to Proceed, data in the Owner's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Owner does not warrant that such information or data is correct, complete or exhaustive as concerns its subject matter and the Owner shall not be liable for any inaccuracy or incompleteness in such information or data and the Supply Contractor hereby acknowledges that it may not rely on such information or data and waives any claim against the Owner in respect of such.

4.10.2 The Supply Contractor shall be responsible for verifying and interpreting all such data. The Owner shall have no responsibility for the accuracy or completeness of such data, except as stated in Clause 5.1 (*General Design Responsibilities*).

4.10.3 The Supply Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works. To the same extent, the Supply Contractor shall be deemed to have inspected and examined the Site (including the Site Surveys), its surroundings, the above data and other available information, and to have been satisfied before the date of this Contract as to all relevant matters, including:

- (i) the form and nature of the Site, including natural and man-made sub-surface, subsea and seabed conditions;
- (ii) the hydrological and climatic conditions;



- (iii) the extent and nature of the work and goods necessary for the execution and completion of the Works and any Remedial Works; and
- (iv) the Applicable Laws.
- (v) [Not Used]
- (vi) [Not Used]

4.10.4 The information made available to the Supply Contractor by the Owner referred to in this Clause 4.10 is not necessarily all of the information that may be required by the Supply Contractor for the proper engineering and design of the Works. The Supply Contractor shall carry out, at its own cost, all additional investigations and shall obtain all further information which the Supply Contractor considers to be necessary for the proper engineering and design of the Works. The Supply Contractor is deemed to have allowed for any costs which may arise from all such matters.

4.11 Sufficiency of the Contract Price

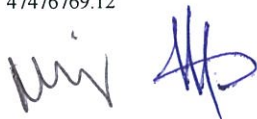
4.11.1 The Supply Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price. Unless otherwise stated in the Contract, the Contract Price shall cover all his obligations under the Contract and all things necessary for the proper design, execution and completion of the Works and the remedying of any Defects or Latent Defects as required by the Contract.

4.11.2 The Supply Contractor shall be responsible for having obtained all information necessary for the Works and shall be deemed to have included in the Contract Price allowances for the matters listed in Clause 4.10.3, all risks, contingencies, local and national conditions, legal requirements, customs, policies, practices and all other conditions and requirements affecting the provision of the Works including availability of labour, wage levels, safety and security requirements and environmental risks. The Supply Contractor shall be responsible for its own interpretation of all documentation and/or information made available to it by the Owner or otherwise obtained by the Supply Contractor and shall be responsible for any misunderstanding or incorrect information however obtained.

4.12 Unforeseeable Difficulties

4.12.1 Except as otherwise stated in the Contract:

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



- (ii) by signing the Contract, the Supply Contractor accepts total responsibility for having foreseen all difficulties and costs of successfully completing the Works; and
- (iii) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs.

4.13 [Not Used]

4.14 [Not Used]

4.15 [Not Used]

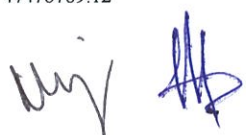
4.15A Port Regulations

The Supply Contractor shall ensure that, at all times, all marine vessels used in connection with the Works comply with all port regulations, by-laws and rules applicable to the Site, together with all other Applicable Laws of the Country governing maritime activities of marine vessels at ports.

4.16 Transport of Plant and Materials

4.16.1 The Supply Contractor shall:

- (i) give the Owner not less than 21 days' notice of the date on which any Plant or Materials will be delivered to the Port of Import and shall promptly notify the Owner of any change in such date;
- (ii) comply with any reasonable requirements of or requests made by any provider of insurance in connection with the Plant and Material, including any request to inspect or survey marine cargo;
- (iii) be responsible for packing, loading and transporting to the Port of Import all Plant and Materials and other things required for the Works;
- (iv) pay all and any Taxes resulting from the transportation of the Plant and Materials and shall indemnify and hold the Owner harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the packing, transport or unloading of the Plant and Materials, and shall negotiate and pay all claims arising from the same.



4.17 [Not Used]

4.18 [Not Used]

4.19 Consumables

The Supply Contractor shall be responsible and bear the costs for the provision of all consumables required to be procured from outside of the Country for use by the Owner's contractors in the Country in the construction of the Jetty at the Site.

4.20 Supply Contractor Not to Depart

The Supply Contractor shall execute the Works and shall ensure that all Works are in accordance with the Contractor's Documents reviewed and approved by the Owner. The Supply Contractor shall not depart from any Supply Contractor's Document previously submitted to the Owner unless it has first submitted an amended Supply Contractor's Document to the Owner and, in the case of Contractor's Documents originally submitted for approval, obtained approval therefor or, in the case of other Contractor's Documents, the Owner have made no adverse comment thereon.

4.20A [Not Used]

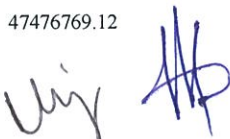
4.21 Progress Reports

4.21.1 The Supply Contractor shall prepare monthly progress reports and submit these to the Owner, in six copies in the form set out in Schedule 11 (*Form of Progress Reports*). The first report shall cover the period up to the end of the first calendar month following the date of issuance of the Limited Notice to Proceed. Reports shall be submitted monthly thereafter, each within seven days after the last day of the period to which it relates.

4.21.2 Reporting shall continue until the Supply Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking Over Certificate for the Works.

4.21.3 Each report shall include:

- (i) charts and detailed descriptions of progress, including each stage of engineering and design, the status of the Contractor's Documents, procurement, manufacture and delivery of the Plant and Materials to the Port of Import;
- (ii) photographs showing the status of manufacture and fabrication of the Plant and Materials;
- (iii) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:



- (a) commencement of manufacture;
- (b) Supply Contractor's inspections;
- (c) tests; and
- (d) shipment and arrival at the Port of Import;
- (iv) [Not Used]
- (v) copies of quality assurance documents, test results and certificates of Plant and Materials;
- (vi) list of Variations, notices given under Clause 2.4 (*Owner's Claims*) and notices given under Clause 20.1 (*Supply Contractor's Claims*);
- (vii) [Not Used]
- (viii) comparisons of actual progress and progress planned under the Programme, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays;
- (ix) if at any time the progress of the Works falls behind the Programme, the reasons for such delay;
- (x) activities planned during the next month period; and
- (xi) such other information as reasonably required by the Owner or the Lenders from time to time.

4.21A Other Reporting Obligations

4.21A.1 [Not Used]

4.21A.2 The Supply Contractor shall, in addition to its obligations set out in Clause 4.21 (*Progress Reports*), prepare and submit to the Owner all other reports in the detail and at the times specified in Schedule 11 (Form of *Progress Reports*).

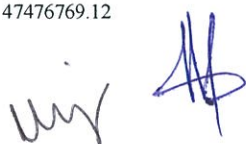
4.22 [Not Used]

4.23 [Not Used]

4.24 [Not Used]

4.25 Dangerous Substances

4.25.1 [Not Used]



4.25.2 [Not Used]

4.25.3 The Supply Contractor warrants that in respect of the Dangerous Substances:

- (a) that it has not used or specified and will not use or specify such Dangerous Substances for use in any part of the Plant, Materials or Works;
- (b) that it has exercised and will continue to exercise reasonable skill, care and diligence to see that they are not used;
- (c) that it is not aware and has no reason to suspect or believe that there have been or will be used; and
- (d) that it will promptly notify the Owner in writing if it becomes aware or has reason to suspect or believe that they have been or will be used.

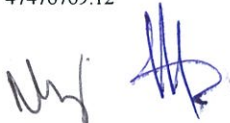
4.26 Bribes

4.26.1 Neither the Supply Contractor nor any of its Affiliates or their respective directors, officers, shareholders, employees or agents shall make or offer, in respect of the performance of the Works, any loan, facilitation payment, gift or any other payment, directly or indirectly, whether in cash or in kind, for the use or benefit of an official of the Governmental Authority for the purposes of influencing any act or decision of such official of the Governmental Authority in its official capacity, or inducing such official of the Governmental Authority to do or omit to do any act in order to obtain or retain business or otherwise to secure any improper advantage, irrespective of where the Works are performed, or give or offer to give to any person any bribe, gift, gratuity or commission as an inducement or reward:

- (a) for doing, or forbearing to do, any action in relation to the Contract or any other contract with the Owner; or
- (b) for showing, or forbearing to show, favor or disfavor to any person in relation to the Contract or to any other contract with the Owner.

4.26.2 If Clause 4.26.1 is contravened, the Owner may, after having given appropriate notice under Clause 15.1 (*Notice to Correct*) to the Supply Contractor, terminate the Supply Contractor's employment under the Contract and the provisions of this Clause 4.26 shall apply as if such termination had been made under Clause 15.2 (*Termination by Owner*). The Supply Contractor shall indemnify, defend and hold the Owner harmless from any and all liabilities, costs, penalties, fines, and reasonable attorney's fees associated with any such violations.

5. DESIGN



5.1 General Design Obligations

- 5.1.1 The Supply Contractor shall be deemed to have scrutinised, prior to the Contract Date, the Owner's Requirements (including design criteria and calculations, if any). The Supply Contractor shall adopt and be responsible for the design of the Works and for the accuracy of such Owner's Requirements (including design criteria and calculations), as if they were its own. The Supply Contractor warrants to the Owner that it has carefully checked any preliminary engineering and design in the Owner's Requirements and that it is suitable, appropriate and adequate for the Works.
- 5.1.2 The Supply Contractor warrants that it, its designers and design Subcontractors have the experience and capability necessary for such design work. The Supply Contractor undertakes that the designers shall be available to attend discussions with the Owner at all reasonable times, until the expiry date of the Latent Defects Period.
- 5.1.3 The Owner shall not be responsible for any error, inaccuracy or omission of any kind in the Owner's Requirements as originally included in the Contract and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by the Supply Contractor, from the Owner or otherwise, shall not relieve the Supply Contractor from its responsibility for the design and execution of the Works.
- 5.1.4 However, the Owner shall be responsible for the correctness of the following portions of the Owner's Requirements and of the following data and information provided by (or on behalf of) the Owner:
- (i) definitions of intended purposes of the Works or any parts thereof; and
 - (ii) criteria for the testing and performance of the completed Works.

5.2 Contractor's Documents

- 5.2.1 The Contractor's Documents shall comprise the technical documents specified in the Owner's Requirements, documents required to satisfy all regulatory approvals, and the documents described in Clause 5.6 (*As-Built Documents*) and Clause 5.7 (*Operation and Maintenance Manuals*). Unless otherwise stated in the Owner's Requirements, the Contractor's Documents shall be written in the language for communications defined in Clause 1.4 (*Law and Language*) inclusive of soft/electronic copies thereof on a medium acceptable to employer.
- 5.2.2 The Supply Contractor shall prepare all Contractor's Documents, and update them (where necessary) until issuance of the Performance Certificate, and shall also prepare any other documents necessary to instruct the Supply Contractor's Personnel.



- 5.2.3 If the Owner's Requirements describe the Contractor's Documents which are to be submitted to the Owner for review, they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Clause 5.2, (i) "review period" means the period required by the Owner for review, and (ii) "Contractor's Documents" exclude any documents which are not specified as being required to be submitted for review.
- 5.2.4 Any Contractor's Documents submitted to the Owner shall be taken to be for the Owner's information. The Owner may (but is not obliged to) review any such document to determine whether or not it is in accordance with the Supply Contractor's obligations under the Contract. Such review is for the purpose of protecting the Owner's rights under the Contract, and shall not be treated as its approval of the Supply Contractor's performance. The Owner shall be entitled to object to any aspect of the Supply Contractor's design, methods, and/or resources as not being in accordance with the Contract. Nothing done by the Owner pursuant to this Clause whether by way of examination of any document submitted by the Supply Contractor or of any Supply Contractor's designs, drawings and calculations of the Works nor any comment, approval or disapproval expressed by the Owner in regard thereto either with or without additional comments or otherwise shall absolve the Supply Contractor from any of its duties, responsibilities or liabilities under the Contract or constitute by virtue of such approval or disapproval a Variation.
- 5.2.5 Unless otherwise stated in the Owner's Requirements, each review period shall not exceed 21 days, and any subsequent review period shall not exceed seven days, calculated from the date on which the Owner receives a Supply Contractor's Document and the Supply Contractor's notice. This notice shall state that the Supply Contractor's Document is considered ready, both for review in accordance with this Clause 5.2 and for use. The notice shall also state that the Supply Contractor's Document complies with the Contract, or the extent to which it does not comply.
- 5.2.6 The Owner may, within the review period specified in Clause 5.2.5, give notice to the Supply Contractor that a Supply Contractor's Document fails (to the extent stated) to comply with the Contract. If a Supply Contractor's Document so fails to comply, the Supply Contractor shall rectify, resubmit and review in accordance with this Clause 5.2, at the Supply Contractor's expense. The Owner may also, within such review period, give notice to the Supply Contractor proposing reasonable amendments following Prudent Contractor Practice that would have a positive effect on throughput capacity, efficiency, availability or maintainability of the Jetty, provided these amendments will not result in an increase of the Contract Price or an extension of the Time for Completion. Unless reasonably objected by the Supply Contractor, the Supply Contractor shall rectify the Supply Contractor's Document to comply with these improvements, resubmitted and reviewed in accordance with this Clause 5.2 at the Supply Contractor's cost.

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

- (i) the Supply Contractor shall not commence execution of such part of the Works prior to the expiry of the review periods for all the Contractor's Documents which are relevant to its design and execution (unless approved earlier by the Owner);
- (ii) the Supply Contractor shall execute such part of the Works in accordance with these Contractor's Documents, as submitted for review; and
- (iii) if the Supply Contractor wishes to modify any design or document which has previously been submitted for review, the Supply Contractor shall immediately give notice to the Owner. Thereafter, the Supply Contractor shall submit revised documents to the Owner in accordance with the above procedure.

5.2.8 Any such agreement (under Clause 5.2.7) or any approval, consent or review (under this Clause 5.2 or otherwise) shall not relieve the Supply Contractor from any obligation or responsibility.

5.2.9 Any notice provided by the Supply Contractor within the review period or any failure by the Owner to review the Contractor's Documents within the allotted review periods shall not prevent the Owner from subsequently providing a notice that such document fails to comply with the Contract.

5.2.10 The Supply Contractor shall not be entitled to claim for an extension of the Time for Completion and/or any increase in the Contract Price should the Owner provide a notice described in Clause 5.2.9.

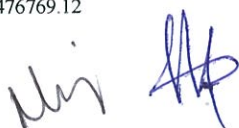
5.3 Supply Contractor's Undertaking

The Supply Contractor undertakes that the design, the Contractor's Documents, the execution and the completed Works (including all Plant and Materials) will be in accordance with:

- 5.3.1 all Applicable Laws;
- 5.3.2 the Licences; and
- 5.3.3 the documents forming the Contract, as altered or modified by Variations.

5.4 Technical Standards and Regulations

5.4.1 The design, the Contractor's Documents, the execution and the completed Works shall comply with the Country's technical standards, building, construction and environmental standards, standards in relation to the operation



of the Jetty, and other standards specified in the Owner's Requirements, applicable to the Works, or defined by the Applicable Laws.

5.4.2 The Country's technical standards shall mean mandatory technical standards and technical norms required to be followed for work performed in the Country. In case any equipment or other part of the Works indicated by the Supply Contractor is not permitted by Applicable Laws in the Country, in order to use them the Supply Contractor is required at its cost and risk to secure recognition for the use of the relevant equipment or other part of the Works in a procedure set by the Applicable Laws.

5.4.3 All these applicable standards shall, in respect of the Works and each Section, be those prevailing at the time the basic design of the Project is approved by the Owner. References in the Contract to published standards shall be understood to be references to the edition applicable at such time, unless stated otherwise.

5.5 Training

5.5.1 The Supply Contractor shall carry out the training of Owner's Personnel in the operation and maintenance of the Works for the purpose of enabling all relevant Owner's Personnel to fully, safely, continuously and efficiently operate, maintain, adjust and repair the Jetty and its parts without interfering with its commercial operation and to the extent specified in the Owner's Requirements. If the Contract specifies training which is to be carried out before Taking Over, the Works shall not be considered to be completed for the purposes of Taking Over under Clause 10.1 (*Taking Over of the Works*) until this training has been provided.

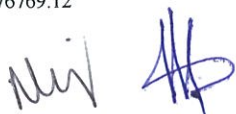
5.5.2 The cost of such training is included in the Contract Price.

5.6 As-Built Documents

5.6.1 The Supply Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be used exclusively for the purposes of this Clause 5.6. The Supply Contractor shall supply two copies to the Owner prior to the commencement of the Tests on Completion.

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

5.6.3 Prior to the issue of any Taking Over Certificate, the Supply Contractor shall supply to the Owner the specified numbers and types of copies of the relevant preliminary or marked-up as-built drawings, in accordance with the Owner's



Requirements, sufficient for the Owner to properly operate and maintain the Jetty. The Works shall not be considered to be completed for the purposes of Taking Over under Clause 10.1 (*Taking Over of the Works*) until the Owner has received these documents. Final as-built documents shall be provided in six paper copies and two electronic copies within two months after the Owner has issued the Taking Over Certificate.

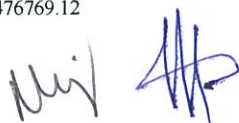
- 5.6.4 Provision of the final as-built documents shall be considered an outstanding work within the meaning of Clause 11.1.1 (*Completion of Outstanding Work and Remedying Defects*).

5.7 Operation and Maintenance Manuals

- 5.7.1 Prior to commencement of the Tests on Completion by the Owner's contractors in the Country, the Supply Contractor shall supply to the Owner provisional operation and maintenance manuals in sufficient detail for the Owner to operate, maintain, dismantle, reassemble, adjust and repair the Jetty and to submit any relevant documents necessary for reporting to the Lenders' Representative. The manuals shall be in English.
- 5.7.2 The Works shall not be considered to be completed for the purposes of Taking Over under Clause 10.1 (*Taking Over of the Works*) until the Owner has received final operation and maintenance manuals in such detail, and any other manuals specified in the Owner's Requirements for these purposes.

5.8 Design Error

- 5.8.1 If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents or the Owner's Requirements (including any conflict between the requirements of Applicable Laws and such documents), they and the Works shall be corrected at the Supply Contractor's cost, notwithstanding any consent or approval under this Clause 5.8 (whether or not it has been reviewed by the Owner).
- 5.8.2 The Supply Contractor shall engineer and design and thereafter construct and complete the Works so that the operational performance parameters of the Jetty meet the minimum functional specifications set out in the Owner's Requirements.
- 5.8.3 The Supply Contractor shall carry out and complete the detailed design and manufacturing of the Works in accordance with Prudent Contractor Practice and the Owner's Requirements.
- 5.8.4 Subject to Clause 5.1.4 (*General Design Obligations*), the Supply Contractor shall not in any way be relieved from any of its obligations under the Contract should any information provided by the Owner be incorrect or insufficient or both and shall make its own reasonable enquiries as to the accuracy and sufficiency of such information.



6. STAFF AND LABOUR

6.1 Engagement of Staff and Labour

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

6.2 Rates of Wages and Conditions of Labour

The Supply Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Supply Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Supply Contractor.

6.3 Persons in the Service of Others

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

6.4 Labour Laws

6.4.1 The Supply Contractor shall comply with all the Applicable Laws relating to the Contractor's Personnel, including Applicable Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

6.4.2 The Supply Contractor shall require its employees to obey all Applicable Laws, including those concerning safety at work.

6.5 [Not Used]

6.6 [Not Used]

6.7 Health and Safety

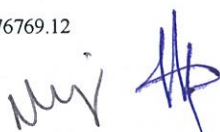
6.7.1 The Supply Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel.

6.7.2 [Not Used]

6.7.3 [Not Used]

6.7.4 [Not Used]

6.7.5 The Supply Contractor shall send to the Owner details of any accident at any place where the Works are performed as soon as practicable after its occurrence.



The Supply Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Owner may reasonably require.

6.8 [Not Used]

6.9 Contractor's Personnel

6.9.1 The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Owner may require the Supply Contractor to remove (or cause to be removed) immediately any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

- (i) persists in any misconduct or lack of care;
- (ii) carries out duties incompetently or negligently;
- (iii) fails to conform with any provisions of the Contract; or
- (iv) engages in any conduct which is prejudicial to safety, health, or the protection of the environment.

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

6.10 [Not Used]

6.11 [Not Used]

6.12 Key Personnel and Organisation Chart

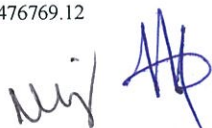
The Supply Contractor shall provide the key personnel identified in and to perform the roles specified in the Organisation Chart set out at Schedule 2 (*Organisation Chart*) to perform the roles specified in such chart. The Supply Contractor shall promptly inform the Owner in writing of any revision or alteration of such organisation chart. The Supply Contractor shall ensure that key personnel give sufficient working time to the supervision of the Works and shall not be removed from their posts without the Owner's prior consent (not to be unreasonably withheld or delayed).

6.13 [Not Used]

7. PLANT, MATERIALS AND WORKMANSHIP

7.1 Manner of Execution

7.1.1 The Supply Contractor shall carry out the manufacture, procurement and transport of all Plant, Materials and other things required for the completion of the Works:



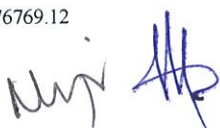
- (i) in the manner (if any) specified in the Contract;
- (ii) in a proper workmanlike and careful manner in accordance with Prudent Contractor Practice, Applicable Laws and Applicable Licences; and
- (iii) with properly equipped facilities and new, good quality and non-hazardous Plant and Materials (except as otherwise specified in the Owner's Requirements) and Plant and Materials which otherwise comply with the requirements of the Owner's Requirements.

7.2 Samples

The Supply Contractor shall submit samples to the Owner, for review in accordance with the procedures for Contractor's Documents described in Clause 5.2 (*Contractor's Documents*), as specified in the Contract and at the Supply Contractor's cost. Each sample shall be labelled as to origin and intended use in the Works.

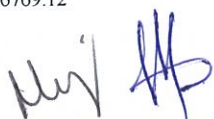
7.3 Inspection

- 7.3.1 The Owner's Personnel and any person authorised in writing by any of them for this purpose, the Lenders' Representative, the representatives of any Governmental Authority and the Power Purchaser's representatives (together, the "**Authorised Persons**") shall at all reasonable times:
- (i) have full access to all places outside of the Country from which natural Materials are being obtained; and
 - (ii) during production and manufacture of any Plant and Materials, be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.
- 7.3.2 The Supply Contractor shall give the Authorised Persons full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Supply Contractor from any obligation or responsibility.
- 7.3.3 In respect of the work which the Authorised Persons are entitled to examine, inspect, measure and/or test, the Supply Contractor shall give notice to the Owner whenever any such work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Owner and all such other Authorised Persons shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Supply Contractor that the Owner or any of the other Authorised Persons do not require to do so. If the Supply Contractor fails to give such notice, it shall, if and when required by the Owner, uncover the work and thereafter reinstate and make good, all at the Supply Contractor's cost.




7.4 Testing Prior to Delivery

- 7.4.1 This Clause shall apply to all tests specified in the Contract to be performed prior to the delivery to the Owner of any items of Plant and Materials. The specific testing requirements for Tests on Completion to be carried out by the Owner's contractors in the Country to verify Required Performance Levels in relation to the Works are contained in Clause 9 (*Tests on Completion*).
- 7.4.2 [Not Used]
- 7.4.3 The Supply Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Supply Contractor shall agree, with the Owner, the time and place for the specified testing of any Plant, Materials and other parts of the Works.
- 7.4.4 The Owner may, under Clause 13 (*Variations and Adjustments*), vary the location or details of specified tests, or instruct the Supply Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out such tests shall be borne by the Supply Contractor, notwithstanding other provisions of the Contract.
- 7.4.5 The Authorised Persons shall be entitled to accompany the Owner at these tests or inspections or be represented by their own duly authorised and designated inspector. The Owner shall give the Supply Contractor not less than 24 hours' notice of the Owner's and any other Authorised Persons' intention to attend the tests. If the Owner or any other Authorised Persons do not attend at the time and place agreed, the Supply Contractor may proceed with the tests, unless otherwise instructed by the Owner.
- 7.4.6 If the Supply Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Owner is responsible, the Supply Contractor shall give notice to the Owner and shall be entitled subject to Clause 20.1 (*Supply Contractor's Claims*) to:
- (i) an extension of time for any such delay, if completion is or will be delayed, under Clause 8.4 (*Extension of Time for Completion*), and
 - (ii) payment of any such Cost shall be added to the Contract Price.
- 7.4.7 After receiving this notice, the Owner shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine these matters.
- 7.4.8 The Supply Contractor shall promptly forward to the Owner duly certified reports of the tests. When the specified tests have been passed, the Owner shall



endorse the Supply Contractor's test certificate, or issue a certificate to him, to that effect.

7.5 Rejection

- 7.5.1 If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Owner may reject the Works or any part thereof or require retesting or further investigation by giving notice to the Supply Contractor, with reasons. In case of such rejection, the Supply Contractor shall promptly make good the defect and ensure that the rejected item complies with the Contract.
- 7.5.2 If the Owner requires any Plant, Materials, design or workmanship rejected under Clause 7.5.1 to be retested, such tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Owner to incur additional costs, the Supply Contractor shall subject to Clause 2.4 (*Owner's Claims*) pay these costs to the Owner.
- 7.5.3 The costs incurred by the Supply Contractor in repairing or replacing rejected Works and re-submitting the same for further testing and inspection shall be borne by the Supply Contractor.
- 7.5.4 No such inspection, examination, testing or re-testing shall in any way relieve the Supply Contractor of its obligations under the Contract.
- 7.5.5 If the same (or substantially similar) Defect occurs in respect of an item of Plant, Materials or workmanship on more than two occasions, the Supply Contractor shall be obliged (upon notification to the Owner) to exchange such item with a brand new, fit for purpose replacement. If such repeated Defect has occurred within any major system or sub-system of Plant, then the Supply Contractor must replace all such similar defective items of Plant, Materials or workmanship across identical (or substantially similar) systems or sub-systems.

7.6 Remedial Work

- 7.6.1 Notwithstanding any previous test or certification, the Owner may instruct the Supply Contractor to:
- (i) replace any Plant or Materials which are not in accordance with the Contract;
 - (ii) remove and re-execute any other work which is not in accordance with the Contract; and
 - (iii) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

- 7.6.2 Without prejudice to the Supply Contractor's obligations pursuant to Clauses 8.2 (*Time for Completion*), 8.7 (*Liquidated Damages for delay*), 9.6 (*Failure to Pass Tests on Completion*) and 11 (*Defects Liability*), if the Supply Contractor fails to comply with any such instruction the Owner shall be entitled to employ and pay other persons to carry out the work at the risk of the Supply Contractor. Except to the extent that the Supply Contractor would have been entitled to payment for the work, the Supply Contractor shall be subject to Clause 2.4 (*Owner's Claims*) pay to the Owner all costs arising from this failure.

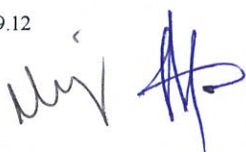
7.7 Ownership of Plant and Materials

- 7.7.1 Each item of Plant and Materials shall, to the extent consistent with Applicable Law, become the property of the Owner at whichever is the earlier of the following times, free from Liens:
- (i) when such items enter the high seas or international airspace, as applicable, on shipment to the Country; and
 - (ii) when the Supply Contractor is entitled to payment of the value of the Plant and Materials under Clauses 8.10 (*Consequences of Suspension*) or 8.11 (*Payment for Plant and Materials in Event of Suspension*).
- 7.7.2 Once the Plant and Materials have become the property of the Owner in accordance with this Clause, the Supply Contractor shall not remove any of such Plant or Materials without the written consent of the Owner, and the same shall continue to be the property of the Owner notwithstanding its removal without such written consent.
- 7.7.3 When any Plant or Materials belonging to the Owner are on the Supply Contractor's or its Subcontractor's premises or on the premises of third parties, the Supply Contractor shall ensure that it is set aside and clearly marked as the Owner's property.
- 7.7.4 Regardless of any ownership transfer from the Supply Contractor to the Owner under this Clause 7.7 the Supply Contractor shall continue to be at risk for and to be otherwise responsible for the Works until the date of taking over specified in the Taking Over Certificate.

7.8 [Not Used]

7.9 Spare Parts

- 7.9.1 The Supply Contractor shall deliver to the Owner in accordance with the Programme and as a pre-condition to Taking Over (i) a list of spare parts and special tools applicable to the Works, including the price of all such items, as agreed by the Owner ("**Spare Parts**"); and (ii) a vendor list identifying the name and contact details of the supplier of each item of Plant forming part of the Jetty.



- 7.9.2 The Supply Contractor shall make available for purchase by the Owner, at any time until two years after Taking Over, the Spare Parts and special tools identified in such list of Spare Parts, at the prices and for the period therein stated.
- 7.9.3 [Not Used]
- 7.9.4 At any time until five years after Taking Over, if a Subcontractor ceases, or notifies the Supply Contractor that it will cease, to manufacture any of the spare parts or special tools referred to in this Clause 7.9, or the Supply Contractor otherwise becomes aware of the same, then:
- (i) the Supply Contractor shall promptly notify the Owner of the same, in order that the Owner can consider whether it wishes to purchase such spare parts or special tools at that time;
 - (ii) if such Subcontractor continues to trade or remain solvent, the Supply Contractor shall provide reasonable assistance to the Owner in efforts to cause such Subcontractor to procure alternative spare parts or special tools of equal or better quality; and
 - (iii) if such Subcontractor does not continue to trade or has become insolvent, the Supply Contractor shall:
 - (a) if so instructed by the Owner, provide reasonable assistance to the Owner in efforts to obtain manufacturing drawings for the necessary spare parts or special tools (as applicable); and
 - (b) provide reasonable assistance to the Owner in securing the services of an alternative manufacturer or supplier of the necessary spare parts or special tools or better quality or that will manufacture such spare parts or special tools on the basis of drawings obtained from the Subcontractor.

8. COMMENCEMENT, DELAYS AND SUSPENSION

8.1 Commencement of Works

- 8.1.1 The Owner will issue to the Supply Contractor a Notice to Proceed, following which the Supply Contractor shall commence the design and execution of the Works and shall proceed with the Works with due expedition and without delay.
- 8.1.2 If a Notice to Proceed is not issued on or before 1 April 2017, the Owner may issue a notice to the Supply Contractor extending the term of the Limited Notice to Proceed for a further three months (the "**LNTP Extension**"), and the Supply Contractor shall, upon receipt of such notice, diligently continue to perform the Works for the duration of such LNTP Extension (which shall be deemed to form part of the LNTP Works) (the "**LNTP Extension Works**").


- 8.1.3 The Supply Contractor shall claim payment for the LNTP Extension Works, and the Owner shall pay the Supply Contractor for the LNTP Extension Works in accordance with the procedure set out in Clauses 14.3 (*Application for Interim Payment Certificates*) to 14.7 (*Timing of Payments*), inclusive, provided that, notwithstanding Clause 14.7 (*Timing of Payments*), payment of any amount to the Supply Contractor for Milestones completed as part of the LNTP Extension Works shall be due by the later of 30 days after the end of the LNTP Extension or 30 days of the Owner's receipt of an Interim Payment Certificate for the last Milestone performed as part of the LNTP Extension Works.
- 8.1.4 If a Notice to Proceed is not issued by the end of the LNTP Extension, the Owner may continue to extend the term of the Limited Notice to Proceed by periods of three months each, until such time a Notice to Proceed is issued, on the terms set out above.

8.1A Limited Notice to Proceed

- 8.1A.1 The Owner shall, as soon as practicable after the Contract Date, issue the Limited Notice to Proceed. The Owner shall not issue the Limited Notice to Proceed until:
- (a) the Owner has, after receiving from the Supply Contractor the Performance Bond, provided the Supply Contractor with a corporate guarantee issued by China Power International Holding Limited guaranteeing the Owner's payment obligations in respect of the LNTP Price;
 - (b) [Not Used]
 - (c) the Owner has taken out all Owner Permits applicable to the LNTP Works; and
 - (d) the Owner has provided to the Supply Contractor with evidence that it has taken out all insurances that are identified in Schedule 17 (*Insurances*) as its responsibility and required to be taken out from the commencement of the LNTP Works.

The Supply Contractor shall commence, diligently pursue and complete the LNTP Works in accordance with the Contract.

- 8.1A.2 In full consideration for the performance by the Supply Contractor of the LNTP Works, the Owner shall pay the Supply Contractor the amount calculated in accordance with Schedule 3 (*Project Milestones and Project Milestone Payments*) (the "LNTP Price").
- 8.1A.3 The Supply Contractor shall claim payment, and the Owner shall pay the Supply Contractor the LNTP Price in accordance with the procedure set out in Clauses 14.3 (*Application for Interim Payment Certificates*) to 14.7 (*Timing of*



Payments), provided that (a) the provision of a Performance Bond by the Supply Contractor in accordance with Clause 4.2 (*Performance Security*) shall be a condition precedent to the Supply Contractor's entitlement to any payment other than the Advance Payment; and (b) notwithstanding Clause 14.7 (*Timing of Payments*), payment of any amount to the Supply Contractor for Milestones completed as part of the LNTP Works shall be due by the later of 30 April 2017 and 30 days of the Owner's receipt of an Interim Payment Certificate for the last Milestone forming part of the LNTP Works.

- 8.1A.4 The Owner shall direct the Supply Contractor to place orders for the manufacture and delivery of the coal handling equipment under the relevant Subcontracts no later than 15 February 2017, failing which the Supply Contractor shall be entitled to, subject to Clause 20.1 (*Supply Contractor's Claims*), an extension of time under Clause 8.4 (*Extension of Time for Completion*) if the delivery of the coal handling equipment is or will be delayed by the Owner's delay or failure to issue such direction.
- 8.1A.5 If, following the completion of the LNTP Works, the Owner elects not to issue a Notice to Proceed and instead terminate the Contract, the Supply Contractor shall be entitled to payment of the amounts specified for such termination in Schedule 23 (*LNTP Works*).
- 8.1A.6 The Supply Contractor shall bear complete risk of loss, destruction, and damage (including deterioration in quality) to the LNTP Works arising from any cause (other than any events set out in Clause 17.3.1 (*Owner's Risks*)), until the first to occur of:
- (i) the date on which risk of loss passes to the Owner with respect to such Works as described in Clause 17.2 (*Supply Contractor's Care of the Works*); or
 - (ii) the date of termination of the Contract.
- 8.1A.7 Upon the occurrence of the Commencement Date:
- (i) all LNTP Works completed prior to the Commencement Date shall be subject to all of the representations, warranties and other requirements of the Contract;
 - (ii) the Supply Contractor shall diligently continue to perform all unperformed parts of the LNTP Works in accordance with the Contract and all payments under the Contract in respect thereof shall be made in accordance with Clause 14 (*Contract Price and Payment*) without regard to the provisions of the Limited Notice to Proceed or Schedule 23 (*LNTP Works*); and
 - (iii) except for any Advance Payment, any amounts already paid to the Supply Contractor in relation to the LNTP Works shall be a prepayment



of the Contract Price and the Supply Contractor shall not be entitled to any further payment unless and until the amounts due for Milestones already completed exceeds the LNTP Price already paid to the Supply Contractor.

8.1B Early Works

Upon the occurrence of the Contract Date:

- (i) all works in relation to the Project completed prior to the Contract Date under the Memorandum of Understanding entered into between the Owner and China Harbour Engineering Company Limited on 27 May 2016 shall be deemed to form part of the Works and shall be subject to all of the representations, warranties and other requirements of the Contract (the "**Early Works**");
- (ii) the Supply Contractor shall be entitled to payment for any Milestones completed as part of the Early Works, which shall be included as part of the LNTP Price and payable in accordance with Clause 8.1A.3 (*Limited Notice to Proceed*); and
- (iii) the Supply Contractor shall continue to diligently perform all unperformed parts of the Early Works in accordance with the Contract.

If a Limited Notice to Proceed is not issued by 31 August 2016, the Supply Contractor shall be entitled to payment for any Milestones completed as part of the Early Works in accordance with the procedure set out in Clauses 14.3 (*Application for Interim Payment Certificates*) to 14.7 (*Timing of Payments*).

8.2 Time for Completion

The Supply Contractor shall complete the whole of the Works and deliver the Plant and Materials in accordance with the Programme so as to enable the Jetty to be completed within the Time for Completion, including:

- 8.2.1 ensuring the passing of the Tests on Completion by the Owner's contractors in the Country, and
- 8.2.2 completing all work which is stated in the Contract as being required for the Jetty to be considered to be completed for the purposes of taking over under Clause 10.1 (*Taking Over of the Works and Sections*).

8.3 Programme

- 8.3.1 The initial programme for the execution of the Works is attached to the Contract in Schedule 21 (*Programme*). The Supply Contractor shall submit a more detailed time programme to the Owner within 28 days after the date of issuance of the Limited Notice to Proceed. The Supply Contractor shall also promptly



submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Supply Contractor's obligations. Unless otherwise stated in the Contract, each programme shall include:

- (i) the order in which the Supply Contractor intends to carry out the Works, including the anticipated timing of each stage of engineering, design, Contractor's Documents, procurement, manufacture, inspection and delivery of the Works;
- (ii) the periods for reviews under Clause 5.2 (*Contractor's Documents*) and for any other submissions, approvals and consents specified in the Owner's Requirements;
- (iii) the sequence and timing of inspections and tests specified in the Contract; and
- (iv) a supporting report which includes:
 - (a) a general description of the methods which the Supply Contractor intends to adopt for the execution of each major stage of the Works; and
 - (b) the approximate number of each class of Contractor's Personnel for each major stage.

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

8.3.3 The Supply Contractor shall promptly give notice to the Owner of specific probable future events or circumstances which may adversely affect or delay the execution of the Works. In this event, or if the Owner gives notice to the Supply Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Supply Contractor's stated intentions, the Supply Contractor shall submit a revised programme to the Owner in accordance with this Clause 8.3.

8.3.4 The programme described in this Clause 8.3 is intended for use as a management and reporting tool. Nothing stated in the Programme, and no consent, comment or approval given by the Owner in respect of the programme, shall relieve the Supply Contractor of its obligations or liabilities under this Contract.



8.4 Extension of Time for Completion

8.4.1 The Supply Contractor shall be entitled subject to Clause 8.4.2 and Clause 20.1 (*Supply Contractor's Claims*) to an extension of the Time for Completion if and to the extent that completion for the purposes of Clause 10.1 (*Taking Over of the Works and Sections*) is or will be delayed by any of the following causes (each, a "**Delay Event**"):

- (i) a Variation (unless an adjustment to the Time for Completion has been agreed under Clause 13.3 (*Variation Procedure*));
- (ii) [Not Used]
- (iii) [Not Used]
- (iv) delays attributable to Owner instructions described in Clause 7.4.6 (*Testing*);
- (v) if the Owner has issued a Limited Notice to Proceed, delays by the Owner in the issuance of a Notice to Proceed in accordance with Clause 8.1.2 (*Commencement of Works*);
- (vi) if the Owner has issued a Limited Notice to Proceed, delays by the Owner in the issuance of a direction for the ordering of coal handling equipment Clause 8.1A.4 (*Limited Notice to Proceed*);
- (vii) delays due to Owner suspension under Clause 8.10 (*Consequences of Suspension*);
- (viii) [Not used]
- (ix) delays attributable to a Change in Law pursuant to Clause 13.7 (*Adjustments for Changes in Legislation*);
- (x) delays due to the Supply Contractor's entitlement to suspension pursuant to Clause 16.1 (*Supply Contractor's Entitlement to Suspend Work*);
- (xi) delays attributable to rectification of damage attributable to Owner's Risks pursuant to Clause 17.4 (*Consequences of Owner's Risks*);
- (xii) delays attributable to an event of Force Majeure pursuant to Clause 19.2 (*Effect of Force Majeure*); or
- (xiii) any delay, impediment or act of prevention caused by or attributable to the Owner, the Owner's Personnel, or the Owner's other contractors to the extent such delay could not have been avoided or mitigated pursuant to Clause 4.6 (*Co-operation*).



(xiv) [Not Used]

8.4.2 If the Supply Contractor considers itself to be entitled to an extension of the Time for Completion, the Supply Contractor shall give notice to the Owner in accordance with Clause 20.1 (*Supply Contractor's Claims*). When determining each extension of time under Clause 20.1 (*Supply Contractor's Claims*), the Owner shall review efforts made by the Supply Contractor to prevent, mitigate or minimise the delay or disruption and previous determinations and may increase, but shall not decrease, the total extension of time accordingly, provided always that:

- (i) the Supply Contractor shall use its reasonable endeavours (including incurring reasonable additional Cost) consistent with Prudent Contractor Practice to eliminate or minimise (by remedying the consequences of the delay in the most effective and most expedient way) any delay in attaining Taking Over of the Works beyond the Time for Completion;
- (ii) in determining any extension of time, the Owner or the Owner representative may consider, inter alia the following matter:
 - (a) any omission of any work permitted or instructed under this Contract;
 - (b) whether (and if so to what extent) as a consequence of the failure of the Supply Contractor to execute the Works at all times prior to the occurrence of the delaying event or events on which the Supply Contractor has based its claim for an extension of time in accordance with the Programme and Prudent Contractor Practice, the impact of such delaying event or events on the ability of the Supply Contractor to attain Taking Over is greater than it otherwise would have been; and
 - (c) whether (and to what extent) any other delay is occurring simultaneously with a Delay Event (or Delay Events), where such other delay is not attributable to any Delay Event. In such circumstances, the Owner shall apportion responsibility between the concurrent delay and the Delay Event (or Delay Events) and grant an extension of time to the Supply Contractor taking into account the extent to which the Supply Contractor is responsible for or contributed to the combined delay;
- (iii) the Owner may at any time up to issue of the Final Payment Certificate review all relevant circumstances (including the matters set out in Clause 8.4.1(xii)) and revise or confirm by notification to the Supply Contractor any previous decision given by it in relation to any claim by the Supply Contractor for an extension of the Time for Completion



and/or elect to grant an extension of the Time for Completion, notwithstanding that the Supply Contractor has failed to comply with the requirements as to the giving of notices and provision of information under this Clause 8.4;

- (iv) if the Owner declines to grant an extension of the Time for Completion or if the Supply Contractor considers that there has been an insufficient extension to the Time for Completion, then either Party shall be entitled to refer the matter for determination in accordance with the procedures set out in Clause 20 (*Claims, Disputes and Arbitration*);
- (v) the Owner shall not be bound to grant an extension of the Time for Completion unless:
 - (a) the Supply Contractor provides supporting details of its application for an extension of the Time for Completion within the periods referred to in this Clause 8.4 and in Clause 20.1 (*Supply Contractor's Claims*); and
 - (b) the delay directly interfered with the progress of critical activities as set out in the approved programme current when the events giving rise to the claim occurred;
- (vi) the Supply Contractor shall not be entitled to any extension of time in respect of any event or period of delay which is concurrent with any event or period of delay caused or contributed to by any negligent act or omission, breach of contract or other default on the part of the Supply Contractor or any person for which it is responsible; and
- (vii) unless otherwise agreed between the Parties, the Supply Contractor shall have no claim for any extension of time or in respect of delay save as and to the extent set out in this Clause 8.4.

8.4.3 The granting of any extension shall not of itself provide any grounds for the Supply Contractor to claim any extra payment or reimbursement of costs.

8.4.4 Notwithstanding Clause 8.4.3, if an extension of time has been granted under Section 8.4.1(xiii) (other than in relation to an extension of time granted due to the Owner delaying the performance of the Tests on Completion) and the aggregate period of all such extensions of time granted during the term of this Contract pursuant to Clause 8.4.2 is greater than 10 days, the Supply Contractor shall, subject to Clause 20.1 (*Supply Contractor's Claims*), be entitled to recover Costs incurred as a consequence of any such delay beyond such 10 day period.



8.5 [Not Used]

8.6 Rate of Progress

8.6.1 If, at any time:

- (i) actual progress is too slow to complete within the Time for Completion; and/or
- (ii) progress has fallen (or will fall) behind the current programme under Clause 8.3 (*Programme*),

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

8.6.2 Unless the Owner notifies otherwise, the Supply Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Plant and Materials, at the risk and cost of the Supply Contractor. If these revised methods cause the Owner to incur additional costs, the Supply Contractor shall subject to Clause 2.4 (*Owner's Claims*) pay these costs to the Owner, in addition to Delay Liquidated Damages (if any) under Clause 8.7 (*Liquidated Damages for delay*).

8.6.3 In any circumstances when the Owner determines that the Supply Contractor is entitled to an extension of the Time for Completion, the Owner may, by written direction, expressly marked "Acceleration Direction" (an "**Acceleration Direction**") direct that the Supply Contractor accelerate the Works by applying additional resources if necessary or working longer hours or in whatever manner is appropriate, at a fair Cost to be agreed or determined by the Owner in accordance with Clause 3.5 (*Determinations*). In such a case, if and to the extent that the delay is recovered by the acceleration of the Supply Contractor, the Owner shall grant either no extension or such lesser extension as may be agreed. If it is not practicable for the Supply Contractor to comply with the Acceleration Direction it shall provide written notice to that effect with detailed reasons to the Owner within seven days of receiving the Acceleration Direction.

8.6.4 Prior to providing an Acceleration Direction the Owner shall provide to the Supply Contractor notice of its intention to do so and request the Supply Contractor to provide in writing within seven days the Supply Contractor's reasonable estimate of the extra costs it will incur in complying with the Acceleration Direction ("**Supply Contractor's Estimate**") if issued. Within seven days of receipt of the Supply Contractor's Estimate the Owner may proceed to issue the Acceleration Direction and accept in writing the Supply Contractor's Estimate. If the Owner does not accept the Supply Contractor's



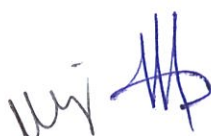
Estimate, the Owner can still proceed in accordance with this Clause 8.6.4 to provide an Acceleration Direction.

8.7 Liquidated Damages for delay

- 8.7.1 If the Supply Contractor fails to comply with Clause 8.2 (*Time for Completion*), the Supply Contractor shall subject to Clause 2.4 (*Owner's Claims*) and Clause 8.4 (*Extension of Time for Completion*) pay delay liquidated damages to the Owner for this default ("**Delay Liquidated Damages**"). These Delay Liquidated Damages shall be the sum stated in Schedule 16 (*Liquidated Damages*) with respect to the relevant delay and shall be paid for every day or part day which shall elapse between the relevant Time for Completion and the date stated in the Taking Over Certificate. However, the total amount due under this Clause shall not exceed the maximum amount of Delay Liquidated Damages stated in Clause 17.6.3 (*Limitation of Liability*).
- 8.7.2 [Not Used]
- 8.7.3 The Delay Liquidated Damages payable pursuant to this Clause represent an agreed genuine pre-estimate of losses likely to be suffered by the Owner in the event of delay to Taking Over of the Works beyond the Time for Completion and are not a penalty. The Supply Contractor shall not be entitled to withhold or set-off any amounts due pursuant to this Clause 8.7 for any reason whatsoever, including for the avoidance of doubt, where the Supply Contractor wishes to dispute the quantum or validity of any such amounts.
- 8.7.4 Subject to Clause 21.1, these Delay Liquidated Damages shall be the only damages due from the Supply Contractor for such default, other than in the event of Clause 9.6 (*Failure to Pass Tests on Completion*) and/or termination under Clause 15.2 (*Termination by Owner*) prior to completion of the Works. These damages shall not relieve the Supply Contractor from its obligation to complete the Works, or from any other duties, obligations or responsibilities which it may have under the Contract.
- 8.7.5 Without prejudice to the Supply Contractor's obligations pursuant to Clauses 8.2 (*Time for Completion*), 8.7 (*Liquidated Damages for delay*), 9.6 (*Failure to Pass Tests on Completion*) and 11 (*Defects Liability*) and without prejudice to the Owner's right to terminate the contract pursuant to Clause 15.2.1 (*Termination by Owner*), if the limit on the Delay Liquidated Damages as set out in Clause 17.6.3 (*Limitation of Liability*) has been reached, the Owner may at the cost and risk of the Supply Contractor, undertake such remedial actions as it deems necessary to accelerate the completion of the Works, including procuring the Plant and Materials from other third party contractors.

8.8 Payment of Liquidated Damages

- 8.8.1 If Delay Liquidated Damages are at anytime due and payable by the Supply Contractor, the Owner may, at the end of each month where Delay Liquidated



Damages are due, deliver to the Supply Contractor an invoice setting out the amount of Delay Liquidated Damages incurred and unpaid to date. The Supply Contractor shall make payment of the Delay Liquidated Damages to the Owner against the Owner's invoice within 10 Business Days after receipt of an invoice into the Owner's bank account designated in the invoice.

- 8.8.2 In case of Supply Contractor's failure to make the payment within 10 Business Days of Owner's invoice, Owner shall be entitled to recover the amount of any outstanding Delay Liquidated Damages from the Performance Bond, or otherwise offset against any amount payable to Supply Contractor under the Contract.

8.9 Suspension of Work

- 8.9.1 The Owner may at any time instruct the Supply Contractor to suspend progress of part or all of the Works. During such suspension, the Supply Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage. The Supply Contractor shall promptly inform the Owner whether and to such extent such suspension could have serious effect on performance of its obligations under the Contract (including any delay in the Time for Completion or any damage to the Works).
- 8.9.2 [Not Used]
- 8.9.3 The Owner may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Supply Contractor, the following Clauses 8.10 (*Consequences of Suspension*), 8.11 (*Payment for Plant and Materials in Event of Suspension*) and 8.12 (*Prolonged Suspension*) shall not apply.

8.10 Consequences of Suspension

- 8.10.1 If the Supply Contractor suffers delay and/or incurs Cost from complying with the Owner's instructions under Clause 8.9 (*Suspension of Work*) and/or from resuming the work, then provided that the reason for such suspension was not a result of a breach or default by the Supply Contractor or the Contractor's Personnel, the Supply Contractor shall give notice to the Owner and shall be entitled subject to Clause 20.1 (*Supply Contractor's Claims*) to:
- (i) an extension of time for any such delay, if completion is or will be delayed, under Clause 8.4 (*Extension of Time for Completion*), and
 - (ii) payment of any such Cost, which shall be added to the Contract Price.
- 8.10.2 After receiving this notice, the Owner shall proceed in accordance with Clause ^3.5 (*Determinations*) to agree or determine these matters.



- 8.10.3 The Supply Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Supply Contractor's faulty design, workmanship or materials, or of the Supply Contractor's failure to protect, store or secure in accordance with Clause 8.9 (*Suspension of Work*).

8.11 Payment for Plant and Materials in Event of Suspension

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

- 8.11.1 the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and
- 8.11.2 the Supply Contractor has marked the Plant and/or Materials as the Owner's property in accordance with the Owner's instructions.

8.12 Prolonged Suspension

If the suspension under Clause 8.9 (*Suspension of Work*) has continued for more than 270 (consecutive) days or 365 days in total, the Supply Contractor may request the Owner's permission to proceed. If the Owner does not give permission within 28 days after being requested to do so, the Supply Contractor may, by giving notice to the Owner, treat the suspension as an omission under Clause 13 (*Variations and Adjustments*) of the affected part of the Works. If the suspension affects the whole of the Works, the Supply Contractor may give notice of termination under Clause 16.2 (*Termination by Supply Contractor*).

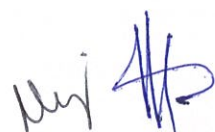
8.13 Resumption of Work

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

9. TESTS ON COMPLETION

9.1 Practical Completion

- 9.1.1 Practical Completion shall be defined to occur when the following requirements have been satisfied:
- (i) the Supply Contractor has supplied all Plant and Materials and executed all Works required to be supplied or executed from outside of the Country (except for completion of minor portions of the Works not affecting the reliability, dependability, operability, safety, compliance with Applicable Laws of the Works or Section) in all material respects in accordance with the Contract (including the requirements necessary



to enable the Jetty as a whole to achieve Practical Completion as set out in Schedule 5 (*Required Performance Levels and Tests on Completion*));

(ii) [Not Used]

(iii) [Not Used]

(iv) the Supply Contractor has supplied all Plant and Materials and executed all works required to be supplied or executed from outside of the Country to enable the Jetty to be ready to allow commencement of the Tests on Completion at the Site by the Owner's contractors in the Country and to allow operation; and

(v) the Supply Contractor has supplied all Plant and Materials and executed all Works required to be supplied or executed from outside of the Country to enable all systems and subsystems to be installed at the Jetty by the Owner's contractors in the Country, the equipment and systems included therein can be operated in accordance with Prudent Contractor Practice and Applicable Law and can be operated in a manner that does not void any warranty under the Contract.

9.1.2 When the requirements of Practical Completion have, in the opinion of the Supply Contractor, been completed, and all other criteria for (including any tests and/or inspections) Practical Completion of the Works have been met, the Supply Contractor shall apply to the Owner in writing for a Practical Completion Certificate in respect of the Works or Section.

9.1.3 If the Owner is satisfied that the requirements for Practical Completion of the Works or Section are met, the Owner shall issue a Practical Completion Certificate relating to the Works or Section, within 14 days of receipt of the Supply Contractor's application. Practical Completion of the Works or Section shall be stated in the Practical Completion Certificate to be the date on which Practical Completion was attained. If the Owner is not so satisfied, the Owner shall within the same 14 day period notify the Supply Contractor in writing of the reasons why and it shall not issue a Practical Completion Certificate.

9.1.4 If the Owner has declined to issue a Practical Completion Certificate in respect of the Works or Section the Supply Contractor shall take all necessary steps to remedy at its own expense the reasons stated by the Owner for so declining. As soon as practicable after Practical Completion, the Supply Contractor shall complete such minor items which were not required in order to attain Practical Completion of the Works or Section.

9.2 Supply Contractor's Obligations

9.2.1 The Supply Contractor acknowledges that no Tests on Completion involving any part of the Works or a Section can be carried out at the Site by the Owner's contractors in the Country unless:



- (i) a Practical Completion Certificate has been issued in respect of it;
- (ii) the Supply Contractor has provided to the Owner the preliminary marked-up as built drawings in accordance with Clause 5.6 (*As-Built Documents*) and the provisional operation and maintenance manuals in accordance with Clause 5.7 (*Operation and Maintenance Manuals*), in respect of the Works or Section; and
- (iii) the Supply Contractor has provided any training including training materials, which are required by Clause 5.5 (*Training*) for the Owner's Personnel or the Owner's contractors' personnel.
- (iv) [Not Used]

9.2.2 The Supply Contractor acknowledges that the Tests on Completion shall be carried out in accordance with this Clause 9, Clause 7.4 (*Testing*) and the requirements set out in Schedule 5 (*Required Performance Levels and Tests on Completion*) and the test procedures specified in Clause 9.3 (*Commissioning Tests and Performance Tests*).

9.2.3 [Not Used]

9.2.4 [Not Used]

9.2.5 [Not Used]

9.3 Commissioning Tests and Performance Tests

9.3.1 Commissioning Test Notice

- (i) [Not Used]
- (ii) The Supply Contractor acknowledges that the Commissioning Tests and Performance Tests shall be carried out in accordance with the procedures established in accordance with of Schedule 5 (*Required Performance Levels and Tests on Completion*).

9.3.2 Commissioning Test Report

On completion of the Commissioning Tests and Performance Tests for the Works or a Section at the Site by the Owner's contractors in the Country, a Commissioning Test Report will be prepared by the Owner's contractors in the Country confirming that (in the Owner's onshore contractor's opinion) the Commissioning Tests and the Performance Tests for the Works or Section have been completed, together with a certified copy of such results.

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9.3.3 Commissioning Certificate

The Owner shall, within 14 days following receipt of the Commissioning Test Report from its contractors in the Country, either:

- (i) if it is satisfied that the requirements for the Commissioning Tests for the Works or Section have been met and the Required Performance Levels (with respect to the Performance Tests) have been achieved, deliver to the Supply Contractor a Commissioning Certificate;
- (ii) if it considers that the requirements for the Commissioning Tests for the Works or Section have not been satisfied and/or the Required Performance Levels (with respect to the Performance Tests) have not been achieved, notify the Supply Contractor in writing that the requirements for the Commissioning Tests and/or Performance Tests have not been satisfied, and (subject to the Supply Contractor's right to request the repeat of any test as specified in Clause 9.5 (*Retesting*)), the Parties shall proceed in accordance with Clause 9.6 (*Failure to Pass Tests on Completion*).

9.3.4 Repetition of Commissioning Tests and Performance Tests

If the Owner notifies the Supply Contractor pursuant to Clause 9.3.3 (*Commissioning Certificate*) that the requirements for the Commissioning Tests have not been satisfied and/or the Required Performance Levels (with respect to the Performance Tests) have not been achieved, or the Power Purchase requires a test to be repeated, the Supply Contractor shall direct the Owner's contractors in the Country to repeat the Commissioning Tests and Performance Tests in accordance with Clause 9.5 (*Retesting*).

9.4 [Not Used]

9.5 Retesting

9.5.1 If the Works or a Section fail to pass the Tests on Completion carried out by the Owner's contractors in the Country or fail to achieve the Required Performance Levels then Clause 7.5 (*Rejection*) shall apply, and the Owner or the Supply Contractor may require the failed tests, and Tests on Completion on any related work, to be repeated by the Owner's contractors in the Country under the same terms and conditions. However, prior to repetition of such Tests on Completion, the Supply Contractor shall deliver to the Owner a report detailing reasons for failure of the tests and steps that have been taken in order to avoid repeating the failure of the tests.

9.5.2 If the Works or a Section fail to pass any such re-test, the Supply Contractor or the Owner may require the failed tests, and Tests on Completion on any related work, to be repeated by the Owner's contractors in the Country under the same terms and conditions and Clause 7.5 (*Rejection*) shall apply and subject to



provisions of Clause 9.6 (*Failure to Pass Tests on Completion*), the Supply Contractor shall be responsible for all Costs incurred during any retesting.

9.6 Failure to Pass Tests on Completion

- 9.6.1 The Supply Contractor warrants that, when the Performance Tests are carried out by the Owner's contractors in the Country, the Works shall attain the Required Performance Levels subject to and upon the conditions set out in the Contract.
- 9.6.2 [Not Used]
- 9.6.3 If the Works, or a Section, fails to attain the Required Performance Levels following completion of all repetitions required under Clause 9.5 (*Retesting*) to be carried out by the Owner's contractors in the Country, the Owner shall be entitled to:
- (i) order further repetition of Tests on Completion under Clause 9.5 (*Retesting*) to be carried out by the Owner's contractors in the Country;
 - (ii) if the failure deprives the Owner of substantially the whole benefit of the Works or Section and the limit specified in Clause 17.6.3 (*Limitation of Liability*) for Delay Liquidated Damages has been reached or exceeded, reject the Works or Section (as the case may be), in which event the Owner shall have the same remedies as are provided in Clause 11.4.2(i) (*Failure to Remedy Defects*); or
 - (iii) issue a Taking Over Certificate.
- 9.6.4 If the Owner issues a Taking Over Certificate in accordance with Clause 9.6.3(iii), the Supply Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Owner as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Owner may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking Over Certificate is issued, or (ii) determined and paid under Clause 2.4 (*Owner's Claims*) and Clause 3.5 (*Determinations*).

9.7 Creation of Punch List

- 9.7.1 As soon as the Supply Contractor reasonably believes the state of the Works warrants such action, but in any event before Taking Over of the Works the Supply Contractor shall provide written notice to the Owner requesting an inspection of the Works for the purposes of producing a proposed Punch List. The Owner and the Owner's contractors in the Country shall then conduct a joint inspection of the Works as soon as reasonably possible after the Owner's receipt of such written notice but, in any event, within 14 days of its receipt. At



the Owner's option, the Punch List may be prepared and inspections performed on a Section by Section basis. The Supply Contractor shall be notified of the outcome of such inspection.

- 9.7.2 Within five days of completion of any such inspection, the Supply Contractor shall prepare and deliver to the Owner a written description of all proposed items for the Punch List to the extent required to be supplied or performed outside of the Country (other than the Performance Tests to be performed by the Owner's contractors in the Country or additional work required in connection with such tests or which is necessary to achieve successful completion of such tests) which the Supply Contractor, in its best good faith judgment, believes have not been completed or require revision or correction to cause them to conform with the requirements of this Contract. Items of additional work required to be supplied or performed outside of the Country and disclosed by testing or operation of the Works through the successful completion of the Performance Tests by the Owner's contractors in the Country shall be added to the proposed Punch List. The Punch List cannot contain any item which may in any way compromise the safety, efficacy, stability or regulatory compliance of the Works, and if such an item is proposed, will automatically preclude the occurrence of Taking Over (as specified in Clause 10 (*Owner's Taking Over*)) of the Works.
- 9.7.3 If the Owner accepts the proposed list as a complete Punch List then known, then the Owner shall sign a copy of such list marked "accepted" and return such copy to the Supply Contractor. If the Owner does not accept such proposed list, then the Owner shall within 10 days, state the objections to such proposed list and all if its proposed changes therein and additions thereto by written notice to the Supply Contractor.
- 9.7.4 The Owner may, upon giving prior notice to Supply Contractor, determine the cost of the list of items for the Punch List agreed and the cost thereof shall be certified by the Owner. The Owner shall be entitled to retain from the payment due upon the completion of the last Milestone an amount equal to 150% of the estimated value of the work and materials required for rectification or completion of the Punch List items (the "**Punch List Retention**"), pending satisfactory rectification and/or completion of the Punch List items. If the payment due upon the completion of the last Milestone is less than the Punch List Retention amounts required pursuant to this Clause, the Supply Contractor shall be required to make payment of the balance to the Owner as a condition to Taking Over. The Punch List Retention shall be returned to the Supply Contractor within 30 days of the issue of the Final Completion Certificate.
- 9.7.5 Promptly following the Supply Contractor's delivery of a proposed Punch List to the Owner, and in any event within the time stated in a Taking Over Certificate, the Supply Contractor shall commence and thereafter diligently pursue the completion of the items on the Punch List, as well as any portion of the Works which the Owner, in its reasonable discretion believes have not been

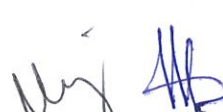
completed or require revision or correction, to cause it to conform with the requirements of this Contract. If the Supply Contractor fails to do so after having received reasonable prior notice thereof by the Owner, the Owner may arrange for the outstanding work to be performed and the cost thereof shall be certified by the Owner and deducted from the Contract Price or (at the Owner's option) paid to the Owner by the Supply Contractor. The Owner's acceptance of, or agreement on, a Punch List shall not alter or diminish either the Supply Contractor's obligations to complete all of the Works, or the Owner's right to require the Supply Contractor's completion of the Works, in accordance with the Contract.

10. OWNER'S TAKING OVER

10.1 Taking Over of the Works and Sections

10.1.1 Taking Over in respect of the Works shall be conditional upon the events below having occurred:

- (i) Practical Completion has occurred in respect of the Works;
- (ii) a Commissioning Certificate has been issued in respect of the Works;
- (iii) the Supply Contractor has completed the Works (except for the items on the Punch List) in accordance with all Contract requirements and the Works comply with Applicable Laws and Applicable Licences;
- (iv) the Works have passed all Tests on Completion and the Commissioning Certificate has been issued to the Supply Contractor;
- (v) the Punch List applicable to the Works has been mutually agreed upon by the Parties or resolved pursuant to Clause 9.7.1 (*Creation of Punch List*);
- (vi) if the payment due upon the completion of the last Milestone is less than the Punch List Retention required pursuant to Clause 9.7 (*Creation of Punch List*), the Supply Contractor has made payment of the balance of the sums required for the Punch List Retention to the Owner pursuant to that Clause;
- (vii) [Not Used]
- (viii) the Supply Contractor has completed its training obligations for the Owner's personnel and other nominees of the Owner pursuant to Clause 5.5 (*Training*);
- (ix) if applicable, the Supply Contractor has supplied substantially complete drafts of the Contractor's Documents (including the preliminary versions of the As-Built Document specified in Clause 5.6.3 (*As-Built*



Documents)) required for Taking Over of the Works and as required to operate and maintain such Works;

- (x) the final versions of the Manuals have been delivered by the Supply Contractor to the Owner in accordance with Clause 5.7 (*Operation and Maintenance Manuals*); and
- (xi) the Supply Contractor has paid any Delay Liquidated Damages for which the due date for payment has passed pursuant to Clause 8.7 (*Liquidated Damages for delay*).

10.1.2 The Supply Contractor may apply by notice to the Owner for a Taking Over Certificate not earlier than 14 days before the Works will, in the Supply Contractor's opinion, be complete and ready for Taking Over. If the Works are divided into Sections, the Supply Contractor may similarly apply for a Taking Over Certificate for each Section.

10.1.3 The Owner shall, within 28 days after receiving the Supply Contractor's application:

- (i) issue the Taking Over Certificate to the Supply Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for the items on the Punch List; or
- (ii) reject the application, giving reasons and specifying the work required to be done by the Supply Contractor to enable the Taking Over Certificate to be issued. The Supply Contractor shall then complete this work before issuing a further notice under this Clause 10.1.1.

10.2 Taking Over of Parts of the Works


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

10.3 [Not Used]

10.4 Final Completion

10.4.1 Promptly following the issue of each Taking Over Certificate by the Owner, and in any event within the time stated in the Taking Over Certificate, the Supply Contractor shall commence and thereafter diligently pursue Final Completion of the Works, which shall be defined to occur on the date on which:

- (i) Practical Completion has occurred and the Practical Completion Certificate has been issued;



- (ii) Taking Over of the Works has been achieved and the Taking Over Certificate has been issued and the Supply Contractor has paid all applicable Delay Liquidated Damages; and
- (iii) the items on the Punch List have been completed or have been paid for by the Supply Contractor in accordance with Clause 9.7.5 (*Creation of Punch List*).

10.4.2 Upon the occurrence of the last of the requirements specified in Clause 10.4.1, the Supply Contractor may apply to the Owner for the Final Completion Certificate. If the Owner is satisfied that the requirements for Final Completion have been met, the Owner shall, within 28 days of receipt of the Supply Contractor's application, deliver to the Supply Contractor the Final Completion Certificate.

11. DEFECTS LIABILITY


11.1 Completion of Outstanding Work and Remedying Defects

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

- (i) complete any work which is outstanding on the date stated in a Taking Over Certificate, within such reasonable time as is instructed by the Owner and if no period is instructed in respect of any items on the Punch List, within 120 days of the date of the relevant Taking Over Certificate in respect of such items;
- (ii) execute with all possible speed all Remedial Work required to remedy Defects (including any damage to the Works caused by such Defects) to the extent that such Defects or damage may be notified by (or on behalf of) the Owner on or before the expiry date of the Defects Liability Period for the Works or portion thereof (as the case may be); and
- (iii) provide a representative who is contactable on a 24 hour basis (per day) to provide technical advice and support to the Owner.

11.1.2 If a Defect appears or damage occurs, the Owner shall notify the Supply Contractor accordingly.

11.1.3 If the same (or substantially similar) Defect occurs in respect of an item of Plant, Materials or workmanship on more than two occasions, the Supply Contractor shall be obliged (upon notification to the Owner) to exchange such item with a brand new, fit for purpose replacement. If such repeated Defect has occurred within any major system or sub-system of Plant, then the Supply Contractor



must replace all such similar defective items of Plant, Materials or workmanship across identical (or substantially similar) systems or sub-systems.

- 11.1.4 The expiry of any Defects Liability Period shall not limit the Supply Contractor's legal liability in accordance with the mandatory provisions of the Applicable Laws in respect of any defects in the Works.

11.2 Cost of Remedying Defects

- 11.2.1 All work referred to in Clause 11.1.3 and Clause 11.1.1(ii) (*Completion of Outstanding Work and Remedying Defects*) shall be executed at the risk and cost of the Supply Contractor, if and to the extent that the work is attributable to:

- (i) the design of the Works;
- (ii) Plant, Materials or workmanship not being in accordance with the Contract;
- (iii) improper operation or maintenance which was attributable to training provided by the Supply Contractor in accordance with Clause 5.5 (*Training*) being improper or incorrect, or errors or defects in the operation and maintenance manuals provided by the Supply Contractor in accordance with Clause 5.7 (*Operation and Maintenance Manuals*); or
- (iv) failure by the Supply Contractor to comply with any of its other obligations under the Contract.


- 11.2.2 If and to the extent that such work is attributable to any other cause, the Owner shall give notice to the Supply Contractor accordingly, and Clause 13.3 (*Variation Procedure*) shall apply.

- 11.2.3 [Not Used]

11.3 Extension of Defects Liability Period

- 11.3.1 The Owner shall be entitled subject to Clause 2.4 (*Owner's Claims*) to an extension of the Defects Liability Period for the Works or Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after Taking Over) cannot be used for the purposes for which they are intended by reason of a Defect or damage.

- 11.3.2 Where any Remedial Work is executed pursuant to Clause 11.1 (*Completion of Outstanding Work and Remedying Defects*), the Defects Liability Period in respect of such work only shall expire 12 months after the completion of such work, provided that the aggregate Defects Liability Period in respect of all Works shall not exceed 36 months from the ~~Taking Over Date~~.

date of Taking Over 





11.4 Failure to Remedy Defects

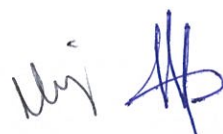
- 11.4.1 If the Supply Contractor fails to remedy any Defect or Latent Defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Owner, on or by which the Defect or Latent Defect or damage is to be remedied. The Supply Contractor shall be given reasonable notice of this date.
- 11.4.2 If the Supply Contractor fails to remedy the Defect or Latent Defect or damage by this notified date and this remedial work was to be executed at the cost of the Supply Contractor under Clause 11.2 (*Cost of Remedying Defects*), the Owner may (at its option):
- (i) carry out the work himself or by others, in a reasonable manner and at the Supply Contractor's risk and cost and the Supply Contractor shall subject to Clause 2.4 (*Owner's Claims*) pay to the Owner the costs reasonably incurred by the Owner in remedying the Defect or Latent Defect or damage.
 - (ii) determine a reasonable reduction in the Contract Price or, if the Final Statement has been issued by the Supply Contractor, agree or determine the amounts which the Supply Contractor shall be required to pay to the Owner, in accordance with Clause 3.5 (*Determinations*); or
 - (iii) if the Defect or Latent Defect or damage deprives the Owner of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use, reject the Works in accordance with Clause 15.7 (*Fundamental Project Failure*).

11.5 Removal of Defective Work

If the Defect or Latent Defect in, or damage to any Plant and Materials cannot be remedied expeditiously on the Site or elsewhere in the Country by the Owner's contractors in the Country, and the Owner gives consent, the Supply Contractor may repair such items of Plant and Materials outside of the Country as are defective or damaged. This consent may require the Supply Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

11.6 Further Tests

- 11.6.1 If the work of remedying of any Defect or Latent Defect or damage may affect the performance of the Works, the Owner may require the repetition of any of the tests described in the Contract, including Tests on Completion. The requirement shall be made by notice within 28 days after the Defect or Latent Defect or damage is remedied.
- 11.6.2 These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the



Party liable under Clause 11.2 (*Cost of Remedying Defects*) for the Cost of the Remedial Work. If the Jetty or Works or any part thereof fails the tests, the Supply Contractor shall carry out further Remedial Work (as the case may be) until the Jetty or part thereof passes such tests. Any retest shall account for any degradation of the Works which has occurred during the prior operation of the Works other than that which was due to the Defect or Latent Defect.

11.7 Right of Access

- 11.7.1 Until the Taking Over Certificate has been issued, the Supply Contractor shall have the right of access to all parts of the Works and to records of the operation and performance of the Works, except as may be inconsistent with the Owner's reasonable security restrictions.
- 11.7.2 Following the issue of the Taking Over Certificate and until the expiry of the Latent Defects Period, the Supply Contractor shall have the right to such access to parts of the Works and to records of the operation and performance of the Works to the extent required to complete the Punch List items and remedy any Defects or Latent Defects, except as may be inconsistent with the Owner's reasonable security restrictions.

11.8 Supply Contractor to Search

The Supply Contractor shall, after Taking Over, if required by the Owner, search for the cause of any defect, under the direction of the Owner. Unless the defect is to be remedied at the cost of the Supply Contractor under Clause 11.2 (*Cost of Remedying Defects*), the Cost of the search shall be agreed or determined by the Owner in accordance with Clause 3.5 (*Determinations*) and shall be included/added to the Contract Price.

11.9 Performance Certificate

- 11.9.1 Performance of the Supply Contractor's obligations shall not be considered to have been completed until the Owner has issued the Performance Certificate to the Supply Contractor, stating the date on which the Supply Contractor completed its obligations under the Contract.
- 11.9.2 The Owner shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Liability Periods (subject to any extension pursuant to Clause 11.3 (*Extension of Defects Liability Period*), provided that:
- (i) the Final Completion Certificate has been issued to the Supply Contractor in accordance with Clause 10.4 (*Final Completion*);
 - (ii) any outstanding Defects have been remedied and all Remedial Work (including any necessary retesting pursuant to Clause 11.6 (*Further Tests*)) has been performed to the satisfaction of the Owner and Lenders' Representative; and



(iii) [Not Used]

(iv) [Not Used]

(v) the Supply Contractor has supplied final versions of all the Contractor's Documents (including the final versions of the As-Built Document specified in Clause 5.6.3 (*As-Built Documents*)) and Manuals.

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

11.9.4 To the extent that the Supply Contractor has received the benefit of any warranties from any Subcontractor or manufacturer or supplier of any plant or Materials, which extends beyond the Defects Liability Period, the Supply Contractor shall, to the extent that the Supply Contractor is legally able to do so, assign the benefit of all such warranties to the Owner when requested to do so by the Owner.

11.10 Unfulfilled Obligations

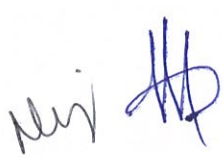
After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force. The Parties shall, prior to the issue of the Performance Certificate, use reasonable endeavors to record such unperformed obligations, together with the timeframe for fulfilment of such obligations.

11.11 [Not Used]

11.12 Latent Defects

11.12.1 Notwithstanding the issue of a Performance Certificate, the Supply Contractor shall be responsible for carrying out all necessary Remedial Work expeditiously and at its cost and expense in respect of any Latent Defect as well as any damage to the Works caused by such Latent Defect which appears or occurs at any time during the Latent Defects Period.

11.12.2 The Supply Contractor shall, within 20 days of the Company notifying the Supply Contractor of a Latent Defect or the Supply Contractor otherwise becoming aware of such Latent Defect, submit to the Owner for its approval (such approval not to be unreasonably withheld) details of the Remedial Work which it proposes to make pursuant to this Clause 11.12, the estimated duration of such Remedial Work, details of such parts of the Works as it may be necessary to shut down and the proposed dates for such Remedial Work. The Owner shall afford the Supply Contractor such access to the Works to the extent it is reasonably required for the Remedial Works. If the Remedial Work can be carried out without shutting down the Works, the Supply Contractor shall carry out such Remedial Work as soon as reasonably practicable. If the Remedial



Work necessitates the shutting down of the Works, the Remedial Work shall be carried out at a time and for periods agreed with the Owner (such period not to be unreasonably delayed).

- 11.12.3 If the Supply Contractor fails to submit details of the proposed Remedial Work to the employer in accordance with Clause 11.2.2, or fails to promptly and expeditiously carry out any Remedial Work and remedy any Latent Defect, Clause 11.4 (*Failure to Remedy Defects*) shall apply.
- 11.12.4 The Supply Contractor shall:
- (i) execute with all possible speed all Remedial Work required to remedy Latent Defects (including any damage to the Works caused by such Latent Defects) to the extent that such Latent Defects or damage may be notified by (or on behalf of) the Owner on or before the expiry date of the Latent Defects Period for the Works or portion thereof (as the case may be); and
 - (ii) provide a representative who is contactable on a 24 hour basis (per day) to provide technical advice and support to the Owner.
- 11.12.5 If a Latent Defect appears or damage occurs, the Owner shall notify the Supply Contractor accordingly.
- 11.12.6 If the same (or substantially similar) Latent Defect occurs in respect of an item of Plant, Materials or workmanship on more than two occasions, the Supply Contractor shall be obliged (upon notification to the Owner) to exchange such item with a brand new, fit for purpose replacement. If such repeated Latent Defect has occurred within any major system or sub-system of Plant, then the Supply Contractor must replace all such similar defective items of Plant, Materials or workmanship across identical (or substantially similar) systems or sub-systems.
- 11.12.7 The expiry of any Latent Defects Period shall not limit the Supply Contractor's legal liability in accordance with the mandatory provisions of the Applicable Laws in respect of any defects in the Works.

12. [NOT USED]

13. VARIATIONS AND ADJUSTMENTS

13.1 Right to Vary

- 13.1.1 Variations may be initiated by the Owner at any time prior to issuing the Taking Over Certificate for the Works, either by an instruction or by a request for the Supply Contractor to submit a proposal.



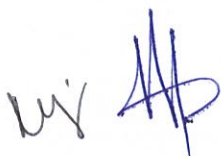
- 13.1.2 The Supply Contractor shall execute and be bound by each Variation, unless the Supply Contractor promptly gives notice to the Owner stating (with supporting particulars) that (i) the Supply Contractor cannot readily obtain the Plant and Materials required for the Variation, (ii) it will reduce the safety or suitability of the Works, or (iii) it will have no adverse impact on the achievement of the Performance Guarantee. Upon receiving this notice, the Owner shall cancel, confirm or vary the instruction.
- 13.1.3 Notwithstanding anything else in this Contract, no change, modification, addition or deletion to, in or from the Owner's Requirements or the Contractor's Documents, the Works or the Supply Contractor's conditions and methods of working made necessary due to any default or breach of Contract by the Supply Contractor or for which it is responsible shall be deemed to be a Variation and any such matter shall not result in any adjustment of the Contract Price, extension of time or other relief.

13.2 Value Engineering

- 13.2.1 The Supply Contractor may, at any time, submit to the Owner a written proposal which (in the Supply Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Owner of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Owner of the completed Works, or (iv) otherwise be of benefit to the Owner.
- 13.2.2 The proposal shall be prepared at the cost of the Supply Contractor and shall include the items listed in Clause 13.3 (*Variation Procedure*).
- 13.2.3 The Owner may at its discretion approve or reject any such proposal.

13.3 Variation Procedure

- 13.3.1 If the Owner requests a proposal, prior to instructing a Variation, the Supply Contractor shall respond in writing as soon as practicable and in any case within 28 days, either by giving reasons why it cannot comply (if this is the case) or by submitting:
- (i) a description of the proposed design and/or work to be performed and a programme for its execution;
 - (ii) the Supply Contractor's proposal for any necessary modifications to the Programme according to Clause 8.3 (*Programme*) and to the Time for Completion; and
 - (iii) the Supply Contractor's proposal for adjustment to the Contract Price,
- and all information in support of the above which is reasonably required in order for the Owner to assess the Supply Contractor's submissions. Such proposal



shall be in the form set out in Schedule 22 (*Variation Proposal and Variation Order*)

- 13.3.2 The Owner shall, as soon as practicable after receiving such proposal (under Clause 13.2 (*Value Engineering*) or otherwise), respond with approval, disapproval or comments. The Supply Contractor shall not delay any work whilst awaiting a response.
- 13.3.3 Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Owner to the Supply Contractor in the form set out in Schedule 22 (*Variation Proposal and Variation Order*), who shall acknowledge receipt.
- 13.3.4 Upon instructing or approving a Variation, the Owner shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine adjustments to the Contract Price (as the case may be) and Schedule 3 (*Project Milestones and Project Milestone Payments*).
- 13.3.5 These adjustments shall include reasonable profit, and shall take account of the Supply Contractor's submissions under Clause 13.2 (*Value Engineering*) if applicable.
- 13.3.6 If the Owner instructs a Variation for a change in Works without requesting a proposal from the Supply Contractor, the Owner shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine the required modification to the Works, programme of performance, Contract Price, and other terms and conditions required as a result of the Variation. The Supply Contractor shall not delay any work whilst awaiting the agreement or determination of such items.


13.4 Payment in Applicable Currencies

The Contract provides for payment of the Contract Price in US Dollars. Whenever an adjustment is agreed, approved or determined as stated above, the amount payable in US Dollars shall be specified.

13.5 [Not Used]

13.6 Daywork

- 13.6.1 For work of a minor or incidental nature, the Owner may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the daywork schedule Schedule 4 (*Price and Payment*), and the following procedure shall apply. If Schedule 4 (*Price and Payment*) does not include a daywork schedule, this Clause 13.6 shall not apply.
- 13.6.2 Before ordering Plant and Materials for the work, the Supply Contractor shall submit quotations to the Owner. When applying for payment, the Supply



Contractor shall submit invoices, vouchers and accounts or receipts for any Plant and Materials.

13.6.3 Except for any items for which Schedule 4 (*Price and Payment*) specifies that payment is not due, the Supply Contractor shall deliver each day to the Owner accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

- (i) the names, occupations and time of Contractor's Personnel; and
- (ii) [Not Used]
- (iii) the quantities and types of Plant and Materials used.

13.6.4 One copy of each statement will, if correct, or when agreed, be signed by the Owner and returned to the Supply Contractor. The Supply Contractor shall then submit priced statements of these resources to the Owner, prior to their inclusion in the next draft Interim Payment Certificate under Clause 14.3 (*Application for Interim Payment Certificates*).

13.7 Adjustments for Changes in Legislation

13.7.1 The Supply Contractor shall, subject to Clause 21.10 (*Claims Prior to Commencement Date*), give written notice to the Owner if, after the Contract Date, any Applicable Laws of the Country are adopted, repealed, promulgated, modified or reinterpreted or any Public Sector Entity imposes any material change in connection with the Supply Contractor's obligations or responsibilities under the Contract ("**Change in Law**"), which was unforeseeable and which requires a physical modification or addition to, or a physical change in, or replacement of any part of the Works, required by, or required in order to achieve compliance with the Change in Law and which would not be required under the terms of the Contract but for such Change in Law ("**Statutory Modification**"). Such notice shall be provided as soon as practicable after the Supply Contractor becomes aware of the need to make such a Statutory Modification.

13.7.2 As soon as practicable after giving notice under Clause 13.7.1, the Supply Contractor shall submit a further notice to the Owner giving details of the Statutory Modification which shall include, inter alia:

- (i) details of the relevant Change in Law and the manner in which the proposed Statutory Modification will secure compliance with it;
- (ii) a costing of the adjustment, if any, to the Contract Price which the Supply Contractor considers would arise if the proposed Statutory Modification were implemented;



- (iii) details of the timing which the Supply Contractor considers would apply to the payment of any such adjustments to the Contract Price, and any consequent changes which would be required to Schedule 3 (*Project Milestones and Project Milestone Payments*) if the proposed Statutory Modification were implemented;
- (iv) a programme for the implementation of the proposed Statutory Modification, details of any effect which the Supply Contractor considers the same would have on the Programme and attainment of any Taking Over and a statement of any extension of time which Supply Contractor considers should be granted to any Time for Completion as a result of the implementation of the proposed Statutory Modification,

and all information in support of the above which is reasonably required in order for the Owner to assess the Supply Contractor's submissions.

13.7.3 If the Supply Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of a Statutory Modification, the Supply Contractor shall give notice to the Owner and shall be entitled subject to Clause 20.1 (*Supply Contractor's Claims*) to:

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

After receiving this notice, the Owner shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine these matters.]

13.8 Adjustments for Changes in Costs

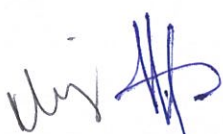
The Contract Price shall not be adjusted whether for rises or falls in the cost of labour, Plant and Materials and other inputs to the Works or otherwise, save as expressly provided for in the Contract.

14. CONTRACT PRICE AND PAYMENT

14.1 The Contract Price

14.1.1 Unless otherwise stated in this Clause 14 (*Contract Price and Payment*):

- (i) Payment for the Works shall be made on the basis of a lump sum contract price, subject to adjustments in accordance with the Contract; and
- (ii) the Supply Contractor shall pay all Taxes and fees required to be paid by it under the Contract or Applicable Laws, and the Contract Price shall not be adjusted for any of these costs, except as stated in Clauses 13.7



(Adjustments for Changes in Legislation), 14.19 (Taxes) and 14.20 (Customs and Import Duties).

- 14.1.2 The Contract Price shall be subject to adjustments only in accordance with the Contract.

14.2 Advance Payment

- 14.2.1 The Supply Contractor may, not earlier than three Business Days following the later of (i) the issuance of the Limited Notice to Proceed and (ii) the date on which the Supply Contractor submits the Performance Bond and the Advance Payment Bond, issue an invoice to the Owner in respect of the first installment of the Advance Payment for 5% of the Contract Price and such invoice once properly issued, shall be payable by the Owner within 30 days of its receipt by the Owner. The Supply Contractor may, not earlier than the earlier of the Commencement Date or 30 June 2017, provided that it has submitted an Advance Payment Bond for an additional 5% of the Contract Price, issue an invoice to the Owner for the second installment of the Advance Payment for an additional 5% of the Contract Price and such invoice once properly issued, shall be payable by the Owner within 30 days of its receipt by the Owner.
- 14.2.2 The Advance Payment shall be repaid through proportional deductions from amounts certified for payment in each Interim Payment Certificate (including any payment of the LNTP Price). Deductions shall be made at the amortization rate of 5% until the second instalment of the Advance Payment is paid in accordance with Clause 14.2.1, and thereafter at 15%, until such time as the Advance Payment has been repaid.
- 14.2.3 If the Advance Payment has not been fully repaid prior to the issue of the Taking Over Certificate, termination under Clause 15 (*Termination by Owner*), Clause 16 (*Suspension and Termination by Supply Contractor*) or Clause 19 (*Force Majeure*) (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Supply Contractor to the Owner and the Owner shall be entitled to claim the whole of the balance of the Advance Payment Bond then outstanding.

14.3 Application for Interim Payment Certificates

- 14.3.1 Subject to Clause 14.4 (*Project Milestones and Project Milestone Payments*), the Supply Contractor may (upon achievement of a Milestone) make an application to the Owner for payment by issuing a draft Interim Payment Certificate in respect of:
- (i) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the relevant Milestone (including Variations but excluding items described in Clauses 14.3.1 (ii) to (vii) inclusive);



- (ii) the achievement of the Milestones set out in Schedule 3 (*Project Milestones and Project Milestone Payments*) in the amount specified therein;
- (iii) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Clause 13.7 (*Adjustments for Changes in Legislation*) and Clause 13.8 (*Adjustments for Changes in Cost*);
- (iv) [Not Used]
- (v) any amounts to be added and deducted for the Advance Payment and repayments in accordance with Clause 14.2 (*Advance Payment*);
- (vi) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 (*Claims, Disputes and Arbitration*); and
- (vii) the deduction of amounts certified in all previous Payment Certificates.

14.3.2 Applications for payment shall be accompanied:

- (i) in the case of Milestones achieved, by such evidence, supporting documents and other information as may reasonably be requested by the Owner for the purpose of satisfying itself of the proper achievement of the relevant Milestones, the transfer of title in and absence of Liens in relation to the plant and materials which are the subject of the application (if applicable under the relevant Milestone);
- (ii) in the case of any Plant and Materials and other items to be imported into the Country, all applicable Shipping Documents required under Clause 17.8.4 (*Exported Plant and Materials*); and
- (iii) in the case of claims for adjustments to the Contract Price in respect of additional payments, by the particulars required under Clause 20.1 (*Supply Contractor's Claims*).

14.4 Project Milestones and Project Milestone Payments

Notwithstanding any other provision of the Contract, the Supply Contractor shall not be entitled to request or claim payment of any part of the Contract Price if the amount of such request or claim would on the date when payable result in the aggregate amount of the Contract Price then paid or payable exceeding the cumulative total of the relevant currency specified in respect of such date in Schedule 3 (*Project Milestones and Project Milestone Payments*) (as may be adjusted to take account of any adjustment to the Contract Price provided for by the Contract, including by reason of a Variation).




14.5 Plant and Materials intended for the Works

If the Supply Contractor is entitled, under the Contract, to an interim payment for Plant and Materials which are not yet delivered to the Port of Import, the Supply Contractor shall nevertheless not be entitled to such payment unless the Supply Contractor has delivered, to the Owner, evidence of insurance and a bank guarantee in a form and issued by an entity approved by the Owner in amounts and currencies equal to such payment. This guarantee may be in a similar form to the form referred to in Clause 14.2 (*Advance Payment*) and shall be valid until the Plant and Materials are delivered to the Port of Import.

14.6 Issue of Interim Payment Certificates

14.6.1 No amount will be paid until the Owner has received and approved the Performance Security. Thereafter within 14 days after receiving a draft Interim Payment Certificate (in the form set out in Schedule 9 (*Form of Interim Payment Certificate*)) which the Supply Contractor was entitled to issue under the Contract, the Owner shall return the Interim Payment Certificate to the Supply Contractor showing the amount due, provided that all evidence, supporting documents and other information required by the Contract has been submitted with the Interim Payment Certificate and has been verified to the reasonable satisfaction of the Owner. If such evidence, supporting documentation and other information is not submitted with Supply Contractor's application or cannot be verified to the reasonable satisfaction of the Owner, the Owner shall promptly notify the Supply Contractor giving its reasons therefor. The Owner shall make such corrections or amendments to the Interim Payment Certificate so that it prescribes only those items for which all evidence, supporting documents and other information has been received and which has been verified to its reasonable satisfaction and shall state the reasons for the corrections or amendments.

14.6.2 The Parties agree that:

- (i) any application for payment that is inaccurate, incomplete or lacks the supporting documents required by this Clause 14 shall not, to the extent of that deficiency, constitute a valid application for payment and shall not be approved for payment or paid for by the Owner, to the extent of such deficiency, until the same is remedied; and
- (ii) the Supply Contractor shall only be paid in respect of Milestones that have been achieved and no payment shall be due for partially achieved Milestones.

14.6.3 Approval of applications for payment contained in an Interim Payment Certificate shall not be withheld by the Owner on account of any part of the payment applied for being disputed. In such case the Owner shall approve an Interim Payment Certificate for the undisputed amount (subject always to Clause 14.6.2).



14.6.4 Every Interim Payment Certificate shall certify the total sum due to the Supply Contractor from the Owner in respect of:

- (i) Milestones achieved; and
- (ii) claims for adjustments to the Contract Price pursuant to Clause 20.1 (*Supply Contractor's Claims*),

up to the date named in the Interim Payment Certificate less:

- (iii) the total of any sums previously certified in Interim Payment Certificates;
- (iv) any sum payable under the Contract by the Supply Contractor to the Owner; and
- (v) any deductions from the Contract Price made in accordance with the Contract,

provided that the Owner shall be entitled to withhold its approval of an Interim Payment Certificate submitted in respect of the achievement of any Milestone due to the reasons set out in Clause 14.6.2.

14.6.5 The Owner may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Owner's acceptance, approval, consent or satisfaction.

14.7 Timing of Payments

14.7.1 Except as otherwise stated in Clause 2.4 (*Owner's Claims*), the Owner shall, subject to Clause 14.7.7, pay to the Supply Contractor:

- (a) the Advance Payment in accordance with Clause 14.2 (*Advance Payment*);
- (b) the amount which is due in respect of each Interim Payment Certificate, other than the Final Payment Certificate, within the later of (i) 30 days after receiving from the Supply Contractor an invoice setting out the amount approved for payment in the Interim Payment Certificate; and (ii) five Business Days after the State Bank of Pakistan approves such payment, provided that payment is due no later than 42 days from the date of receipt of the Supply Contractor's invoice; and
- (c) the final amount due, within the later of (i) 60 days after receiving from the Supply Contractor an invoice setting out the amount approved for payment in the Final Payment Certificate together with the written discharge in accordance with Clause 14.11 (*Application for Final*



Payment) and Clause 14.12 (*Discharge*); and (ii) five Business Days after the State Bank of Pakistan approves such payment, provided that payment is due no later than 72 days from the date of receipt of the Supply Contractor's invoice,

(each the "**Due Date**" in respect of the relevant payment).

If any invoice submitted by the Supply Contractor is for an amount greater than the amount approved by the Owner in the corresponding Interim Payment Certificate or Final Payment Certificate (as applicable), then, for the purposes of Clause 14.7.1(b) or (c) (as applicable), no invoice will be deemed to have been received by the Owner, and the Owner shall not be required to make payment to the Supply Contractor until such time the Supply Contractor resubmits a revised invoice setting out an amount corresponding to the amount approved by the Owner in the corresponding Interim Payment Certificate or Final Payment Certificate (as applicable).

- 14.7.2 Payments of the amount due for the Contract Price, shall, at the Owner's option, be made by (i) a payment by the Lenders to the Supply Contractor on behalf of the Owner and/or (ii) by telegraphic transfer or cheque payment into the account numbers and at the banks as may from time to time be notified by the Supply Contractor to the Owner by 21 days' prior written notice.
- 14.7.3 Any payment which becomes payable on any day which is not a Business Day shall be paid on the immediately succeeding Business Day.
- 14.7.4 The Owner shall be entitled to set off against any sum payable by the Owner to the Supply Contractor under the Contract:
- (i) any debt or other moneys due from the Supply Contractor to the Owner; and
 - (ii) any claim to money which the Owner has against the Supply Contractor whether for damages (including liquidated damages) or otherwise.
- 14.7.5 No Certificate of Payment issued under the Contract, and no consent or approval given or payment made by the Owner to the Supply Contractor, shall be conclusive evidence that the Supply Contractor has performed any of its obligations under the Contract or that any design or work or Materials are in accordance with the Contract.
- 14.7.6 If for any reason either Party has paid the other sums in excess of those properly due under the Contract, the overpaying Party may require that such excess be repaid and the other Party shall promptly make such repayment.
- 14.7.7 The Owner shall not be required to make payment of any amount due in connection with this Contract unless it has received a valid invoice in respect of the relevant amount or amounts. If an invoice properly issued by the Supply



Contractor falls due for payment in a month in which the Owner has already made a payment to the Supply Contractor, the Owner may defer the timing for such payment until no later than the date falling five Business Days after the commencement of the following month.

14.8 Delayed Payment

- 14.8.1 If the Supply Contractor does not receive payment in accordance with Clause 14.7 (*Timing of Payments*), the Supply Contractor shall be entitled to receive interest at the Default Interest Rate on the amount unpaid during the period of delay which occurs after the Due Date.
- 14.8.2 The Supply Contractor shall be entitled to this payment without formal notice and without prejudice to any other right or remedy.
- 14.8.3 For the avoidance of doubt, the Owner will not be deemed to be late in payment of any Interim Payment Certificate or any other Certificate of Payment if the due amount was debited to the account of the Owner in favour of the account of the Supply Contractor not later than the last day of the Due Date of the relevant Payment Certificate.

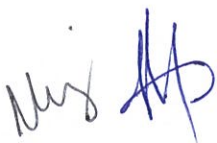
14.9 [Not Used]

14.10 Statement at Completion

- 14.10.1 Within 84 days after receiving the Taking Over Certificate, the Supply Contractor shall submit to the Owner that number of copies reasonably required by the Owner of a statement at completion with supporting documents, in accordance with Clause 14.3 (*Application for Interim Payment Certificates*), showing:
 - (i) the value of all work done in accordance with the Contract up to the date stated in the Taking Over Certificate for the Works;
 - (ii) any further sums which the Supply Contractor considers to be due; and
 - (iii) an estimate of any other amounts which the Supply Contractor considers will become due to it under the Contract. Estimated amounts shall be shown separately in this statement at completion.
- 14.10.2 The Owner shall then certify in accordance with Clause 14.6 (*Issue of Interim Payment Certificates*).

14.11 Application for Final Payment Certificate

- 14.11.1 Within 28 days after receiving the Performance Certificate, the Supply Contractor shall submit, to the Owner that number of copies reasonably



required by the Owner of a draft final statement with supporting documents showing in detail in a form approved by the Owner:

- (i) details of all adjustments which have been made to the Contract Price and which have been reflected in payments already made to the Supply Contractor;
- (ii) a payment history of the Works, showing payments made (and their dates) and correlating these to the achievement of Milestones and to the Contract Price adjustments so that the payments made are explained and justified;
- (iii) a complete statement of any claims for outstanding elements of the Contract Price, any adjustments to the Contract Price to which the Supply Contractor considers itself entitled and which have not yet been paid (whether the same are agreed or disagreed upon by the Parties); and
- (iv) a statement of that sum which the Supply Contractor considers it will be entitled to be paid (or obliged to pay to the Owner) following the issuance of the Final Payment Certificate.

14.11.2 The Owner may consider the Supply Contractor's application for the Final Payment Certificate for up to 35 days and during this period the Supply Contractor shall provide the Owner with such further information and supporting documents as the Owner may reasonably request.

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

14.12 Discharge

When submitting the Final Statement, the Supply Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Supply Contractor under or in connection with the Contract. This discharge shall be in the form set out in Schedule 25 (*Form of Discharge*) and may state that it becomes effective when the Owner settles the outstanding balance of this total, in which event the discharge shall be effective on such date.

14.13 Cessation of Owner's Liability

The Owner shall not be liable to the Supply Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Supply Contractor shall have included an amount expressly for it in the Final Statement and



(except for matters or things arising after the issue of the Taking Over Certificate for the Works) in the Statement at completion described in Clause 14.10 (*Statement at Completion*).

14.14 Issue of Final Payment Certificate

14.14.1 Within 14 days after receiving the Final Statement and written discharge in accordance with Clause 14.11 (*Application for Final Payment Certificate*) and Clause 14.12 (*Discharge*), the Owner shall issue, to the Supply Contractor, the Final Payment Certificate which shall state:

- (i) the amount which is finally due; and
- (ii) after giving credit to the Owner for all amounts previously paid by the Owner and for all sums to which the Owner is entitled, the balance (if any) due from the Owner to the Supply Contractor or from the Supply Contractor to the Owner, as the case may be.

14.14.2 If the Supply Contractor has not applied for a Final Payment Certificate and discharge, the Owner shall request the Supply Contractor to do so. If the Supply Contractor fails to submit an application within a period of 28 days, the Owner shall issue the Final Payment Certificate for such amount as it fairly determines to be due.

14.15 Currency of Payment

14.15.1 All payments due under the Contract shall be made in US Dollars.

14.16 Inspections and Audits by the Lenders and Power Purchaser

The Supply Contractor shall on seven days' prior notice by the Owner, permit the Lenders' Representative and/or the Power Purchaser's representatives to inspect the Supply Contractor's accounts, records and other information relating to the performance of the Contract and to have them audited by auditors appointed by the Lenders, if so required by the Lenders and/or Power Purchaser.

14.17 [Not Used]

14.18 [Not Used]

14.19 Taxes

14.19.1 Except as provided in this Contract, the Supply Contractor shall be responsible for the payment of, and the Contract Price shall be inclusive of all Taxes that are required under the laws of the People's Republic of China and any other country or place in connection with the Works or the production, manufacture, sale, export and transportation of Plant and Materials to be furnished or used



under the Contract and on services to be performed under the Contract (other than in the Country).

The Owner shall be entitled to withhold such amounts from payments as may be prescribed under the Applicable Laws from time to time. The Owner shall furnish the Supply Contractor with withholding tax deduction certificates, together with copies of all official tax payment receipts. Any such amounts withheld and remitted to the relevant Governmental Authorities shall be deemed to be payment on account of the Contract Price.

- 14.19.2 The Contract Price is exclusive of, and the Owner shall assume the cost of any (a) taxes levied by any Governmental Authority in the Country in relation to the Supply Contractor's performance of the Works; and (b) the costs of stamp duties imposed by laws of the Country in connection with entry into the Contract.
- 14.19.3 The Supply Contractor shall, where applicable, register with the appropriate Governmental Authorities in, and fully inform itself of Applicable Laws in relation to Taxes in the People's Republic of China and any other country where Taxes are payable. The Supply Contractor shall be responsible for the payment of all Taxes under its responsibility as stipulated above.
- 14.19.4 The Owner shall have no obligation to reimburse or indemnify the Supply Contractor or its Subcontractors for any Taxes and other charges pursuant to Applicable Laws incurred by the Supply Contractor prior to the Contract Date.
- 14.19.5 If a dispute arises with any Governmental Authority with respect to the payment or deduction of any Tax or fee by the Owner under the Contract, the Supply Contractor shall, at the Owner's expense, provide reasonable assistance to the Owner in the settlement of such dispute.

14.20 Customs and Import Duties

- 14.20.1 The Owner shall be responsible for the payment of all customs and import duties payable to the Collector of Customs and/or the applicable provincial authorities for the collection of excise imposed on or as a consequence of the importation of all Plant and Materials into the Country for the purposes of the Contract. For the avoidance of doubt, the Owner shall not be responsible for the payment of any customs and import duties, levies, fees and similar charges and/or import surcharges in respect of any items other than the Plant and Materials, or any Plant and Materials which are being imported into the Port of Import as a result of any replacement or repair or shortfall for which the Supply Contractor is responsible.
- 14.20.2 The Supply Contractor acknowledges that certain exemptions and concessions from the payment of customs and import duties in relation to the Plant and Materials may be available to the Owner, including, any which may be set out in the Notifications and Customs General Orders issued by the Government of



Pakistan. The Supply Contractor shall undertake all necessary actions required to ensure that such exemptions and concessions are obtained, including ensuring that all Plant and Materials are imported into the Country in the name of, and identified in all Shipping Documents as being the property of the Owner. If any such exemption or concession in relation to any Plant and Materials cannot be obtained due to the Supply Contractor's act or omission, the Supply Contractor shall reimburse the Owner for the cost of such custom or import duty which would have been subject to such exemption or concession.

14.20.3 [Not Used]

14.20.4 The Owner shall not be responsible in any material manner and respect, including obtaining any consents or payment of Taxes in respect of the re-export or re-import of any Plant or Materials.

14.20.5 The Supply Contractor shall be responsible for and pay all penalties or port demurrage as may be imposed due to non-compliance of the Supply Contractor with Applicable Law, provision of incorrect/incomplete Shipping Documents, delay in submission of Shipping Documents and/or non-compliance of the imported Plant and Materials with the Applicable Law.

15. TERMINATION BY OWNER

15.1 Notice to Correct

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

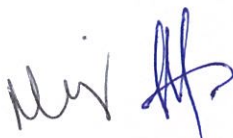
15.2 Termination by Owner

15.2.1 The Owner shall be entitled to terminate the Contract if:

- (i) the Supply Contractor fails to comply with Clause 4.2 (*Performance Security*) or with a notice under Clause 15.1 (*Notice to Correct*);
- (ii) the Supply Contractor plainly demonstrates the intention not to continue performance of its obligations under the Contract;
- (iii) the Supply Contractor without reasonable excuse fails to proceed with the Works in accordance with Clause 8 (*Commencement, Delays and Suspension*) or fails to comply with a notice issued under Clause 7.5 (*Rejection*), or Clause 7.6 (*Remedial Work*);
- (iv) the Supply Contractor subcontracts the whole of the Works or assigns the Contract without the required consent pursuant to Clauses 4.4 (*Subcontractors*) and 1.7 (*Assignment*);



- (v) the Supply Contractor becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under Applicable Laws) has a similar effect to any of these acts or events; or
- (vi) the Supply Contractor gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (a) for doing or forbearing to do any action in relation to the Contract, or
 - (b) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this Clause 15.2.1(vi) or Clause 4.26 (*Bribes*). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination;
- (vii) the Owner has become entitled to the maximum amount of Delay Liquidated Damages pursuant to Clause 17.6.3 (*Limitation of Liability*);
- (viii) the Supply Contractor's overall liability under or in connection with this Contract exceeds any limitation of liability stated in Clause 17.6 (*Limitation of Liability*);
- (ix) the Supply Contractor fails to pay any sum (which is not in dispute) due to the Owner within a reasonable time (and, in any event within 30 days) of such demand;
- (x) the existence of a Defect or Latent Defect depriving the Owner of the benefit of the whole, or substantially the whole, of the Jetty in accordance with Clause 11.4.2(iii) (*Failure to Remedy Defects*) or Clause 9.6.3(ii) (*Failure to Pass Tests on Completion*);
- (xi) a Security Replacement Event occurs and the Supply Contractor fails, within 20 days of such a Security Replacement Event becoming known, to provide acceptable replacement security (such replacement security and its issue to be in accordance with Clause 4.2 (*Performance Security*) and subject to the Owner's written approval);
- (xii) the Supply Contractor, through any act, omission or default directly or indirectly causes the termination of the Power Purchase Agreement or



any policies of insurance required to be maintained by the Parties pursuant to the Contract; or

- (xiii) the Supply Contractor commits any other material breach of the Contract,

the Owner shall be entitled:

- (i) in the case of the events referred to in Clauses 15.2.1 (iii) or (iv) above to serve notice of default on the Supply Contractor requiring it to remedy the matter within a reasonable period and in any event within 14 days or (at the Owner's option) requiring the Supply Contractor within five working days to submit a remedial plan and a programme for the remedying of the relevant matter for the approval of the Owner (which approval shall not be unreasonably withheld). If the Owner (acting reasonably) does not approve the remediation plan or programme submitted by the Supply Contractor, or if the relevant matter is not remedied in accordance with such notice or agreed plan and programme, the Owner may terminate the Supply Contractor's engagement under the Contract immediately on written notice to the Supply Contractor; or
- (ii) in the case of the other events referred to above to terminate the engagement of the Supply Contractor under the Contract immediately on written notice to the Supply Contractor.

15.2.2 Neither the Owner's election to terminate the Contract, nor any other actions taken in accordance with this Clause 15.2, shall prejudice any other rights of the Owner, under the Contract or otherwise.

15.2.3 The Supply Contractor shall deliver any required Plant and Materials, all Contractor's Documents, and other design documents made by or for the Supply Contractor, to the Owner. However, the Supply Contractor shall use its best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract and (ii) for the protection of life or property or for the safety of the Works.

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

15.2.5 [Not Used]

15.2.6 In the event of termination, any item of Plant and Materials, including any Contractor's Documents or Spare Parts, paid for by the Owner but not delivered by the Supply Contractor shall be delivered to the Port of Import within six weeks after termination.



15.2.7 Without limiting the foregoing provisions, upon termination of the Supply Contractor's employment under the Contract, the following shall apply:

- (a) the Supply Contractor shall use best efforts, when and if required by the Owner, to assign to the Owner all of its rights under all or any of its Subcontracts relating to the Works;
- (b) the Supply Contractor shall co-operate with the Owner in the transfer of information and disposition of work in progress so as to mitigate the cost to the Owner of the determination of the Supply Contractor's employment;
- (c) the Owner may pay any Subcontractor for any materials or goods delivered or works executed for the purpose of the Contract (whether before or after date of determination) insofar as the price thereof has not already been paid by the Supply Contractor. Payments made under this Clause may be deducted from any sums due or to become due to the Supply Contractor. It is a condition of this Contract that the Supply Contractor is entitled to be paid only such sum as, in the event of determination and the making of any direct payments pursuant to this Clause 15, may remain after the amount equivalent to such direct payment has, in addition to any other amounts certified by the Owner under this Clause, been debited against the Supply Contractor; and
- (d) the Supply Contractor shall provide to the Owner upon request and as a precondition to receiving any payment under this Clause 15, such evidence as the Owner shall reasonably require to satisfy the Owner that property in all Materials and Plant which has been supplied by the Supply Contractor to the Owner and is included in the calculation referred to in Clause 15.3 (*Valuation at Date of Termination*) has vested (or will upon such payment vest) in the Owner.

15.3 Valuation at Date of Termination

15.3.1 If the Owner terminates the Supply Contractor's engagement pursuant to Clause 15.2 (*Termination by Owner*), the Supply Contractor shall not be entitled to any further compensation and all obligations (other than as set out in this Clause 15.3) for the Owner to make payments to Supply Contractor shall cease.

15.3.2 [Not Used]

15.3.3 If, following a termination pursuant to this Clause 15.3 (subject to Clause 15.6 (*Owner's Alternative Remedy on Termination*) and Clause 15.7 (*Fundamental Project Failure*)) the Owner determines to complete the Works or any of them then, within 30 days after the termination (or such longer period as the Owner may reasonably elect in order to better estimate the items referred to below) the Owner shall, subject to Clause 15.4.1 (*Payment after Termination*), prepare and

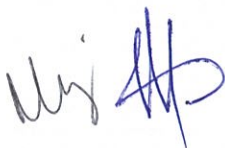


deliver an account in respect of the matters referred to below set out as a certificate (the "**Interim Termination Account**").

$$P = PB + PC + PD + PF + PE$$

where:

- (i) PB = the costs and expenses reasonably estimated by the Owner as incurred or to be incurred by the Owner in carrying out and completing the Works and in making good any Defects for which the Supply Contractor is responsible (including the Owner's costs and expenses incurred or to be incurred in connection with engaging any replacement contractor or contractors, sums payable to such contractor or contractors for such completion of the Works and making good of defects and the Owner's other additional costs, overheads, management, professional fees and other expenses arising as a result of the event of default and the termination) less the unpaid balance of the Contract Price as at the date of the termination together with any other sums due and payable by the Owner to the Supply Contractor under the Contract as at the date of termination but not of any sums due and payable by the Supply Contractor to the Owner as at the date of termination;
- (ii) PC = the costs, expenses and damages reasonably estimated by the Owner as incurred or to be incurred by the Owner in connection with discharging Liens or other claims or demands by Subcontractors in connection with the Works;
- (iii) PD = any Delay Liquidated Damages which have accrued but not been paid or allowed at the date of termination;
- (iv) PF = the costs and expenses reasonably estimated by the Owner to be incurred by the Owner in maintaining any existing financing facilities for the Project (including the payment of any interest and associated interest rate hedging expenses, commitment fees, and guarantee fees or other costs, fees or expenses incurred in connection with the maintaining of financing facilities) in respect of the period of any delay (for which there is no extension of time entitlement under the Contract) which the Supply Contractor is responsible for as at the date of termination (except for any period of such delay for which Delay Liquidated Damages have accrued), including delay occurring after termination and (together with any Delay Liquidated Damages which have been accrued at the date of termination) up to the cap stated in Clause 错误!未找到引用源。 (*Limitation of Liability*) in aggregate, such period of delay being reasonably estimated with regard to the period of time it would take an experienced contractor, acting in accordance with Prudent Contractor Practice, to complete the Works in



accordance with the requirements of this Contract, commencing on the date of termination; and

- (v) PE = any other losses, costs, expenses and damages reasonably estimated by the Owner to be reasonably and properly incurred by the Owner arising by reason of the termination and the relevant event of default but excluding sums accounted for in PB, PC, PD and PF,

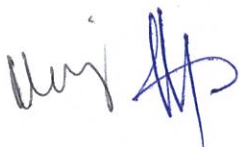
provided always that the estimates in PB, PC and PE shall be calculated respectively by reference to the contract prices and completion dates in replacement contracts let or shortly due to be let by the Owner at the time of preparation of the account or, if no such contracts have been prepared at such date, by reference to competitive tenders received and/or professionally prepared estimates for such purposes determined by the prevailing circumstances at the relevant time (and, in the case of estimated dates for Taking Over, taking no account of potential future acceleration of or future variations of the Works).

15.4 Payment after Termination

- 15.4.1 The sum of P certified in accordance with Clause 15.3 (*Valuation at Date of Termination*) shall if positive be a debt payable by the Supply Contractor to the Owner (or if negative shall be deemed to be zero) within 30 days of issue of the Interim Termination Account.
- 15.4.2 Within 30 days of completion of the Works (being the nearest equivalent of Taking Over of the Works pursuant to this Contract) the Owner shall prepare and deliver an account in respect of the matters referred to below set out as a certificate (the "**Final Termination Account**").

$F = FB + FC + FD + FF + FE - P$ where:

- (i) FB = the equivalent calculation to "PB" under Clause 15.3.3(i) (*Valuation at Date of Termination*) but instead calculated by reference to the actual costs reasonably incurred by the Owner;
- (ii) FC = the equivalent calculation to "PC" under Clause 15.3.3(ii) (*Valuation at Date of Termination*) but instead calculated by reference to actual costs, expenses and damages incurred;
- (iii) FD = the equivalent calculation to "PD" under Clause 15.3.3(iii) (*Valuation at Date of Termination*);
- (iv) FF = the equivalent calculation to "PF" under Clause 15.3.3(iv) (*Valuation at Date of Termination*) but instead calculated by reference to actual costs and expenses incurred during the relevant period, subject to the caps stated in "PF" under Clause 15.3.3(iv);



- (v) FE = the equivalent calculation to "PE" under Clause 15.3.3(v) (*Valuation at Date of Termination*) but instead calculated by reference to actual losses, costs, expenses and damages incurred but excluding sums accounted for in FB, FC, FD and FF;
- (vi) P = "P" as certified in accordance with Clause 15.3 (*Valuation at Date of Termination*).

15.4.3 The sum of "F" certified in accordance with Clause 15.3 (*Valuation at Date of Termination*) shall if positive be a debt payable by the Supply Contractor to the Owner or if negative be a debt payable by the Owner to the Supply Contractor within 30 days of issue of the Final Termination Account.

15.5 Owner's Entitlement to Termination

- 15.5.1 The Owner shall be entitled to terminate the Contract, at any time for the Owner's convenience, by giving notice of such termination to the Supply Contractor. The termination shall take effect 28 days after the date on which the Supply Contractor receives this notice. The Owner shall not terminate the Contract under this Clause 15.5 for the sole reason of executing the Works himself or to arrange for the Works to be executed by another contractor.
- 15.5.2 After this termination, the Supply Contractor shall proceed in accordance with Clause 16.3 (*Cessation of Work*) and shall be paid in accordance with Clause 19.6 (*Optional Termination, Payment and Release*).
- 15.5.3 Notwithstanding Clauses 15.5.1 and 15.5.2, if the Owner terminates the Contract for its convenience after a Limited Notice to Proceed has been issued but before a Notice to Proceed is issued, the Owner shall pay the Supply Contractor the amounts specified for such termination in Schedule 23 (*LNTP Works*).

15.6 Owner's Alternative Remedy on Termination

In lieu of completing the Works as contemplated by Clauses 15.3 (*Valuation at Date of Termination*) and 15.4 (*Payment after Termination*), the Owner may elect to accept the Works as having attained Taking Over subject to a fair and reasonable reduction in the Contract Price, such reduction to be agreed or, in the absence of agreement within 30 days of such election by the Owner, provisionally determined by the Owner (subject to dispute resolution in accordance with Clause 20 (*Claims, Disputes and Arbitration*)), such reduction to be fair and reasonable with reference to the Tests on Completion results, the ongoing delay and the effect on the Works, and the Supply Contractor shall pay or allow to the Owner such reduction forthwith upon such agreement or provisional determination.

15.7 Fundamental Project Failure

- 15.7.1 Following any event of default or the existence of any Defect which gives rise to circumstances described in Clause 15.2.1(x) (*Termination by Owner*)



whereby the Owner is deprived of the benefit of the whole, or substantially the whole, of the Jetty and for which Supply Contractor has been unable or unwilling to remedy in accordance with its obligations under the Contract, the Owner may by notice to the Supply Contractor elect to permanently reject the Works and, without prejudice to any Delay Liquidated Damages or other liabilities accrued by the Supply Contractor prior to termination, the Supply Contractor's sole liability to the Owner shall be to:

- (i) repay to the Owner all amounts paid to the Supply Contractor by the Owner under the Contract up to the date of the notice; and
- (ii) pay or allow to the Owner all costs and expenses incurred by the Owner under the Finance Documents in excess of the sum specified in Clause 15.7.1(i), including any interest and associated interest rate hedging expenses, commitment fees, and guarantee fees or other costs, fees or expenses incurred in respect of the Finance Documents, except for such costs payable during the period in respect of which the Supply Contractor has paid any Delay Liquidated Damages prior to termination,
- (iii) [Not Used]
- (iv) [Not Used]
- (v) [Not Used]
- (vi) [Not Used]

all to the reasonable satisfaction and in a manner reasonably satisfactory to the Owner.

15.7.2 The Supply Contractor shall within 30 days of receiving a notice from the Owner pursuant to Clause 15.7.1 pay to the Owner the amounts referred to in the notice served in accordance with Clause 15.7.1. If the Supply Contractor fails to pay, when due, any amount notified in accordance with Clause 15.7.1, the Owner shall be entitled to receive interest on the amount unpaid during the period of delay at the Default Interest Rate.

15.7.3 The Supply Contractor shall:

- (i) not be entitled to any further payments under the Contract or any payments for complying with the Owner's and the Owners Representative's instructions pursuant to Clause 15.7.1 and 9.6.3 (*Failure to Pass Tests on Completion*); and
- (ii) provided it has paid to the Owner the amounts referred to in Clause 15.7.1, be entitled to keep for its own benefit the proceeds, if any, of the disposal of the Works under that Clause.



16. SUSPENSION AND TERMINATION BY CONTRACTOR

16.1 Supply Contractor's Entitlement to Suspend Work

- 16.1.1 If the Owner fails to pay any portion of the Contract Price which is due and undisputed within the periods specified in accordance with Clause 14.7 (*Timing of Payments*) and which in aggregate exceeds US\$10,000,000, the Supply Contractor may, subject to the Direct Agreement after giving not less than 30 days' notice to the Owner, suspend work (or reduce the rate of work) unless and until the Supply Contractor has received the payment, as described in the notice.
- 16.1.2 The Supply Contractor's actions shall not prejudice its entitlements to interest under Clause 14.8 (*Delayed Payment*) and to termination under Clause 16.2 (*Termination by Supply Contractor*).
- 16.1.3 If the Supply Contractor subsequently receives such payment (as described in the notice described in Clause 16.1.1) before giving notice of termination, the Supply Contractor shall resume normal working as soon as is reasonably practicable.
- 16.1.4 If the Supply Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Clause, the Supply Contractor shall give notice to the Owner and shall be entitled subject to Clause 20.1 (*Supply Contractor's Claims*) to:
- (i) an extension of time for any such delay, if completion is or will be delayed, under Clause 8.4 (*Extension of Time for Completion*); and
 - (ii) payment of any such Cost which shall be added to the Contract Price.

After receiving this notice, the Owner shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine these matters.

16.2 Termination by Supply Contractor

- 16.2.1 If:
- (i) the Supply Contractor does not receive an undisputed portion of the Contract Price which in aggregate exceeds US\$20,000,000 due under one or more Interim Payment Certificate within 60 days after the expiry of the time stated in Clause 14.7 (*Timing of Payments*) within which payment is to be made (except for deductions in accordance with Clause 2.4 (*Owner's Claims*)) provided that a suspension under Clause 16.1.1 has been in effect for more than 30 days;
 - (ii) a prolonged suspension affects the whole of the Works as described in Clause 8.12 (*Prolonged Suspension*);



- (iii) the Owner becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under Applicable Laws) has a similar effect to any of these acts or events,

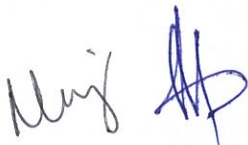
then, subject to the provisions of the Direct Agreement, the Supply Contractor may, upon giving 30 days' notice to the Owner, terminate the Contract. However, in the case of Clause 16.2.1(iii), the Supply Contractor may by notice terminate the Contract immediately.

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

16.3 Cessation of Work

After a notice of termination under Clause 15.2 (*Termination by Owner*), Clause 15.5 (*Owner's Entitlement to Termination*), Clause 16.2 (*Termination by Supply Contractor*) or Clause 19.6 (*Optional Termination, Payment and Release*) (and in the case of a termination pursuant to Clause 15.2, to the extent not already provided for in Clause 15.2.7) has taken effect, the Supply Contractor shall promptly:

- 16.3.1 cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Works already executed;
- 16.3.2 hand over Plant, Materials and other work and/or for which the Supply Contractor has received payment;
- 16.3.3 [Not Used]
- 16.3.4 terminate all Subcontracts, except those to be assigned to the Owner pursuant to Clause 16.3.6;
- 16.3.5 deliver to the Owner the parts of the Works executed by the Supply Contractor up to the date of termination together with any Manuals (including as-built drawings) or drafts of them in existence at the date of termination;
- 16.3.6 to the extent legally possible, procure the assignment to the Owner or such person as the Owner may direct of all rights, title and benefit of the Supply Contractor to the Works and in the Materials as at the date of termination;
- 16.3.7 procure that any Contractor Licences obtained by the Supply Contractor in connection with the Contract and the Works are transferred into the name of the Owner or such person as the Owner may direct (to the extent permissible by Applicable Law); and



- 16.3.8 deliver to the Owner all Contractor's Documents prepared by the Supply Contractor or its Subcontractors as at the date of termination in connection with the Works which are designated in the Owner's Requirements as being a document deliverable under the Contract, in addition to those referred to Clause 16.3.5.

16.4 Payment on Termination

After a notice of termination under Clause 16.2.2 (*Termination by Supply Contractor*) has taken effect, the Owner shall promptly pay the Supply Contractor in accordance with Clause 19.6 (*Optional Termination, Payment and Release*) and thereafter return the Performance Security to the Supply Contractor.

17. RISK AND RESPONSIBILITY

17.1 Indemnities

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

- (i) bodily injury, sickness, disease or death, of any person whatsoever; and
- (ii) damage to or loss of any property, real or personal (other than the Works),

arising out of or in the course of or by reason of the design, execution and completion of the Works and taking corrective actions after Taking Over or carrying out any Remedial Work or remedying any damage save in each case to the extent attributable to any negligence, wilful act or breach of the Contract by the Owner, the Owner's Personnel, or any of their respective agents.

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

- (i) bodily injury, sickness, disease or death, of any person whatsoever; and
- (ii) damage to or loss of any property, real or personal (other than the Works),

to the extent attributable to any negligence, wilful act or breach of the Contract by the Owner, the Owner's Personnel, or any of their respective agents.

- 17.1.3 The Parties shall each act for itself in connection with the indemnities in this Clause 17.1 and as trustee for its affiliates and the employees, officers, and agents of the Owner and its affiliates.



17.2 Supply Contractor's Care of the Works

- 17.2.1 The Supply Contractor shall take full responsibility for the care of and risk of any loss or damage to the Works and Plant and Materials from the date of issuance of the Limited Notice to Proceed until the Taking Over Certificate is issued for the Works, when responsibility for the care of the Works shall pass to the Owner. If a Taking Over Certificate is issued (or is so deemed to be issued) for any Section, responsibility for the care of the Section shall then pass to the Owner.
- 17.2.2 After responsibility has accordingly passed to the Owner, the Supply Contractor shall take responsibility for the care and risk of any loss or damage to (i) any work which is outstanding on the date stated in a Taking Over Certificate, until this outstanding work has been completed and (ii) any part of the Works on which Remedial Work is being performed, until the completion of such Remedial Work.
- 17.2.3 If any loss or damage happens to the Works, Plant and Materials or Contractor's Documents during the period when the Supply Contractor is responsible for their care, from any cause not listed in Clause 17.3 (*Owner's Risks*), the Supply Contractor shall rectify the loss or damage at the Supply Contractor's risk and cost, so that the Works, Plant and Materials and Contractor's Documents conform with the Contract.
- 17.2.4 The Supply Contractor shall be liable for any loss or damage caused by any actions performed by the Supply Contractor after a Taking Over Certificate has been issued. The Supply Contractor shall also be liable for any loss or damage which occurs after a Taking Over Certificate has been issued and which arose from a previous event for which the Supply Contractor was liable or which arises out of any Remedial Work.

17.3 Owner's Risks

- 17.3.1 The risks referred to in Clause 17.4 (*Consequences of Owner's Risks*) are:
- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
 - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country,
 - (iii) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Supply Contractor and Subcontractors,
 - (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be



attributable to the Supply Contractor's use of such munitions, explosives, radiation or radio-activity, and

- (v) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

17.3.2 The Parties acknowledge that events and circumstances set out in Clause 19.1.2 are excluded from the definition of Owner's Risks under this Clause 17.3.

17.4 Consequences of Owner's Risks

17.4.1 If and to the extent that any of the risks listed in Clause 17.3 (*Owner's Risks*) results in loss or damage to the Works, Plant and Materials or Contractor's Documents, the Supply Contractor shall promptly give notice to the Owner and shall rectify this loss or damage to the extent required by the Owner.

17.4.2 If the Supply Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Supply Contractor shall give a further notice to the Owner and shall be entitled subject to Clause 20.1 (*Supply Contractor's Claims*) to:

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

17.4.3 After receiving this further notice, the Owner shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine these matters.

17.5 Intellectual and Industrial Property Rights

17.5.1 In this Clause 17.5, "infringement" means an infringement (or alleged infringement) of any Intellectual Property Right; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

17.5.2 Whenever a Party becomes aware of any claim it shall give notice of the same to the other Party as soon as is reasonably practicable thereafter.

17.5.3 The Owner shall indemnify and hold the Supply Contractor harmless against and from any claim which is or was a result of any Works being used by the Owner for a purpose other than that indicated by, or reasonably to be inferred from, the Contract.

17.5.4 The Supply Contractor shall indemnify and hold the Owner harmless against and from any other claim, demands, losses, damages or other sums, including costs which the Owner has been ordered to pay, other costs and expenses whatsoever, including legal advisor's fees and expenses alleging infringement which arise out of or in relation to (i) the Supply Contractor's engineering, design, manufacture or execution of the Works or (ii) the use of the Works, or



(iii) the copying, use or communication of Contractor's Documents or (iv) the use of computer programmes and other software which are part of the Works.

17.5.5 If a Party is entitled to be indemnified under this Clause 17.5, it may elect that the indemnifying Party (at its cost) will conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

17.6 Limitation of Liability

17.6.1 Notwithstanding any other caps on liabilities of the Supply Contractor under the Contract the aggregate liability of the Supply Contractor to the Owner for any matters arising under or in connection with the Contract however arising (including for breach of contract, in tort (including negligence and strict liability), by reason of indemnification, breach of statutory duty, equity or any other legal theory, including the Applicable Laws) shall in no case exceed in the aggregate US\$192,469,038, except as otherwise expressly set out below in this Clause 17.6.1(i) (the "**Contract Liability Limit**"). The Contract Liability Limit shall not apply to or be reduced by (and in calculating the same no account shall be made in respect of):

- (i) liability under or in connection with Clause 17.1 (*Indemnities*);
- (ii) liability in respect of the Supply Contractor's indemnity obligations set out in Clauses 4.16.1(iv) (*Transport of Plant and Materials*), and 21.11 (*Tax Indemnity*) in respect of the losses, claims, costs and liabilities of persons other than the Owner;
- (iii) liability for fraud, fraudulent misrepresentation, Gross Negligence and Wilful Misconduct, or indemnities for fines and penalties for violation of any Applicable Laws;
- (iv) liability in respect of which sums have been recovered under any insurance policies required to be taken out under the Contract;
- (v) liability in respect of infringement of any Intellectual Property Rights;
- (vi) liability for Delay Liquidated Damages; and
- (vii) losses or costs which would otherwise be expressly recoverable following any termination of the Supply Contractor's engagement pursuant to Clause 15.2 (*Termination by Owner*).



17.6.2 Neither Party shall be liable to the other Party whether in contract, tort (including negligence and strict liability), under statute, in equity, by way of indemnity or otherwise in connection with this Contract, for any loss of use of the Works, loss of profit or revenue, loss of production, loss of income, loss of any contract, loss of business, loss of anticipated savings, increased interest and related costs, fuel costs, loss of entitlement to special damages, loss of information or data and loss of opportunity resulting from or arising under or in connection with this Contract, any damages asserted against the Owner by the Owner's customers for breach of contract or for any special, indirect, incidental, or consequential loss or damage which may be suffered by the other Party in connection with the Contract other than:

- (i) any delayed interest costs agreed by the Parties with respect to any unjustified late payments;
- (ii) the Supply Contractor's obligation to pay Delay Liquidated Damages in accordance with Clause 8.7 (*Liquidated Damages for delay*);
- (iii) the liability of either Party under the indemnities set out in this Contract in respect of a Party's liability in respect of losses, claims, costs and liabilities of any third party; or
- (iv) any amounts expressly provided for in Clauses 15.3 (*Valuation at Date of Termination*), 15.4 (*Payment after Termination*) or 15.7 (*Fundamental Project Failure*).

17.6.3 Subject to Clause 17.6.4, the liability of the Supply Contractor to the Owner for Delay Liquidated Damages shall not exceed US\$38,493,808.

17.6.4 The Supply Contractor may propose increases to the Contract Liability Limit and/or to any of the limits set out in Clause 17.6.3 by notice to the Owner, subject always to the Owner's written consent prior to such increases becoming applicable under the Contract. If the Owner does so consent, such new limit or limits shall be deemed to replace the Contract Liability Limit and/or those set out in Clause 17.6.3 (as appropriate). The Parties acknowledge that the limitations on liability contained in this Clause 17.6 are just, proportionate and agreed.

17.7 Claims

17.7.1 The following procedure shall not apply to the extent the agreed insurance policies taken out by the Owner stipulate a claims handling procedure and if and to the extent such claims are covered and resolved under the respective insurance policy.

17.7.2 In the event of any claim being made against a Party (the "**non affected Party**") arising out of the matters referred to and in respect of which it appears that the other Party may be liable under this Clause 17 (the "**affected Party**"), the



affected Party shall be promptly notified thereof by the non-affected Party and may, at its own expense but in the other Party's name, conduct all negotiations for the settlement of the same and any proceedings or claim that may arise in relation thereto.

17.7.3 The non-affected Party shall not, unless and until the affected Party shall have failed to take over the conduct of the negotiations or litigation, make any admission, which might be prejudicial thereto. The affected Party shall be deemed to have failed to take over the conduct of the negotiations or litigation in circumstances where having been notified of the claim (which notification will include all details reasonably available to the non affected Party in respect thereof) the affected Party fails within 28 days of receipt of such notification to advise the non-affected Party in writing that it is so taking over. The non-affected Party shall, at the request of the affected Party, afford all available assistance for any such purpose and shall be repaid all costs and expenses incurred in so doing.

17.7.4 In all cases the Party claiming a breach of contract or a right to be indemnified in accordance with the Contract shall be obliged to take all reasonable measures to mitigate the loss or damage which has occurred or may occur and the liability to indemnify the other Party shall be subject to the above mentioned procedure.

17.8 Exported Plant and Materials

17.8.1 Exported Plant and Materials

- (a) The Supply Contractor shall provide transportation for all of the Plant and Materials from ex-works to the port of export and shall pay for the shipping or other means of transport required for delivery of the Plant and Materials on CFR basis as per Incoterms 2010 to the Port of Import. At least 14 Business Days prior to dispatch of each shipment of the Plant and Materials, the Supply Contractor shall notify the Owner of the description of such Plant and Materials, the point and means of dispatch, the details of vessel or aircraft and the estimated time and point of arrival at the Port of Import. The Supply Contractor shall furnish the Owner with a copy of all relevant shipping and other documents required for importation of the Plant and Materials into the Country.
- (b) The Supply Contractor shall within three Business Days of receipt of the signed original bill of lading provide the documents required by the Owner electronically (originals to follow within 10 days) to fulfill the legal requirements of import into the Country.
- (c) The Supply Contractor shall be responsible for:



- (i) transportation of Plant and Materials to the Port of Import and re-importation in respect of defective imported Plant and Materials from the Country;
- (ii) procuring all Contractor Licences relating to the Plant and Materials;
- (iii) any damage to the Plant and Materials due to reasons attributable to the Supply Contractor; and
- (iv) meeting other contractual requirements and performing other related obligations under this Contract regarding Plant and Materials.

17.8.2 Packing

The Supply Contractor shall adopt Prudent Contractor Practices for packing Plant and Materials, and shall use standardised and duly treated wooden packages and boxes of fortified strength to sustain stresses and strains during loading, un-loading and sea or air shipments. Delicate and sophisticated equipment including electronics, controls, panels, instruments and other fragile items shall be transported in suitable containers to avoid damage to them during ocean transit or other transportation including in-land transportation and haulage.

17.8.3 Markings

All consignments and shipments packages, boxes and steel containers shall have the following markings with un-removable ink stampings:

Consignee:

Project: CPHG 2 x 660MW Power Project, Jetty Works


No. of Package.:

Supplier's/Subcontractor's Name and Address.:

Contract No.:

17.8.4 Shipping Documents

Following the shipment of the Plant and Materials from the port of export, the Supply Contractor shall immediately submit by registered courier service, the following shipping documents to the negotiating bank (with copies to the Owner):




- (a) four bills of lading or airway bill, one original negotiable and three originals non-negotiable;
- (b) four original sets of commercial invoices of all equipment actually shipped;
- (c) four original sets of packing lists;
- (d) three copies of the results of all factory acceptance tests conducted in respect of the equipment being shipped, or of a certificate issued by the Supply Contractor stating no such tests were required by the Supply Contractor in respect of such equipment;
- (e) three copies of a country of origin certificate provided by the Supply Contractor certifying the country in which the relevant equipment was manufactured/assembled/fabricated;
- (f) for all shipments from China, a certificate of origin in accordance with the requirements of the Free Trade Agreement between the Country and China issued by authorised import/export inspection and quarantine bureau at the port of export in China; and
- (g) a certificate of origin issued by the chamber of commerce of the country of origin of the goods/equipment, if the goods/equipment are being imported from a country other than China,

(collectively, the "Shipping Documents").

The Supply Contractor shall ensure that the non-negotiable set of Shipping Documents reach the Owner not more than seven days before the arrival of the relevant shipment at the Port of Import. If the Supply Contractor uses air freight it shall use its best efforts to ensure that all of the Shipping Documents shall be delivered to the Owner not more than two days after arrival of the relevant shipment at the Port of Import.

The Supply Contractor shall include one copy of the packing list with each shipment, in addition to any document to be provided by the Supply Contractor pursuant to this Clause.

If there is any delay in clearance of the imported Plant and Materials from customs resulting from incomplete, deficient or delayed provision of Shipping Documents, the Supply Contractor shall not be eligible for any extension in Time for Completion or adjustment in Contract Price.



18. INSURANCE

18.1 Owner Insurances

- 18.1.1 The Owner shall at its expense take out and maintain in effect during the execution of the Works those insurances specified in Schedule 17 (*Insurance*) as being its responsibility, in accordance with the requirements in respect of amount of cover, duration, deductibles, exclusions, extensions and other conditions specified therein.
- 18.1.2 The Owner shall ensure that the Supply Contractor, and the Supply Contractor's Subcontractors are named as co-insured under all policies taken out by the Owner pursuant to Clause 18.1.1. The Owner shall ensure that all insurers' rights of subrogation against all co-insureds for losses or claims arising out of the performance of the Contract shall (to the extent permitted by the Applicable Laws) be waived under such policy (excluding co-insureds who have committed a vitiating act under the policies). The Owner shall, when requested by the Supply Contractor, deliver to the Supply Contractor copies of the cover notes evidencing the insurances required by this Clause 18.1.1 are in full force and effect and compliant with the requirements set out in Schedule 17 (*Insurance*) .
- 18.1.3 If the Owner fails to take out and/or maintain in effect the insurances referred to in Clause 18.1.1, the Supply Contractor may take out and maintain in effect any such insurances and may claim reimbursement of any premium which the Supply Contractor shall have paid to the insurer pursuant to Clause 20.1 (*Supply Contractor's Claims*).

18.2 Supply Contractor Insurances

- 18.2.1 The Supply Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, those insurances specified in Schedule 17 (*Insurance*) as being its responsibility, in the sums and with the deductibles and other conditions specified therein. The identity of the insurers and the form of the policies shall be subject to the approval of the Owner, such approval not to be unreasonably withheld or delayed.
- 18.2.2 The Owner and the Lenders shall be named as the co-insured under all insurance policies taken out by the Supply Contractor pursuant to Clause 18.2.1 except for workmen's compensation (employer's liability) and the automobile liability insurances. The Supply Contractor shall ensure that all insurers' rights of subrogation against all co-insureds for losses or claims arising out of the performance of the Contract shall (to the extent permitted by the Applicable Laws) be waived under such policy. The Supply Contractor shall deliver to the Owner satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than 21 days, notice shall be given



to the Owner by all insurers prior to any cancelation or material modification of the policies.

- 18.2.3 The Supply Contractor shall ensure that, where applicable, its Subcontractors shall take out and maintain in effect adequate insurance policies for their own personnel and vehicles and all work executed by them under the Contract unless the Subcontractors are covered by the policies taken out by either the Owner or the Supply Contractor
- 18.2.4 If the Supply Contractor fails to take out and/or maintain in effect the insurances referred to in Clause 18.2.1 or fails to ensure that its Subcontractors take out and/or maintain in effect the insurances referred to in Clause 18.2.3, the Owner may take out and maintain in effect any such insurances and may from time to time deduct from any amount due to the Supply Contractor under the Contract any premium which the Owner shall have paid to the insurer or otherwise recover such amount as a debt due from the Supply Contractor.

18.3 Loss Payee

- 18.3.1 Subject to the requirements of the Lenders and unless the Parties otherwise agree, proceeds of insurance in relation to loss of or damage to the Works, shall, where the proceeds do not exceed US\$1,000,000 per occurrence, be paid directly to the Supply Contractor for the repair or replacement of the loss or damage.
- 18.3.2 Subject to Clause 18.3, the Lenders shall be named as loss payees in respect of all proceeds of insurance in relation to loss of or damage to the Works, and in respect of loss or damage insured under the Marine Open Cover insurance. The right of the Supply Contractor to receive any proceeds of insurance in respect of such loss of or damage to the Works and any items lost or damaged in transit shall be subject to the loss payee and security rights and interests of the Lenders pursuant to the Finance Documents, unless and until a notification as described below has been served.
- 18.3.3 In the case of any successful insurance claim for loss of or damage to the Works, the Supply Contractor shall not be obliged to continue with rectification pursuant to Clause 17.2 (*Supply Contractor's Care of the Works*) or (to the extent that repair of the relevant defect or damage is insured under the above mentioned insurance) Clause 11 (*Defects Liability*) until receipt of a notification from the Lenders that the proceeds of the insurance claim will be released to the Supply Contractor, and that such loss payee rights are waived in respect of the relevant claim.
- 18.3.4 If the Supply Contractor suffers delay and/or incurs Cost as result of any delay by the Lenders in providing the Supply Contractor with such notification, the Supply Contractor shall be entitled subject to Clause 20.1 (*Contractor's Claims*)



to recover such Costs and an extension of time for any such delay if completion is or will be delayed, under Clause 8.4 (*Extension of Time for Completion*), provided that such notification may be served prior to receipt of the insurance proceeds, and without stipulating the amount of any insurance proceeds.

18.4 [Not Used]

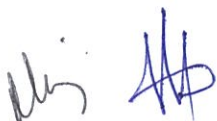
18.5 Disclosure Requirements

18.5.1 With regard to the insurances in Schedule 17 (*Insurance*), the Supply Contractor shall ensure that full disclosure is made through the insurance brokers to those insurers providing insurance cover in respect of any risk relating to the Works or the Jetty where the Supply Contractor is an insured ("**Insurers**"), of:

- (i) all information which the Insurers specifically request to be disclosed which is relevant to the Supply Contractor's performance of the Contract or any risk covered by the insurance cover;
- (ii) all information which is of a type which insurance brokers in relation to the relevant policy advise should be disclosed to the Insurers;
- (iii) details of any significant problems encountered in relation to the Work to the extent that such details are required to be disclosed by the policy of insurance effected in accordance with Schedule 17 (*Insurance*) or in accordance with Prudent Contractor Practice; and
- (iv) all other information which the Supply Contractor acting in accordance with Prudent Contractor Practice and in good faith could reasonably consider to be material to the relevant insurance coverage.

18.5.2 The Supply Contractor shall put in place appropriate internal reporting procedures to ensure that full disclosure as described above is made by the management and managers of the Supply Contractor.

18.5.3 The Supply Contractor shall indemnify the Owner for any loss which it suffers, which it would have been able to recover under the insurances but has not been able to recover as a result of misrepresentation, nondisclosure, want of due diligence or breach of any declaration, condition or warranty contained in the relevant insurance policy or any other vitiating act or omission on the part of the Supply Contractor or any Subcontractor. This indemnity shall apply subject to any other limitation of liability in the Contract provided that the indemnity shall apply notwithstanding any other limitation of liability where the vitiating act or omission is fraudulent, deliberate or otherwise intentional.



18.5A Compliance with Terms of Insurance

The Owner and the Supply Contractor shall each comply with the terms of the insurance policies specified in Schedule 17 (*Insurance*). The Supply Contractor shall ensure that its Subcontractors (i) comply with all terms of such insurance policies (other than those relating to the payment of premiums), including all procedures for the notification and administration of claims; and (ii) not perform any act or omission which may render such insurance policies void or entitle the insurers to avoid liability.

18.6 Alteration to Insurances

Neither Party shall make any material alteration to the terms of any insurance as specified in Schedule 17 (*Insurance*) (other than an alteration that broadens or improves such terms) without the other's prior written approval. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice thereof to the other Party.

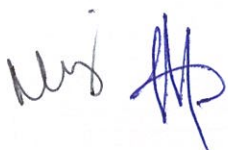
18.7 Claims Assistance

Each Party shall give all such assistance to the other Party as may be appropriate in connection with any claims that may be made under the policies of insurance effected pursuant to this Clause 18 (and each Party shall give to the other Party all such reasonable assistance as may be appropriate in connection with claims under such insurances made by the other Party reasonably requested by the other Party. Neither Party shall give any release or make any compromise with any insurer to the extent such release or compromise relates to any claim in which the other Party has an interest or would adversely impact the interests of the other Party without the prior written consent of the other.

Without limiting its obligations to provide assistance, the Supply Contractor shall promptly provide written notice to the Owner, the Lenders and the relevant insurer providing insurance coverage of any actual or potential loss or claim under any of the Owner's insurance policies.

Subject to the Clause 18.3.2 (*Loss Payee*), if the physical loss or damage to the Works:

- 18.7.1 is equal to, or less than US\$1,000,000, the Supply Contractor may conduct negotiations and settle any claim directly with the relevant insurer and settle any claim with the prior written consent of the Owner (such consent not to be unreasonably withheld) as to the amount of the settlement; or
- 18.7.2 exceeds US\$1,000,000 or an insured event has occurred that involves a potential delay to the Programme, the Supply Contractor, the Owner and the Lenders' Representative shall, jointly conduct negotiations and, subject to the prior written consent of the Owner and the Lenders' Representative (such consent not to be unreasonably withheld), settle any claim with the relevant insurer.



18.8 Continuance of underlying responsibilities

Nothing in this Clause 18 limits the obligations, liabilities or responsibilities of the, Parties under the other terms of the Contract or otherwise, except as otherwise expressly stated in the Contract. Any amounts not insured (including by reason of limitation, exclusion, deductible or excess) shall be borne by the Owner and Supply Contractor in accordance with their liabilities under the Contract and, in particular, Clauses 17.1 (*Indemnities*) to 17.4 (*Consequences of Owner's Risks*), subject to Clause 18.9 (*Failure to Insure*).

18.9 Failure to Insure

If a Party required to insure a risk under this Clause 18 (*Insurance*) (or, in the case of the Supply Contractor, required to procure its Subcontractors to take out insurance), fails to take out, maintain or procure (as the case may be) the relevant insurance, and the other Party does not approve such omission nor effects replacement insurance pursuant to Clause 18.1.3 (*Owner Insurances*) or 18.2.3 (*Supply Contractor Insurances*) then subject to Clauses 17.6.1 and 17.6.2 (*Limitation of Liability*), any monies which would have been recoverable by the other Party under the relevant insurance had it been properly taken out and maintained as required, shall be paid or allowed by the Party originally required to insure to the other Party.

18.10 Language

All policies of insurance required by this Clause 18 shall be issued in the relevant language required by Applicable Laws and translated to the English language if necessary.

18.11 Industry Meanings

Terms used in this Clause 18 and Schedule 17 (*Insurance*) and not otherwise defined in this Contract shall have the meaning generally ascribed to them in the international insurance industry.

18.12 Requirements of Lenders

The insurance covers, deductibles, endorsements and other terms procured by the Parties in accordance with this Clause 18 and Schedule 17 (*Insurance*) shall comply or be modified to comply with the requirements of the Lenders as far as such request is in accordance with international insurance practice and shall not reduce any insurance coverage or increase the liability of the Supply Contractor or, if such request would reduce such insurance coverage or increase the liability of the Supply Contractor, shall be discussed and agreed between the Parties.

19. FORCE MAJEURE

19.1 Definition of Force Majeure

19.1.1 "Force Majeure" shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the



reasonable control of a Party and that materially and adversely affects the performance by such affected Party of its obligations under or pursuant to the Contract; provided, however, that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Works and the Plant and Materials from a casualty or other event; that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. Force Majeure hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the above requirements:

- (i) [Not Used]
- (ii) [Not Used]
- (iii) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado (provided that the potential occurrence of these events is not suggested by the Site Data and that no measures or design tolerances have been expressly incorporated into the design of the Works to guard against the consequences of such natural catastrophes);
- (iv) fire, explosion, chemical contamination, radioactive contamination, or ionising radiation; and
- (v) epidemic or plague.
- (vi) [Not Used]
- (vii) [Not Used]

19.1.2 In relation to the Supply Contractor, Force Majeure shall expressly not include the following events or circumstances:

- (i) late delivery or interruption in the delivery of machinery, equipment materials, spare parts or consumables (including water and fuel);
- (ii) a delay in the performance of any Subcontractor;
- (iii) breakdown in machinery or equipment;
- (iv) normal wear and tear or random flaws in materials, machinery or equipment;
- (v) any risk for which the Supply Contractor is responsible pursuant to this Contract,



- (vi) the consequences of monsoon rains and any other forces of nature which are usual occurrences in the place of occurrence and against which an experienced contractor could reasonably have been expected to have taken adequate preventative precautions; and
- (vii) delays resulting from unsuitable sea conditions or other similar adverse conditions, which an experienced contractor could reasonably have been expected to have taken adequate preventative precautions,

provided, that each of the events described in paragraphs (i), (ii) or (iii) shall constitute a Force Majeure to the extent that such events or circumstances are caused by an event or circumstance that is itself a Force Majeure.

- 19.1.3 The Parties expressly recognise that acts or omissions of Subcontractors of any tier shall not be deemed an event beyond the control of the Supply Contractor unless such Subcontractors can demonstrate that the actual event giving rise to the Force Majeure would be an event covered by this Clause 19.1 (*Definition of Force Majeure*).

19.2 Effect of Force Majeure

Neither the Owner nor the Supply Contractor shall be considered in default or in contractual breach to the extent that performance of its obligations under the Contract is prevented by a Force Majeure event and it has given notice of such Force Majeure event in accordance with Clauses 19.3 (*Supply Contractor's Responsibility*) or 19.4 (*Owner's Responsibility*), as applicable.

19.3 Supply Contractor's Responsibility

- 19.3.1 Upon occurrence of an event considered by the Supply Contractor to constitute Force Majeure and which may affect performance of the Supply Contractor's obligations, the Supply Contractor shall promptly notify the Owner's Representative of the event as soon as practicable, but in any event not later than 24 hours after it becomes aware of the occurrence of the circumstances giving rise to a Force Majeure. Thereafter, the Contractor shall give the Owner's Representative a second notice, describing the Force Majeure events in detail, to the extent which can be reasonably determined at the time of such notice, providing a preliminary evaluation of obligations affected, a preliminary estimate of the period of time that the Supply Contractor shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, not later than five days after the initial notice of the occurrence of the Force Majeure event.
- 19.3.2 The Supply Contractor shall also notify when appropriate and requested by the Owner's Representative to provide further notices more fully describing the Force Majeure events and its causes and providing up to date information relating to the efforts made by the Supply Contractor to avoid and/or mitigate the effects thereof and estimates, to the extent practicable, of the time that it



expects it shall be unable to perform its obligations under the Contract. Furthermore, the Supply Contractor shall include in its notices of any proposals, including any reasonable alternative means for performance, but shall not effect any proposals without the consent of the Owner's Representative.

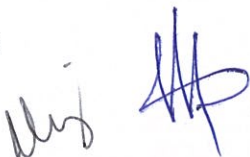
- 19.3.3 If the Supply Contractor is prevented from performing any of its obligations under the Contract by Force Majeure of which notice has been given under Clause 18.3, and suffers delay by reason of such Force Majeure, the Supply Contractor shall be entitled subject to Clause 20.1 (*Supply Contractor's Claims*) to an extension of time for any such delay if completion is or will be delayed, under Clause 8.4 (*Extension of Time for Completion*), but shall not be entitled to any additional payment or adjustment to the Contract Price as a result of such Force Majeure event.

19.4 Owner's Responsibility

Upon occurrence of an act considered by the Owner to constitute Force Majeure and which may affect performance of the Owner's obligations, the Owner shall promptly notify the Supply Contractor soon as practicable, but in any event not later than 24 hours after it becomes aware of the circumstances giving rise to a Force Majeure. Thereafter, the Owner shall give the Supply Contractor a second notice, describing the Force Majeure events in reasonable detail and, to the extent which can be reasonably determined at the time of such notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that it shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, not later than five days after the initial notice. The Owner shall continue to perform his obligations as far as reasonably practicable. The Owner shall also notify the Supply Contractor of any proposals with the objectives of completing the Works and mitigating any increased costs to the Owner and Supply Contractor.

19.5 Duty to Minimise Delay and Mitigate

- 19.5.1 Each Party shall at all times use all reasonable efforts to minimise any delay in the performance of the Contract as a result of Force Majeure and mitigate the effects of the Force Majeure, including the payment of reasonable sums of money by or on behalf of the affected Party, which sums are reasonable in light of the likely efficacy of the mitigation measures.
- 19.5.2 The Supply Contractor shall endeavour to continue the performance of its obligations under the Contract insofar as reasonably practicable and notify the Owner of the steps it proposes to take including any reasonable alternative means for performance which are not prevented by the Force Majeure. The Supply Contractor shall take such steps unless and to the extent the Owner directs the Supply Contractor not to do so.



- 19.5.3 A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure and mitigate any loss suffered by either Party as a result of the Force Majeure.

19.6 Optional Termination, Payment and Release

- 19.6.1 If Force Majeure occurs which prevents the whole of the Works or substantially the whole of the Works and its effect continues for a period of one 180 consecutive days, either the Owner or the Supply Contractor may give to the other a notice of its intention to terminate.
- 19.6.2 Within 14 days of the date of such notice, the senior executives of each Party shall meet to negotiate in good faith and with the aim to prevent the termination of the Contract and achieving a resolution satisfactory to both Parties. If, within 60 days of the date of the initial notice of a Party's intention to terminate, the senior executives of each Party are unable to agree on a resolution satisfactory to both Parties, either Party may give to the other a notice of termination, which shall take effect 30 days after the giving of the notice.
- 19.6.3 In the event of termination under this Section, the total monies that Supply Contractor shall be entitled to for its performance under the Contract shall be the sum of:
- (i) the amounts payable for any work carried out for which a price is stated in the Contract;
 - (ii) the Cost of Plant and Materials ordered for the Works which have been delivered to the Supply Contractor, or of which the Supply Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Owner when paid for by the Owner, and the Supply Contractor shall place the same at the Owner's disposal; and
 - (iii) any other Cost or liability which in the circumstances was reasonably incurred by the Supply Contractor in the expectation of completing the Works,
 - (iv) [Not Used]
 - (v) [Not Used]

provided that the Supply Contractor shall use all reasonable endeavours to mitigate any Costs or other amounts it may incur following such termination.

19.7 Release from Performance under the law

Notwithstanding any other provision of this Clause 19.7, if any event or circumstance outside the control of the Parties (including Force Majeure) arises which makes it



impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

19.7.1 the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and

19.7.2 the sum payable by the Owner to the Supply Contractor shall be the same as would have been payable under Clause 19.6 (*Optional Termination, Payment and Release*) if the Contract had been terminated under Clause 19.6 (*Optional Termination, Payment and Releases*).

20. CLAIMS, DISPUTES AND ARBITRATION

20.1 Supply Contractor's Claims

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

20.1.2 If the Supply Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Supply Contractor shall not be entitled to additional payment, and the Owner shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Clause 20.1 shall apply.

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

20.1.4 The Supply Contractor shall keep such contemporary records as may be necessary to substantiate any claim, at a location acceptable to the Owner. Without admitting liability, the Owner may, after receiving any notice under this Clause 20.1, monitor the record-keeping and/or instruct the Supply Contractor to keep further contemporary records. The Supply Contractor shall permit the Owner to inspect these records and shall (if instructed) submit copies to the Owner.

20.1.5 Within 42 days after the Supply Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Supply Contractor and approved by the Owner, the Supply Contractor shall send to the Owner a fully detailed claim which includes full supporting particulars of the basis of the claim and of



the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (i) this fully detailed claim shall be considered as interim;
- (ii) the Supply Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Owner may reasonably require; and
- (iii) the Supply Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Supply Contractor and approved by the Owner.

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

- 20.1.6 The Owner shall proceed in accordance with Clause 3.5 (*Determinations*) to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Clause 8.4 (*Extension of Time for Completion*), and/or (ii) the adjustment to the Contract Price in respect of any additional payment to which the Supply Contractor is entitled under the Contract. Compliance with the provisions of this Clause 20.1 is a condition precedent to the Supply Contractor being entitled to an additional payment or to an extension of time.
- 20.1.7 The requirements of this Clause 20.1 are in addition to those of any other Clause which may apply to a claim. If the Supply Contractor fails to comply with this or another Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under Clause 20.1.2.
- 20.1.8 The Supply Contractor shall not be entitled to an extension of time and/or Cost pursuant to this Contract if and to the extent that the delay or Cost in question:
 - (i) could have been avoided by the Supply Contractor taking all reasonable steps to mitigate such delay and/or Costs; or
 - (ii) was caused or contributed to by the negligence, default or breach of Contract on the part of the Supply Contractor, its employees or agents or of any Subcontractor.



20.2 Dispute Resolution Procedure

20.2.1 Mutual Consultation and Amicable Settlement

- (i) The Parties shall seek to resolve any Dispute of any kind whatsoever arising between them under or in relation to this Contract or the subject matter thereof by mutual consultation.
- (ii) If a Party is unable to settle a Dispute through mutual consultation, it shall first refer the Dispute in writing to a committee comprising two senior managers of the Parties who shall not be involved in the day to day running and/or management of the Contract ("**Management Committee**") with a copy of the notice of referral to the other Party. The Management committee shall convene at a mutually agreed venue within seven days of the notice of referral to consider the information available and provide the opinion within 21 days of the notice of referral, provided that the Parties may agree to longer periods for convening the Management Committee and for it to form an opinion.
- (iii) If within such 21 day or longer period as aforesaid, a unanimous decision is reached by the Management Committee resolving the Dispute such decision shall be final and binding on the Parties.

20.2.2 Expert Resolution

- (i) Notwithstanding the provisions of Clause 20.2.3 (*Arbitration*), provided the Parties have first complied with Clause 20.2.1 (*Mutual Consultation and Amicable Settlement*), either Party may refer a Dispute of the nature set out in this Clause at any time to an expert upon giving written notice of its intention so to refer to the other Party. The expert shall be appointed by the International Centre for Technical Expertise established by the ICC. The expert shall not be a present or former employee or agent of, or consultant or counsel to, any Party or any affiliate thereof.
- (ii) Unless otherwise agreed between the Parties, the relevant Dispute which may be referred to an expert pursuant to this Clause shall include only a Dispute concerning:
 - (a) a Variation as provided for in Clause 13 (*Variations and Adjustments*);
 - (b) valuation of any Cost and/or any application for an extension of time by the Supply Contractor;
 - (c) the certification of sums alleged to be due to the Supply Contractor or the Owner;



- (d) the attainment of any time related obligation or satisfaction of technical requirements under this Contract; and
 - (e) the detailing and settlement of any test procedures and/or attainment of test results.
- (iii) This expert resolution procedure shall be carried out in accordance with the ICC Rules for Technical Expertise. The decision of the expert shall be binding on and complied with by the Parties unless and until subsequently altered by means of an arbitration decision pursuant to Clause 20.2.3 (*Arbitration*) or unless otherwise agreed by the Parties. Provided that in all such other cases the decision of the expert shall become finally binding on the Parties (except in the case of fraud, bad faith or manifest error or unless otherwise agreed by the Parties) unless referred to arbitration in accordance with Clause 20.2.3 (*Arbitration*) within 30 days after the decision of the expert.

20.2.3 Arbitration

- (i) Any Dispute that cannot be settled amicably by the Parties under Clause 20.2.1 (*Mutual Consultation and Amicable Settlement*) (including where the Management Committee does not reach a unanimous decision or is not properly convened in accordance with Clause 20.2.1(ii) (*Mutual Consultation and Amicable Settlement*)) or is not determined by an expert or has been determined by an expert but is not binding in accordance with Clause 20.2.2 (*Expert Resolution*), shall be referred to final determination by arbitration in accordance with this Clause 20.2.3.
- (ii) The arbitration shall be conducted according to the London Court of International Arbitration rules for arbitration (the "**LCIA Rules**"), in London, or another mutually agreeable location. In case of conflict between the LCIA Rules and the provisions of this Clause, the provisions hereof shall prevail. The tribunal shall draw-up and submit to Parties for signature, the Terms of Reference within 21 days of receiving the file. The Terms of Reference shall not include a list of issues to be determined.
- (iii) The arbitral tribunal shall consist of three arbitrators. The Owner shall appoint one arbitrator and the Supply Contractor shall appoint one arbitrator. The two arbitrators so appointed shall, in turn, appoint the third arbitrator who shall serve as the chairman of the arbitral tribunal. If a Party fails to appoint its arbitrator within a period of 20 days after receiving notice of the Arbitration, or if the two arbitrators appointed cannot agree on the third arbitrator within a period of 20 days after appointment of the second arbitrator, then such arbitrator shall be appointed pursuant to the procedures of the LCIA Rules.



- (iv) Arbitrators appointed by the Owner, the Supply Contractor or the London Court of International Arbitration shall be persons with experience of the implementation and interpretation of contracts relating to the design, engineering, construction, operation and maintenance of projects of a similar nature to the Jetty and works of a similar nature to the Works. No arbitrator shall be a present or former employee or agent of, or consultant or counsel to, any Party or any affiliate thereof.
- (v) Any decision rendered by the arbitral tribunal, including the arbitral award shall be treated in secrecy by the arbitral tribunal and as confidential information by the Parties, pursuant to Clause 1.9 (*Confidentiality*).
- (vi) Each Party shall bear its costs and expenses incurred with the arbitration, including solicitors' and other legal advisors' fees. The Parties shall also share equally the arbitrators' fees and expenses. All legal costs and expenses shall follow the event and shall be paid to the successful Party, including arbitration fees and expenses, save that the tribunal may, in appropriate circumstances, award part of the legal costs and expenses against the successful Party in circumstances where such Party has failed on one or more issues.

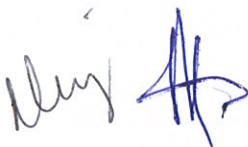
20.3 Multi-Party Disputes

20.3.1 Notwithstanding any other provision in the Contract, if any Dispute under the Contract (the "**First Dispute**"):

- (i) raises issues which are substantially the same as, or connected with, or relate to issues raised in any other dispute or difference arising under any of the Project Documents (a "**Related Project Dispute**"); or
- (ii) arises out of, or relates to substantially the same facts as are the subject of a Related Project Dispute,

then, notwithstanding that the arbitrators may have been agreed or appointed under this Contract in relation to the First Dispute, the Owner may, by notice to the Supply Contractor and any arbitrators who have already been agreed or appointed hereunder, require that the First Dispute be referred to and finally settled by the dispute resolution procedures set out in such other Project Document to which the Related Project Dispute relates, provided however, that no joinder under this Clause 20.3 shall occur in respect of any First Dispute after a hearing on the merits has commenced.

20.3.2 If the dispute resolution procedures applicable to such Related Project Dispute prescribes for the resolution of the Related Project Dispute by expert determination, such expert determination procedures shall apply to the First Dispute. The binding nature of the expert's determination shall be as prescribed in the dispute resolution procedures applicable to such Related Project Dispute.



- 20.3.3 If the dispute resolution procedures applicable to such Related Project Dispute prescribes for the resolution of the Related Project Dispute by arbitration (or by arbitration following expert determination), the First Dispute shall be referred to and finally settled by the arbitral tribunal appointed or to be appointed in respect of any such Related Project Dispute (the "**Joint Tribunal**"). The Joint Tribunal shall become the arbitral tribunal in respect of the First Dispute and the Related Project Dispute and the Owner and the Supply Contractor shall revoke the authority of any arbitral tribunal already appointed in respect of the First Dispute. The Parties shall be bound by any directions or orders made by the Joint Tribunal as to their joinder in any arbitration proceedings in respect of any First Dispute and shall also be bound by any procedural directions and any subsequent award made by the Joint Tribunal.
- 20.3.4 If the authority of arbitrators who have already been agreed or appointed under this Contract by reason of the notice given pursuant to this Clause 20.3 is revoked, the cost of the cancelled arbitration (including the arbitrators' fees) shall be dealt with by the Joint Tribunal as costs in that arbitration. Pending such determination, the fees of the arbitrators whose authority has been revoked shall be paid equally by the Parties to the Dispute.
- 20.3.5 The Joint Tribunal, in determining any dispute or difference, shall consider all evidence which it may think pertinent to that dispute which is filed or called by a Party to the arbitration proceedings.

20.4 Assistance with Owner Disputes

If any dispute between the Owner and any counterparty under any Project Document arises out of, or relates to the Supply Contractor's performance of the Works, or any other act or omission of the Supply Contractor, the Supply Contractor shall, at its cost, grant the Owner all reasonable assistance it requests and provide the Owner with all information required by it in conducting its claim or defence against such counterparty.

20.5 Continuing Obligations

Notwithstanding any reference to dispute resolution hereunder, the Parties (as applicable) shall continue to perform their respective obligations under the Contract unless the Parties otherwise agree.

21. MISCELLANEOUS

21.1 Sole and Exclusive Warranties and Remedies

- 21.1.1 Subject to Clause 21.1.2, the remedies arising under the Contract are the sole and exclusive remedies of the Parties for the obligations and the liabilities arising under or in connection with the Contract however arising (including for breach of contract, in tort (including negligence and strict liability), by reason of indemnification, breach of statutory duty, equity or any other legal theory, including Applicable Laws), provided that nothing in the Contract shall prevent



or restrict the right of either Party to seek injunctive relief or a decree of specific performance against the other Party.

- 21.1.2 If the Delay Liquidated Damages are for any reason found to be void, invalid or a penalty, such that the Owner is unable to enforce its entitlement to payment of the Delay Liquidated Damages under this Contract where it otherwise would have been able to pursuant to the terms of this Contract, then Clause 21.1.1 shall cease to apply in respect of the Supply Contractor's obligations and liabilities giving rise to such entitlement of the Owner and the Owner shall be entitled to claim for any remedies it may have at law or in equity or otherwise (including by reason of negligence), provided that the Owner's entitlement to claim shall be subject in any case to the limitations which would otherwise have been applicable for the relevant Delay Liquidated Damages, pursuant to Clause 17.6.3 (*Limitation of Liability*).

21.2 Non-Waiver and Preservation of Remedies

- 21.2.1 Subject to Clause 21.2.3, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Contract, nor shall any waiver by either Party of any breach of the Contract operate as a waiver of any subsequent or continuing breach of the Contract.
- 21.2.2 No approval, expression of satisfaction, comment, review, test, inspection, payment or certificate made or given (or any failure to make or give or attend the same) by the Owner under the Contract, by the Lenders or by any of such persons' representatives, shall relieve the Supply Contractor of any of its obligations, risks or liabilities under the Contract.
- 21.2.3 Any waiver of a Party's rights, powers or remedies under the Contract must be in writing, dated and signed by an authorised representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

21.3 Privity

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

21.4 Entire Agreement

The Contract and the Direct Agreement constitutes the entire agreement between the Parties with respect to the subject matter of the Contract and supersedes all prior arrangements, representations, communications, negotiations, agreements and contracts (whether written or oral) made between or entered into by the Parties with respect thereto prior to the date of the Contract.



21.5 Amendment

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract and is signed by a duly authorised representative of each Party hereto.

21.6 Severability

If the enforcement or operation of any provision of the Contract is prohibited by Applicable Law or if any provision of the Contract is by Applicable Law rendered void, invalid or unenforceable, such prohibition, voidness, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

21.7 Negotiation Expenses

Each Party shall be responsible for paying its own costs and expenses incurred in connection with negotiating, preparing and entering into the Contract.

21.8 Counterparts

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

21.9 Independent Contractor

The Supply Contractor shall be an independent contractor performing the Contract. The Contract does not create any partnership, joint venture or other joint relationship between the Owner on the one hand and the Supply Contractor on the other hand.

21.10 Claims Prior to Commencement Date

The Supply Contractor warrants as at the Commencement Date that it will have no outstanding claims for an extension of time, relief or adjustments to the Contract Price arising prior to the Commencement Date and agrees that it shall not be able to make any claim in respect of claims for an extension of time, relief or adjustments to the Contract Price arising prior to the Commencement Date, which it had not made prior to that date. For the avoidance of doubt, nothing in this Clause 21.10 limits the submission after the Commencement Date, in accordance with Clause 20.1 (*Supply Contractor's Claims*), of any details supporting claims which it has made prior to the Commencement Date.

21.11 Tax Indemnity

The Supply Contractor shall indemnify and hold harmless the Owner for the failure by the Supply Contractor to pay any Taxes due and payable (or subject to withholding and remittance thereby) or to file in a timely manner any Tax return, to comply with any Applicable Law relating to Taxes, or to pay or fund any social welfare benefits required by Applicable Law payable on behalf of any of the Contractor's Personnel.



21.12 Survival of obligations

21.12.1 Upon the termination or expiry of this Contract, except where this Contract provides otherwise:

- (i) the Parties are released from their obligations to continue to perform this Contract except the obligations which are expressed to survive termination or expiry;
- (ii) each Party retains the rights and claims it has against the other Party for any past breach of this Contract; and
- (iii) the provisions of this Clause 21 and Clauses 1 (*General Provisions*), 7.9.4 (*Spare Parts*), 11 (*Defects Liability*), 15 (*Termination by Owner*), 16 (*Termination by Supply Contractor*), 17.1 (*Indemnities*), 17.5 (*Intellectual and Industrial Property Rights*), 17.6 (*Limitation of Liability*), 17.7 (*Claims*) and 20 (*Claims, Disputes and Arbitration*) shall survive termination or expiry.

21.13 Representations and Warranties

21.13.1 Each Party hereby represents and warrants to the other (such representations and warranties being true and accurate):

- (i) the representing Party is duly organised, validly existing and in good standing under the laws of the jurisdiction pursuant to the laws of which it is organised;
- (ii) the execution, delivery and performance by it of the Contract has been duly authorised by respective corporate bodies and does not contravene Applicable Law or regulation of its articles or other comparable organisational documents;
- (iii) the Contract constitutes its valid and binding agreement, enforceable against it in accordance with its terms; and
- (iv) the representing Party is not insolvent under Applicable Law and/or has not stopped or suspended payment of its debts and/or become unable to pay its debts.

21.13.2 Unless expressly provided otherwise, the representation and warranties in Clause 21.13.1 shall be deemed to be given as of the Contract Date and repeated on the Commencement Date and each Milestone.

21.13.3 The representations and warranties in Clause 21.13.1 are separate and independent and, except as expressly provided to the contrary in this Contract, are not limited by reference to any of the others of them or by anything in the Contract.



21.14 Lenders' Requirements

21.14.1 The Supply Contractor hereby agrees and acknowledges, without prejudice to any other provision of this Contract:

- (i) that if and so required by the Owner from time to time, the Supply Contractor shall co-operate with the Owner in the delivery of any documents which may be reasonably required in connection with the financing or re-financing of the Works; each in a form reasonably acceptable to the Owner and the Lenders;
- (ii) it will enter into the Direct Agreement in the manner and at the time reasonably required by the Owner;
- (iii) to afford to the Lenders and/or to the Lenders' Representative, the Lenders' agent and/or the Lenders' engineer and any person or persons authorised by them or any of them such access to the Works as is reasonably required by the Owner;
- (iv) that the Lenders and/or the Lenders' Representative and/or the Lenders' agent and/or the Lenders' engineer and any person or persons authorised by them or any of them shall have the right to view any of the documents comprising the Contract;
- (v) that the Lenders and/or the Lenders' Representative and/or the Lenders' agent and/or the Lenders' engineer and any person or persons authorised by them or any of them shall be entitled to attend all tests and inspections in connection with the Works or any part thereof as may reasonably be required and to make representations at the same; and
- (vi) that if required by the Owner, all invoices submitted by the Supply Contractor pursuant to this Contract shall be accompanied by such evidence as may be reasonably requested by the Owner or the Lenders in order to satisfy the requirements of any export credit agency or other multilateral providing financial support in connection with the Project, including: details regarding the place of origin and value of Plant and Materials or services (including places of origin and values related to specific Subcontractors and Appointed Subcontractors); copies of contracts with and invoices from Subcontractors and Appointed Subcontractors; evidence of payment; certification as to no corrupt payments or practices; and certification as to shipping arrangements.

