

Appendix No 13 – Draft Contract

DATED

(1) ICGB AD

and

(2) ◆ [NAME OF CONTRACTOR]

CONTRACT

**for the design, procurement and construction of a natural gas Interconnector Greece-Bulgaria
(IGB Project)**

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DRAFT

THIS CONTRACT is made on

BETWEEN:

- (1) **ICGB AD**, a company established and existing under the laws of the Republic of Bulgaria, having its registered seat at 13 Veslets Street, 1000 Sofia, Bulgaria, with UIC 201383265, represented by its Executive Officers Ms Teodora Georgieva-Mileva and Mr Konstantinos Karayannakos ("**Employer**" which term includes its legal successors and permitted assignees) of the one part; and
- (2) [**NAME OF CONTRACTOR**], (company number [***]) whose registered office is situated at [***] ("**Contractor**" which term includes its legal successors and permitted assignees) of the other part.

BACKGROUND AND SUBJECT OF THE CONTRACT

- A. The Employer is procuring the design, procurement and construction of the natural gas Interconnector Greece-Bulgaria (IGB Project) which will directly connect the national gas transmission systems of the Republic of Greece and the Republic of Bulgaria, will have the outer diameter of DN 800, the total length of approximately 182 km, and the entry point in the region of the town of Komotini (Greece), with the exit point in the region of the town of Stara Zagora (Bulgaria).
- B. The Employer desires that the design, procurement and construction of the natural gas Interconnector Greece-Bulgaria (IGB Project) be executed on a turnkey basis. Pursuant to a Decision No P-09/30.04.2018 of the Executive Directors of the Employer, on the grounds of article 134 in conjunction with article 18, paragraph 1 part 2 of the PPA the Employer opened a restricted procedure inviting tenders from appropriately qualified parties to design, procure and construct the Works (as hereinafter defined), with Announcement with outg. No P-09/30.04.2018.
- C. Pursuant to this restricted procedure, the Employer has selected the Contractor to design, procure and construct the Works and remedy any defects therein in accordance with this Contract, which is entered into by the Employer and the Contractor and executed as a deed.
- D. The Employer has agreed to pay the Contractor, in consideration of the design, procurement and construction of the Works and the remedying of defects therein, the Contract Price (as hereinafter defined) or such other sum as may become payable under the provisions of this Contract, at the times and in the manner prescribed by this Contract.
- E. In consideration of the payments to be made by the Employer to the Contractor under the Contract, the Contractor has agreed to design, procure and construct the Works, and remedy any defects therein, in accordance with this Contract.

IT IS AGREED

1 GENERAL PROVISIONS

1.1 Definitions

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

"Actual Pipeline Length" has the meaning given in Sub-Clause 13.5.2.

"Advance Payment Amount" has the meaning given in Sub-Clause 14.3.1.

"Advance Payment Guarantee" has the meaning given in Sub-Clause 14.3.3.

"Affected Party" has the meaning given in Sub-Clause 19.2.1.

"Approved Bank" means a financial institution that is either (i) a bank licensed or otherwise authorised to operate in Bulgaria or (ii) a reputable bank licensed for operation in the EU/EEA; and such institution described in (i) and (ii) possesses a credit rating of at least Baa3 (Moody's) or BBB- (S&P) or BBB (Fitch).

"Approved Insurer" means an institution that is either (i) licensed or otherwise authorised to operate in Bulgaria or (ii) a reputable insurer licensed for operation in the EU/EEA; and such institution described in (i) and (ii) possesses a credit rating of at least Baa3 (Moody's) or BBB- (S&P) or BBB (Fitch).

"Archaeology Entity" means the entity appointed to provide archaeological services (including survey services) in respect of the Project.

"Base Date" means the date of submission of the Tender.

"Bill of Quantities" means the bill of quantities for the Line Pipe which is attached to the Technical Specification.

"Bulgarian Operational Permit" means a document issued in respect of the Bulgarian Section by the Bulgarian National Construction Control Directorate in the form as set out in Article 177 of the SDA.

"Bulgarian Section" means that section of the Works situated, or to be situated, in the Republic of Bulgaria.

"Bulgarian Site" has the meaning given in Sub-Clause 2.1.1.1.

"CAR Insurance" has the meaning given in Sub-Clause 18.1.1.

"CAR Insurers" has the meaning given in Sub-Clause 18.3.6.2.

"Change in Law" means the coming into effect or repeal (without re-enactment or consolidation) of, or any modification to or amendment or variation of, after the Base Date:

- (a) Laws, other than the coming into effect of any Law which on the Base Date have been published:
 - (i) in official draft form; or
 - (ii) as a proposal in the Official Journal of the European Union; or
- (b) the judicial or official governmental interpretation of any Law.

"Commencement Date" shall have the meaning given in Sub-Clause 1.6.7.

"Confidential Information" means the Contract, all documents relating to the Contract, all information and data provided pursuant to the Contract, all information specifically identified by the disclosing Party as confidential at the time of disclosure, or information that a reasonable person would consider from the nature of the said information and circumstances to be confidential (however it is conveyed or on whatever media it is stored), including without limitation confidential or proprietary information, trade secrets, data, documents, communications, plans, know-how, formulae, designs, calculations, test results, specimens, drawings, studies, specifications, surveys, photographs, software, processes, time schedules, reports, maps, models, agreements, ideas, methods, discoveries, inventions, patents, concepts, research, development, and business and financial information, and any information relating to the Works.

"Conditions" means Clauses 1 (*General Provisions*) to 20 (*Claims, Disputes and Arbitration*) (inclusive).

"Conditions Precedent" means:

- (a) written confirmation, in the form of a brokers' or insurers' certificate, that the insurance cover required to be taken out and maintained by the Contractor in accordance with Clause 18 (*Insurance*) is being maintained; and
- (b) execution of the Line Pipe Supply Agreement.

"Conflict of Interest" means where (i) the Contractor, his employees or hired persons outside his structure (including Subcontractors) who participate in the Works have an interest which may lead to benefit as meant by Article 54 of the Bulgarian Act on Anti-Corruption and Withdrawal of Illegally Acquired Property which a fair minded and informed observer would conclude may influence their impartiality and independence in relation to the Works, and/or (ii) the Contractor contracts with the Owner's Engineer or a subsidiary, parent or related company of the Owner's Engineer to perform services in respect of the Project.

"Construction Supervision Entity" means, with respect to Bulgaria, the entity appointed by the Employer (in accordance with Articles 166 and 167 of the SDA) to carry out mandatory "construction supervision" and "compliance assessment" within the meaning of the SDA, for so long as such assessment is required pursuant to the provisions of the SDA.

"Contract" means the Conditions, Schedules 1 to 8 (inclusive), [the Technical Specification, the Tender] [*if not attached as a schedule to the Contract*], and [other - *to be confirmed*], in each case as may be amended from time to time in accordance with this Contract.

"Contractor Party" means the Contractor's Personnel, the Contractor's professional advisors, the Suppliers, the Subcontractors and any suppliers and/or subcontractors of any tier appointed by the Subcontractors and/or Suppliers in relation to the Works.

"Contractor's Documents" means (a) the technical documents which are to be prepared and/or provided by or on behalf of the Contractor pursuant to the Technical Specification, (b) all documents prepared by or on behalf of the Contractor in the course of carrying out the design and required for the execution and completion of the Works, (c) all documents required to satisfy all Laws and Permissions which require to be complied with and obtained respectively under the Contract and the documents

described in Sub-Clause 5.6 (*As-Built Documents*) and Sub-Clause 5.7 (*Operation and Maintenance Manuals*), and (d) reports, diagrams, computer programs and other software, records, method statements, training manuals, risk assessments, manuals, schedules, reinforcement details, photographs, formulae, plans, designs, specifications, drawings (including as-built drawings), details, calculations, transport and other models and simulations, the outputs and reports based on any models, and time schedules, in each case created and/or provided by the Contractor (and/or any Subcontractor or Supplier) in relation to the Works. Unless the Contract expressly provides and/or requires to the contrary, Contractor's Documents shall not include (i) any cost and price information of the Contractor, the Subcontractors, and/or the Suppliers and (ii) any internal correspondence, information, reports or records within or among the Contractor's Personnel, the Subcontractors and/or the Suppliers.

"Contractor's Equipment" means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor's Equipment excludes Temporary Works, Plant, Materials and any other things intended to form or forming part of the Permanent Works.

"Contractor's Insurances" has the meaning given in Sub-Clause 18.1.2.1.

"Contractor's IPR" means all Intellectual Property Rights in the Contractor's Documents, in any design documents made by (or on behalf of) the Contractor, and any other Intellectual Property Rights created in the design and performance of the Works, but excluding Third Party Software and In-House Software.

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

"Contractor's Representative" means [*** Contractor to provide] or any replacement appointed from time to time by the Contractor under Sub-Clause 4.3 (*Contractor's Representative*), who acts on behalf of the Contractor.

"Contract Price" means the Total Lump Sum Price as may be adjusted from time to time in accordance with this Contract.

"Contractual Length" has the meaning given in Sub-Clause 13.5.1.

"Cost" means all expenditure reasonably, properly and demonstrably incurred (or to be incurred) by the Contractor in accordance with and subject to the terms of this Contract, whether on or off the Site, including overhead and similar charges (unless expressly provided to the contrary in this Contract), but does not include profit, any financing costs or charges or any pecuniary gain which might have otherwise accrued to the Contractor.

"Country" means, as the context requires, the Republic of Bulgaria and the Republic of Greece.

"CP Satisfaction Date" means the date on which the Condition Precedents have been satisfied or waived pursuant to Sub-Clause 1.6.2 and Sub-Clause 1.6.4 (respectively and as appropriate) and the Employer has confirmed the same in writing pursuant to Sub-Clause 1.6.2 and Sub-Clause 1.6.4 (as appropriate).

"**day**" means a calendar day and "year" means three hundred and sixty-five (365) days.

"**Defects Notification Period**" means the period for notifying defects in the Works (as the case may be) under Sub-Clause 11.1 (*Completion of Outstanding Work and Remedying Defects*), being the period commencing on the date of issue of the Mechanical Completion and Pre-Commissioning Certificate pursuant to Sub-Clause 9A.5 and expiring twenty four (24) months from the date of the Handover for Use Certificate (with any extension under Sub-Clause 11.3 (*Extension of Defects Notification Period*)).

"**Delay Liquidated Damages**" has the meaning given in Sub-Clause 8.7.1.

"**Delivery Date**" has the meaning given in Sub-Clause 4B.2.1.

"**Delivery Periods**" means the periods during which Provisional Acceptance of the Line Pipe is to be achieved under the terms of the Line Pipe Supply Agreement, as set out in appendix 4 of the Line Pipe Supply Agreement which is attached to the Technical Specification, and as may be amended from time to time by the Employer and notified to the Contractor.

"**Delivery Points**" means any and each of the delivery points for the Line Pipe, which comply with the description for such delivery points specified in the Technical Specification, and as notified by the Contractor to the Employer under Sub-Clause 4B.1.1.

"**Delivery Requirements**" means the proportions of Line Pipe to be delivered in any particular Delivery Period or by any particular Guaranteed Delivery Date, as set out in appendix 4 of the Line Pipe Supply Agreement which is attached to the Technical Specification, and as may be amended from time to time by the Employer and notified to the Contractor.

"**Delivery Schedule**" means the schedule of dates that the Line Pipe is to be delivered, issued by the Employer pursuant to Sub-Clause 4B.1.3, as may be amended or updated from time to time pursuant to Sub-Clause 4B.1.4.

"**Dispute**" has the meaning given in Sub-Clause 20.2.1.

"**Dispute Resolution Procedure**" means the procedure described in Clause 20 (*Claims, Disputes and Arbitration*).

"**Effective Date**" means the date of this Contract.

"**EIA Permit**" means:

- (a) in respect of the Bulgarian Section, the Environmental Impact Assessment Permit No. 1-1/2013, dated 03.02.2013, issued by the Bulgarian Minister of Environment and Water; and
- (b) in respect of the Greek Section, Decision No. 171379/29.10.2013 on the Approval of Environmental Terms for the Construction and Operation of the project entitled "High Pressure Natural Gas Interconnector Greece-Bulgaria and Accompanying Facilities-Greek Section" issued by the

Ministry of Environment, Energy and Climate Change,

including any amendments or replacements of either of them.

"Employer Documents" has the meaning given in Sub-Clause 1.11.

"Employer Party" has the meaning given in Sub-Clause 18.3.1.

"Employer Risks" are those risks listed in Sub-Clause 17.3 (*Employer's Risks*).

"Employer's Personnel" means the Employer's Representative, the Owner's Engineer, the Third Party Inspector, the assistants referred to in Sub-Clause 3.2 (*Other Employer's Personnel*) and all other staff, labour and other employees of the Employer and of the Employer's Representative, Owner's Engineer and/or the Third Party Inspector; and any other personnel notified to the Contractor, by the Employer or the Employer's Representative, as Employer's Personnel.

"Employer's Representative" means [***] [and [****]] [*Employer to provide*] or any replacement(s) appointed from time to time by the Employer under Sub-Clause 3.1 (*The Employer's Representative*), who acts on behalf of the Employer.

"Extended Pipe Warranty Period" means, for Line Pipe Defects rectified during any Line Pipe Warranty Period, a further period of twelve (12) months.

"FIDIC" means the Fédération Internationale des Ingénieurs-Conseils, the international federation of consulting engineers.

"Final Persistent Breach Notice" has the meaning given in Sub-Clause 15.2.9.2.

"Final Statement" means a statement submitted by the Contractor as part of an application for payment under Sub-Clause 14.8 (*Application for Final Payment*).

"First Party" has the meaning given in Sub-Clause 4A.1.2.

"Force Majeure" has the meaning given in Clause 19 (*Force Majeure*).

"General Change in Law" means a Change in Law which is not a Specific Change in Law.

"General Conditions of Dispute Adjudication Agreement" means the General Conditions of Dispute Adjudication Agreement contained in Schedule 7 (*General Conditions of Dispute Adjudication Agreement*).

"Greek Operational Permit" means a document issued by the Greek Ministry of Environment, Energy and Climate Change according to the Greek Technical Regulation.

"Greek Pipeline Site" has the meaning given in Sub-Clause 2.1.1.2.

"Greek Station Site" has the meaning given in Sub-Clause 2.1.1.3.

"Greek Technical Regulation" means the Ministerial Decision No. D3/A/oik.4303 IIE 26510 (Government Gazette Issue B No 603/2012) under the title "Natural Gas Transmission Systems with a Maximum Operating Pressure exceeding 16 bar".

"Greek Section" means that section of the Works situated, or to be situated, in the Republic of Greece.

"Guaranteed Delivery Date" means, in relation to each lot of Line Pipe, the date by which Provisional Acceptance of the Line Pipe comprised in that lot is required to be achieved by the Line Pipe Supplier under the Line Pipe Supply Agreement, as set out in appendix 4 of the Line Pipe Supply Agreement which is attached to the Technical Specification, and as may be amended from time to time by the Employer and notified to the Contractor, and **"Guaranteed Delivery Dates"** means all of such dates.

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

"Handover for Use Certificate" means a certificate issued under Sub-Clause 12.6 (*Handover for Use Certificate*).

"Handover for Use Retention Money" means the accumulated retention moneys which the Employer retains under Sub-Clause 14.4.3.3 and which forms part of the Statement which the Contractor is required to present to the Employer following issue of the Handover for Use Certificate for payment pursuant to Sub-Clause 14.6.

"Head Office Overheads" means an allowance on account of head office overheads to be made to the Contractor by reason of the carrying out of varied work, being the amount of [***]% of the varied costs of such work ascertained by the acceptance by the Employer of a Contractor's proposal under Sub-Clause 13.3.5.1 (*Variation Procedure*) or by the application of the valuation rules in Sub-Clause 13.4 (*Valuation Rules*) (as the case may be).

"Hold Point" means a mandatory verification point notified by the Employer under Sub-Clause 7.3.3 beyond which the execution of a part of the Works or work activity may not proceed without the consent of the Employer.

"In-House Software" means computer programs or software which have been developed by the Contractor or any Contractor Party other than specifically for the purposes of the Works, the Intellectual Property Rights in which are owned by the Contractor or any Contractor Party and which are used by the Contractor or any Contractor Party for the purposes of the Works.

"Initial Quantity of Line Pipe" means the total quantity of all Line Pipe, in metres, specified in the Bill of Quantities, being the sum of all the amounts shown in the column of the table in the Bill of Quantities headed "Quantity Total, m" for all Types of Line Pipe.

"Insurance Specifications" means the insurance specifications set out in Schedule 6 (*Insurance*).

"Intellectual Property Rights" means any rights in or to any patent, design right, utility model, trade mark, brand name, service mark, trade name, business name, logo, invention (whether registered or unregistered), domain name, semi-conductor right, topography right, software designs and/or other materials, source code, copyright, moral right, know-how or rights in databases and any other rights in respect of any industrial or intellectual property, whether capable of being registered or not, including all rights to apply for any of the foregoing rights or for an extension,

revival or renewal of any of the foregoing rights and any similar or analogous rights to any of the above arising under the laws of any jurisdiction.

"Interim Certificate" means, as the context requires, an interim payment certificate issued by the Employer pursuant to Sub-Clauses 14.4.4, 14.5.2, 14.6.2, 14.7.4 or 14.8.2.

"Key Personnel" means those staff identified as key personnel of the Contractor in Schedule 4 (*Key Personnel*) as may be replaced from time to time in accordance with the Contract.

"Latent Line Pipe Defect" means any Defect in the Line Pipe which is not apparent or reasonably discoverable from the inspections to be carried out by the Contractor pursuant to Sub-Clause 4B.2 (*Delivery, Transit and Handover of Line Pipe*) for the purposes of certifying Site Acceptance, and which does not become apparent to the Contractor during any Line Pipe Warranty Period or Extended Warranty Period in respect of such Line Pipe, but which becomes apparent following the date of final acceptance of the Line Pipe by the Employer under the Line Pipe Supply Agreement (as such date is notified by the Employer to the Contractor).

"Laws" means all national, regional and local laws applicable to the Site, or each Delivery Point, or the Works or to the Parties including, without limitation, constitutions, statutes, regulations, other legislative measures, treaties, ordinances, judgments, decrees, proclamations, injunctions, writs and orders of any court, arbitrator or governmental agency, common law, as well as the applicable anti-corruption, anti-money laundering, anti-terrorism and economic sanction and anti-boycott laws, as may be in effect from time to time.

"Line Pipe" means line pipe (DN800) supplied to the Employer by the Line Pipe Supplier for the purposes of the Project.

"Line Pipe Defect" means any defect or deficiency of any kind in the Line Pipe including, without limitation, the failure of the Line Pipe to comply with the specification for the Line Pipe as attached to the Technical Specification, but excluding:

- (a) any defect or deficiency which was apparent or reasonably discoverable from the inspections to be carried out by the Contractor pursuant to Sub-Clause 4B.2 (*Delivery, Transit and Handover of Line Pipe*) for the purposes of certifying Site Acceptance; and
- (b) any such defect or deficiency arising as a result of damage caused to any Line Pipe by the Contractor or any Contractor's Personnel, or due to the manner of incorporation by the Contractor of such Line Pipe into the Works,

and the term **"Defective"** shall be construed accordingly.

"Line Pipe Supplier" means the supplier to the Employer of the Line Pipe under the Line Pipe Supply Agreement.

"Line Pipe Supplier Event" means:

- (a) any delay in delivery of Line Pipe beyond the date or dates specified for such Line Pipe in the Delivery Schedule (which is not otherwise caused by or

materially contributed to by any breach or failure by the Contractor to satisfy its obligations under this Contract, including any failure by the Contractor to be available to accept delivery of the Line Pipe on the proposed Delivery Date); and

- (b) any Line Pipe Defect discovered during the applicable Line Pipe Warranty Period and/or any applicable Extended Pipe Warranty Period, subject to and in accordance with Sub-Clause 4B.2; and
- (c) any other act or omission of the Line Pipe Supplier which has a material adverse effect on the Contractor's ability to perform any of its obligations or exercise any of its rights pursuant to this Contract, or directly causes the Contractor to incur additional costs or suffer losses, save to the extent predominantly caused or materially contributed to by the Contractor.

"Line Pipe Supply Agreement" means the agreement entered or to be entered into between the Employer and the Line Pipe Supplier for the supply to the Employer of the Line Pipe for the purposes of the Project.

"Line Pipe Warranty Period" means the period commencing on the last date of Provisional Acceptance in accordance with the Line Pipe Supply Agreement and ending on the date which is:

- (a) twenty four (24) months after the date on which a Taking-Over Certificate has been issued in respect of the Works and all Tests after Completion required pursuant to Clause 12 (*Tests after Completion*) have been passed; or
- (b) thirty six (36) months after the last date of Provisional Acceptance under the Line Pipe Supply Agreement,

whichever is the earliest to occur.

"Longstop Date" means the date which is twelve (12) months after the Time for Completion for the Works.

"LPSA Change" has the meaning given in Sub-Clause 4A.5.1.

"LPSA Change Response" has the meaning given in Sub-Clause 4A.5.1.

"Materials" means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under and in accordance with the Contract.

"Mechanical Completion and Pre-Commissioning Activities" means those activities which are identified in the Technical Specification as being required in respect of the mechanical and pre-commissioning of the Works.

"Mechanical Completion and Pre-Commissioning Activities Programme" has the meaning given in Sub-Clause 9A.1.2.

"Mechanical Completion and Pre-Commissioning Completion Certificate" means a certificate issued or deemed to have been issued under Sub-Clause 9A.5 (*Completion of the Mechanical Completion and Pre-Commissioning Activities*).

"Mechanical Completion and Pre-Commissioning Tests" has the meaning given in Sub-Clause 9A.1.7.

"month" shall mean a calendar month.

"Notice of Dissatisfaction with the Adjudicator's Decision" has the meaning given in Sub-Clause 20.3.4.2.

"Operation and Maintenance Manuals" means the operation and maintenance manuals, and any other manuals, to be provided by the Contractor pursuant to Sub-Clause 5.7 (*Operation and Maintenance Manuals*).

"Ordinance No. 2" means Ordinance No. 2 of July 31, 2003, for the Commissioning of Constructions in the Republic of Bulgaria and for the minimum statutory warranty periods for Completed Construction and Mounting Works, Facilities and Construction Sites, issued by the Ministry of Regional Development and Public Works of the Republic of Bulgaria (promulgated SG, Issue 72, dated 15.08.2003).

"Ordinance No. 3" means Ordinance No. 3 of July 31, 2003, for the Issuance of Acts and Protocols during Construction issued by the Ministry of Regional Development and Public Works of the Republic of Bulgaria (promulgated SG, Issue 72, dated 15.08.2003).

"Owner's Engineer" has the meaning given in Sub-Clause 3.1.4.

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

"Payment Rules" has the meaning given in Schedule 5 (Payment).

"Performance Certificate" means the certificate issued under Sub-Clause 11.9 (*Performance Certificate*).

"Performance Guarantee" means the security (or securities, if any) under Sub-Clause 4.2 (*Performance Guarantee*).

"Performance Levels" means the performance levels stated in Schedule 2 (*Performance Levels*).

"Permanent Works" means the permanent works to be designed, executed and completed by the Contractor under the Contract.

"Permissions" means all permissions, consents, approvals, certificates, permits, licences, registrations, agreements, statutory agreements, authorisations, warrants, relaxations, and orders required in relation to the design, execution and/or completion of the Works (a) specifically identified in the Contract; or (b) required by Laws; or (c) required by Laws from and/or (as appropriate) with any Regulators; or (d) required from and/or with (as appropriate) any parties identified in the Contract.

"Persistent Breach" means a breach for which a Final Persistent Breach Notice has been issued pursuant to Sub-Clause 15.2.9.2, which has not been remedied within seven (7) days, or is remedied and occurs once or more within the ninety (90) day period after the date of the Final Persistent Breach Notice.

"Persistent Breach Notice" has the meaning given in Sub-Clause 15.2.9.1.

"Pipe Length" means, in the case of Relevant Line Pipe, a pipe length of either twelve (12) metres or eighteen (18) metres.

"Pipe Length Ratio Change" means a change to the respective quantities required of each Pipe Length of the relevant Type of Relevant Line Pipe, without changing the overall quantity (number) required of that Type of Relevant Line Pipe.

"Pipeline" means the natural gas pipeline which is the subject of the Project.

"Pipeline Lump Sum Amount" has the meaning given in Sub-Clause 13.5.3.

"Pipeline Variance" has the meaning given in Sub-Clause 13.5.2.

"Plant" means the plant, apparatus and machinery intended to form or forming part of the Permanent Works.

"PPA" means the Public Procurement Act of the Republic of Bulgaria (promulgated SG, issue 13 of 16 February 2016.).

"Price Offer" means the price offer contained in Schedule 3 (*Price Offer*).

"Procurement Documentation" means the documentation issued by the Employer inviting expressions of interest in respect of participation in the Public Procurement.

"Prohibited Materials" means materials, goods or substances or any other goods, substances, products or materials which:

- (a) pose a hazard to the health or safety of any person who may come into contact with the Project (whether during its construction or after its completion); or
- (b) either by themselves or as a result of their use in a particular situation or in combination with other materials, would or are likely to have the effect of reducing the normal life expectancy of any other materials or structure in which they are incorporated or to which they are affixed; or
- (c) are or become generally known within the Greek, Bulgarian or international building, construction or engineering industries to be deleterious (either to health and safety or to the durability of the works); or
- (d) contravene any relevant standard code of practice issued from time to time by any relevant authority or under a European directive relating to standards or good building practice or good industry practice; or
- (e) do not conform to the Technical Specification.

"Profit" means, as the context requires, an allowance on account of the Contractor's profit, being an amount equal to [***%] [*Successful bidder's profit to be inserted.*] of the costs of varied works ascertained by the acceptance of the Employer of a Contractor's proposal under Sub-Clause 13.3.5.1.

"Project" means the design, procurement and construction of the natural gas

Interconnector Greece-Bulgaria (IGB Project) which will directly connect the national gas transmission systems of the Republic of Greece and the Republic of Bulgaria, will have the outer diameter of DN 800, the total length of approximately 182 km, and the entry point in the region of the town of Komotini (Greece), with the exit point in the region of the town of Stara Zagora (Bulgaria).

"Project Execution Plan (PEP)" means the draft project execution plan in relation to the Project prepared by the Contractor under section 2.2.2 of the Technical Specification as approved (or as may be deemed to be approved) by the Employer under Sub-Clause 8.1.2.2, as the same may be revised and updated by the Owner's Engineer in limited cases only to the extent that the amendment of the PEP is absolutely necessary and following the approval of the Employer, and disclosed to the Contractor, from time to time.

"Project Items" means the project items, including sub-project items, set out in detail in the "Total lump sum breakdown" table in Schedule 5 (*Payment*) and **"Project Item"** shall mean any one of them.

"Protocol 15" means the act which is drawn up by the Employer, the designers of all parts of the design, the constructor and the person exercising Construction Supervision after completion of the construction of the Bulgarian Section and which is issued on the grounds of Article 176 Paragraph 1 of the SDA (as defined herein below) in the form and with the contents as provided for in Article 7 Paragraph 3 Item 15 of the Ordinance No. 3, for the purposes of evidencing that the construction of the Bulgarian Section is completed in compliance with the approved designs, the as-built documentation certified in accordance with Article 175 Paragraph 2 of the SDA, the construction requirements set out in Article 169 Paragraphs 1 and 3 of the SDA, and the terms and conditions set out in the Contract.

"Protocol 16" means the protocol which is issued by the State Construction Acceptance Commission appointed by the Chief of the Bulgarian National Construction Control Directorate and which is drawn up in the form and with the contents as provided for in Article 7 Paragraph 3 Item 16 of Ordinance No. 3.

"Provisional Acceptance" means the date of provisional acceptance of the Line Pipe by the Employer under and in accordance with the Line Pipe Supply Agreement, as such date is notified by the Employer to the Contractor.

"Public Holiday" means a day on which banks are not open for general business in the Republic of Greece and the Republic of Bulgaria, as the context requires.

"Public Procurement" means the public procurement competition for the design, construction and commissioning of the Works in connection with the Project.

"Qualifying Change in Law" means:

- (a) a Specific Change in Law; and/or
- (b) a General Change in Law.

"QAM" has the meaning given in Sub-Clause 8.1.2.3.

"QCP" has the meaning given in Sub-Clause 8.1.2.3.

"Regulator" means:

- (a) in respect of the Republic of Greece, the Greek Regulatory Authority for energy (RAE); and
- (b) in respect of the Republic of Bulgaria, the Minister of Regional Development and Public Works; the National Construction Control Directorate at the Ministry of Regional Development and Public Works; the General Labour Inspectorate at the Ministry of Labour and Social Policy; the regional Health Inspectorates at the Ministry of Health; the regional Inspectorates of Environment and Water at the Ministry of Environment and Water; the National Institute of Immovable Cultural Heritage at the Ministry of Culture and local archaeological authorities; the State Agency for Metrological and Technical Surveillance,

and any legally constituted public authority including local authorities, governmental or quasi-governmental public bodies, planning authorities and any other statutory bodies.

"Relevant Line Pipe" means that Line Pipe specified in the Bill of Quantities as having a required individual pipe length of "12m;18m".

"Retention Money" means the accumulated retention moneys which the Employer retains under Sub-Clauses 14.4.3.4, 14.5.1.4 and 14.6.1.4, and forms part of the Final Statement which the Contractor is required to present to the Employer for payment pursuant to Sub-Clause 14.8.1.

"Rules for Adjudication" means the procedural rules for adjudication as set out in Schedule 8 (*Procedural Rules*).

"Rules of Arbitration" has the meaning given in Sub-Clause 20.5.1.1.

"SDA" means the Spatial Development Act 2001 of the Republic of Bulgaria (promulgated SG, Issue 1, dated 02.01.2001).

"Second Party" has the meaning given in Sub-Clause 4A.1.2.

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

"Site Acceptance" has the meaning given in Sub-Clause 4B.2.5.1.

"Site Acceptance Certificate" has the meaning given in Sub-Clause 4B.2.5.1.

"Site Meeting" is defined in Sub-Clause 8.14 (*Site Meetings*).

"Specific Change in Law" means:

- (a) a Change in Law which expressly applies to gas pipeline infrastructure in the Country; or
- (b) a Change in Law which expressly applies to health and safety in respect of gas pipeline infrastructure; or

- (c) a Change in Law which expressly applies to the environment and which directly affects the Works; or
- (d) a Change in Law which expressly applies to the national security of the Country.

"Statement" means, as appropriate, a statement submitted by the Contractor as part of an application for payment under Sub-Clause 14.4 (*Bi-Monthly Payments*), Sub-Clause 14.5 (*Payment following issue of the Taking-Over Certificate*), Sub-Clause 14.6 (*Payment following issue of the Handover for Use*), Sub-Clause 14.7 (*Payment during the Defects Notification Period*) and/or Sub-Clause 14.8 (*Application for Final Payment*).

"Subcontractor" means each of those consultants and subcontractors providing equipment, materials, work or services to the Contractor who has consented to implement a specific part of the Public Procurement in connection with the execution of the Works, as specifically identified in the Tender and/or Sub-Clause 4.4 (*Subcontractors*) of this Contract, or as may be replaced in accordance with Sub-Clause 4.4 (*Subcontractors*).

"Supplier" means any person named in the Contract as a supplier, or any person with whom the Contractor enters into an agreement for the supply of Plant and/or Materials but does not include any Subcontractor appointed to carry out a part of the Works.

"Surveillance" means a planned and structured inspection of the Works by the Employer to demonstrate compliance with the Technical Specification.

"Taking-Over Certificate" means a certificate issued or deemed to have been issued under Clause 10 (*Employer's Taking Over*).

"Taking-Over Retention Money" means the accumulated retention moneys which the Employer retains under Sub-Clause 14.4.3.3 and which forms part of the Statement which the Contractor is required to present to the Employer following issue of the Taking-Over Certificate for payment pursuant to Sub-Clause 14.5.

"Taxes" means any and all direct and indirect taxes, duties, funds, fees, levies, excises, rates, charges, imposts, surcharges, royalties, stamp duties, including taxes imposed on profits, sales, payroll, social security, insurance or other similar contributions, and further including any interest, penalties, fines, or surcharges and any additions to tax, or additional taxes that may become payable in respect thereof and other government imposed mandatory payments of whatever nature wherever payable and whether payable directly or by withholding, and however called and whether paid to a government or to any other person at its directive or pursuant to applicable Laws, or similar to any of the foregoing.

"Technical Specification" means document "TS-EPC" and all attachments, including but not limited to the Technical design for the Bulgarian Section and FEED for the Greek Section [which document and attachments are contained in one CD signed as being relative hereto], as may be amended from time to time in accordance with this Contract.

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

Permanent Works and the remedying of any defects.

"Tender" means the Contractor's signed offer for the Works as contained in Schedule 1 (*Tender*).

"Termination Date" has the meaning given in Sub-Clause 16.2.2.

"Tests on Completion" means the tests on completion required by applicable Laws, specified in the Technical Specification, and any additional tests on completion proposed by the Contractor in accordance with the Technical Specification (including pursuant to the commissioning plan to be developed by the Contractor), or instructed as a Variation, and which are carried out under Clause 9 (*Tests on Completion*) before the Works are taken over by the Employer.

"Tests on Completion Programme" has the meaning given in Sub-Clause 9.1.3.

"Tests after Completion" means any tests which are carried out under Clause 12 (*Tests after Completion*) after the Works are taken over by the Employer.

"Third Party Inspector" has the meaning given in Sub-Clause 3.1.7.

"Third Party Software" means computer programs (other than In-House Software), the Intellectual Property Rights in which are:

- (a) owned by a third party; and
- (b) used by the Contractor to carry out his obligations under the Contract,

and for the purposes of the Contract "Third Party Software" shall exclude word processing and spreadsheet software.

"Time for Completion" means the time for completing the Works under Sub-Clause 8.2 (*Time for Completion*), being eighteen (18) months (with any extension under Sub-Clause 8.4 (*Extension of Time for Completion*)), calculated from the Commencement Date.

"Total Lump Sum Price" has the meaning given in Schedule 5 (*Payment*).

"TLS" has the meaning given in Schedule 5 (*Payment*).

"Type" means a type of Line Pipe as described in the table in the Bill of Quantities (with each individual type of Line Pipe being as described in an individual row of that table).

"Value Engineering Proposal" means a written proposal submitted by the Contractor under Sub-Clause 13.2 (*Value Engineering Proposals*) which (in the Contractor's opinion):

- (a) will permit earlier completion of the Works; or
- (b) will permit improved efficiency and/or reduced Contract Price in respect of the design, execution and/or completion of the Works; or
- (c) will permit improved efficiency and/or reduced cost to the Employer of

maintaining or operating the Works; or

(d) would otherwise be of benefit to the Employer.

"Variable Volume Threshold" shall mean an increase or decrease in the overall quantity (in metres) of Line Pipe required, other than pursuant to a Pipe Length Ratio Change, of up to ten per cent (10%) of the Initial Quantity of Line Pipe.

"Variation" means any addition, modification, reduction or omission in respect of the Works or the Contract or any part thereof, which is instructed or approved as a variation under Clause 13 (*Variations and Adjustments*).

"Witness Point" means a point in the execution of the Works identified in the Technical Specification or otherwise notified by the Employer in respect of which the Employer's Personnel and Construction Supervision Entity are entitled to examine, inspect, measure, test and/or check the progress of work and which shall include, without prejudice to the generality of the foregoing, any work so identified once it is ready and before it is covered up, put out of sight, or packaged for storage or transport.

"Works" mean the Permanent Works and the Temporary Works, or either or part of them as appropriate, and as may be varied from time to time in accordance with the Contract.

1.2 Interpretation

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

1.2.1.1 words indicating one gender include all genders;

1.2.1.2 words indicating the singular also include the plural and words indicating the plural also include the singular;

1.2.1.3 provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing and signed by both Parties;

1.2.1.4 "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent un-editable record;

1.2.1.5 "shall" means that the Party or person referred to has the obligation under this Contract to perform the duty referred to;

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

1.2.1.7 a reference to a person or persons shall include natural persons, individuals, firms, bodies corporate, unincorporated associations, partnerships, joint ventures, trusts or other entities or organisations of any kind, including (without limitation) government entities (or political subdivisions or agencies or instrumentalities thereof), and references to any of the same include the others and references to any of the same include their

successors and assignees and transferees;

- 1.2.1.8 the words "include", "including", "such as" and "for example" are to be construed without limitation;
- 1.2.1.9 where under this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date and if the period ends on a Saturday, Sunday or Public Holiday, then the period shall end on the next business day in the Republic of Greece and the Republic of Bulgaria;
- 1.2.1.10 where under this Contract an act is required to be done within a month or a specified period of months after or from a specified date, the period shall begin immediately after that date and if the period ends on a Saturday, Sunday or Public Holiday, then the period shall end on the next business day in the Republic of Greece and the Republic of Bulgaria;
- 1.2.1.11 a reference to a Clause, Sub-Clause, or Schedule is, unless expressly stated to the contrary, a reference to a Clause in this Contract, a Sub-Clause in this Contract or a Schedule to this Contract;
- 1.2.1.12 any reference to this Contract (or any part thereof) or to any other document shall include any variation, amendment, or supplement to the Contract (but, in respect of the Contract (or any part thereof), only as expressly permitted under the terms of the Contract) or to such other document;
- 1.2.1.13 without prejudice to Sub-Clause 13.8 (*Adjustments for Changes in Law*), any reference to any legislation, draft legislation, order, ordinance, protocol, regulation or other similar instrument (including any EU instrument) (whether specifically named or not) shall be construed as a reference to that legislation, draft legislation, order, regulation or other similar instrument as amended, replaced, consolidated or re-enacted and shall include any subordinate legislation as well as orders, notices or directions made or given thereunder and legally binding codes of practice;
- 1.2.1.14 subject to the restrictions imposed by the Contract on subcontracting, an obligation to do something includes an obligation to procure it to be done;
- 1.2.1.15 an obligation not to do something includes an obligation not to wilfully allow it to be done; and
- 1.2.1.16 any reference to "completion of the Works" or "complete the Works" shall include the testing and commissioning of the Works and the remedying of any defects in the Works for which the Contractor is responsible under the Contract unless expressly excluded or used in the context of the Time for Completion or completion for the purposes of Sub-Clause 10.1 (*Taking Over of the Works*).

1.2.2 The headings shall not be taken into consideration in the interpretation of this Contract.

1.2.3 The ejusdem generis rule does not apply and the meaning of general words is not to be restricted by any particular examples preceding or following those general words.

1.3 Communications

1.3.1 Wherever this Contract provides for the giving or issuing of any communication, including approvals, certificates, consents, determinations, notices and requests, these communications shall (subject to Sub-Clause 3.4.1) be:

1.3.1.1 in writing and delivered by hand, sent by pre-paid special or recorded mail or courier, or, subject to Sub-Clause 1.3.3, sent by email or transmitted using an electronic document management system for document exchange using software which will deliver the requirements described in the Technical Specification; and

1.3.1.2 delivered, sent or transmitted to the address for the recipient's communications being:

(a) in the case of notices or other forms of communication given to the Employer:

Employer's address 13 Veslets Street
1000 Sofia
Bulgaria

Email: [****Email address]

Telephone number: +359(2) 9263 862

(b) in the case of notices or other forms of communication given to the Contractor:

Contractor's address [***]
[***]
[***]

Email: [*** Email address]

Telephone number: [*** Number]

However:

(i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and

(ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

- 1.3.2 Notices or other forms of communication shall be deemed duly served:
- 1.3.2.1 if sent via personal delivery, on proof of delivery; or
 - 1.3.2.2 if sent via hand, on proof of delivery; or
 - 1.3.2.3 if sent by pre-paid special or recorded delivery mail or delivery by courier, on proof of delivery; or
 - 1.3.2.4 if sent via e-mail or via an electronic document management system for document exchange using software which will deliver the requirements described in the Technical Specification, on the day of issue of the relevant delivery confirmation receipt (or other equivalent confirmation of receipt) unless that day is not a business day in the Republic of Bulgaria and the Republic of Greece, in which case it shall be deemed duly served on the next business day in the Republic of Bulgaria and the Republic of Greece thereafter.
- 1.3.3 Electronic communication (whether by e-mail or via the electronic document management system for document exchange using software which will deliver the requirements described in the Technical Specification) shall not be used in respect of:
- 1.3.3.1 the issue by the Contractor of any certificates pursuant to the Technical Specification except that any supporting information accompanying such certificates may be communicated using electronic means; or
 - 1.3.3.2 the issue by the Employer of a notice of termination pursuant to Clause 15 (*Termination by Employer*); or
 - 1.3.3.3 the issue by the Contractor of a notice of suspension or a notice of termination pursuant to Clause 16 (*Suspension and Termination by Contractor*); or
 - 1.3.3.4 the issue by either Party of a notice of termination pursuant to Sub-Clause 19.6.1 (*Optional Termination, Payment and Release*); or
 - 1.3.3.5 the issue by either Party of any notice or communication in respect of any Dispute which arises out of or in connection with this Contract; or
 - 1.3.3.6 the issue by the Employer of a Notice to Proceed pursuant to Sub-Clause 1.6.6.
- 1.3.4 Save to the extent expressly provided otherwise in this Contract, notices, approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed.

1.4 Law and Language

- 1.4.1 This Contract and any non-contractual obligations arising out of or in

connection with it shall be governed by the laws of England and Wales.

1.4.2 If there are versions of any part of this Contract which are written and/or signed in more than one language, the ruling language shall be English.

1.4.3 The language for communications shall be English (except that the Bulgarian and Greek languages shall be used where identified in the Technical Specification).

1.5 Priority of Documents

1.5.1 The documents forming this Contract are to be taken as mutually explanatory of one another. In the event of any conflict or ambiguity between these documents, the priority of the documents shall be in accordance with the following sequence:

1.5.1.1 the Conditions;

1.5.1.2 Technical Specification;

1.5.1.3 Schedule 2 (*Performance Levels*);

1.5.1.4 Schedule 5 (*Payment*);

1.5.1.5 Schedule 6 (*Insurance*);

1.5.1.6 Schedule 7 (General Conditions of Dispute Adjudication Agreement);

1.5.1.7 Schedule 8 (*Procedural Rules*);

1.5.1.8 Schedule 1 (*Tender*);

1.5.1.9 Schedule 3 (*Price Offer*); and

1.5.1.10 Schedule 4 (*Key Personnel*).

1.5.2 If the Contractor discovers any conflict, discrepancy, ambiguity or inconsistency within and/or between the documents forming this Contract, the Contractor shall notify the Employer immediately, giving full details of such conflict or ambiguity. The Contractor shall provide the Employer with proposals for resolving such conflict or ambiguity which comply with the Contract. The Employer shall, acting reasonably, decide how the conflict or ambiguity shall be resolved and shall notify the Contractor of his decision as soon as is reasonably practicable, and in no event later than seven (7) days after the Employer has received proposals from the Contractor in respect of such conflict or ambiguity. The Contractor shall give immediate effect to this decision. Such decision shall not be treated as a Variation and the Contractor shall not be entitled to any extension of time, Cost or any other payment in giving effect to such a decision.

1.6 Effective Date, Conditions Precedent and Notice to Proceed

1.6.1 Except for Sub-Clause 1.1 (*Definitions*), Sub-Clause 1.2 (*Interpretation*),

Sub-Clause 1.3 (*Communications*), Sub-Clause 1.4 (*Law and Language*), this Sub-Clause 1.6 (*Effective Date, Conditions Precedent and Notice to Proceed*), Sub-Clause 1.7 (*Assignment*), Sub-Clause 1.9 (*Confidentiality*), Sub-Clause 1.16 (*Severability*), Sub-Clause 1.17 (*Entire Agreement*), Sub-Clause 1.18 (*Amendments*), Sub-Clause 1.22 (*Relationship of Parties*), Sub-Clause 1.23 (*Conflict of Interest*), Sub-Clause 4.25 (*Contractor Warranties*) and Clause 18 (*Insurance*), the obligations of the Parties under this Contract shall be conditional upon the occurrence of the Commencement Date.

- 1.6.2 The Employer may by notice in writing to the Contractor waive any or all of the Conditions Precedent required to be delivered by the Contractor.
- 1.6.3 The Contractor shall use its best endeavours to satisfy or procure the satisfaction of the Conditions Precedent as soon as reasonably practicable on or after the Effective Date.
- 1.6.4 On the date that the Conditions Precedent (with the exception of any Conditions Precedent that have been expressly waived by the Employer in writing) have, in the opinion of the Employer (acting reasonably), been satisfied, the Employer shall confirm the same in writing to the Contractor.
- 1.6.5 In the event that the CP Satisfaction Date has not occurred by the date falling six (6) months after the Effective Date, the Employer may terminate this Contract by written notice with immediate effect, and if such termination occurs all provisions of the Contract other than Sub-Clause 1.1 (*Definitions*), Sub-Clause 1.2 (*Interpretation*), Sub-Clause 1.3 (*Communications*), Sub-Clause 1.4 (*Law and Language*), this Sub-Clause 1.6 (*Effective Date, Conditions Precedent and Notice to Proceed*), Sub-Clause 1.7 (*Assignment*), Sub-Clause 1.9 (*Confidentiality*), Sub-Clause 1.16 (*Severability*), Sub-Clause 1.17 (*Entire Agreement*), Sub-Clause 1.18 (*Amendments*) and Sub-Clause 1.22 (*Relationship of Parties*)), shall cease to have effect and such termination shall be without prejudice to any accrued rights or obligations as at that date.
- 1.6.6 The Employer may serve a Notice to Proceed at any time in the period commencing on the Effective Date and ending on the date falling eight (8) months after the CP Satisfaction Date.
- 1.6.7 The "Commencement Date" for the purposes of this Contract shall be the date of service of the Notice to Proceed pursuant to Sub-Clause 1.6.6 (or, if later, the CP Satisfaction Date).
- 1.6.8 If the Employer does not serve a Notice to Proceed as described in Sub-Clause 1.6.6, the Employer shall either:
 - 1.6.8.1 terminate this Contract, by notice, with immediate effect, in which case all provisions of the Contract other than Sub-Clause 1.1 (*Definitions*), Sub-Clause 1.2 (*Interpretation*), Sub-Clause 1.3 (*Communications*), Sub-Clause 1.4 (*Law and Language*), this Sub-Clause 1.6 (*Effective Date, Conditions Precedent*), Sub-Clause 1.7 (*Assignment*), Sub-Clause 1.9 (*Confidentiality*), Sub-Clause 1.16 (*Severability*), Sub-Clause

1.17 (*Entire Agreement*), Sub-Clause 1.18 (*Amendments*) and Sub-Clause 1.22 (*Relationship of Parties*), shall cease to have effect and such termination shall be without prejudice to any accrued rights or obligations as at that date; or

1.6.8.2 suspend the Contract under Sub-Clause 8.8.1; or

1.6.8.3 issue a Variation pursuant to this Clause 13 (*Variations and Adjustments*).

1.7 Assignment

1.7.1 Save as provided in Sub-Clause 1.7.3 below, the Contractor shall not assign any of its rights under this Contract to any person without the prior written consent of the Employer (at the Employer's sole discretion). The Employer may assign all or any of its rights under this Contract to any person at any time.

1.7.2 The Contractor shall not transfer any of its obligations under this Contract to any person without the prior written consent of the Employer (at the Employer's sole discretion). The Employer may transfer all or any of its obligations under this Contract to any person at any time.

1.7.3 The Contractor may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

1.8 Care and Supply of Documents

1.8.1 Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. The Contractor shall supply to the Employer copies of each of the Contractor's Documents in the form and number as specified in the Technical Specification.

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

1.8.3 Without prejudice to Sub-Clause 5.8 (*Design Error*), if a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

1.8.4 The Contractor shall establish and maintain an electronic document management system for document exchange (using software which will deliver the requirements described in the Technical Specification) which the Employer, the Employer's Personnel and any other party reasonably required by the Employer may access remotely by computer (through an appropriate login and security regime) to view any Contractor's Documents and electronically store and/or print copies of such Contractor's Documents. All costs associated with such document

management system (save in respect of the internal costs of the Employer relating to any computer equipment, consumables, telecommunications connections and telecommunications usage) shall be borne by the Contractor, and the requirements for such document management system are identified in the Technical Specification.

1.9 Confidentiality

- 1.9.1 Subject to Sub-Clause 1.9.7, both Parties shall:
 - 1.9.1.1 treat and keep all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
 - 1.9.1.2 not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, or except to such persons and to such extent as may be necessary for the performance of this Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.
- 1.9.2 Subject to Sub-Clause 1.9.7, the Contractor shall take all reasonably necessary precautions to ensure that all Confidential Information obtained from the Employer or the Employer's Personnel under or in connection with the Contract:
 - 1.9.2.1 is given only to such of the Contractor's Personnel, insurers, insurance brokers, sureties, Subcontractors, Suppliers and/or professional advisors in connection with this Contract and/or the Works as is strictly necessary for or in connection with the tendering, pricing, preparation for and carrying out by the Contractor of the Works and its obligations under this Contract; and
 - 1.9.2.2 is treated as confidential and not disclosed (without prior approval) or used by any such Contractor's Personnel, insurers, insurance brokers, sureties, Subcontractors, Suppliers and/or professional advisors otherwise than for such purposes.
- 1.9.3 Where it is considered necessary in the opinion of the Employer (acting reasonably), the Contractor shall ensure that its Contractor's Personnel, Subcontractors, Suppliers and/or professional advisors sign a confidentiality undertaking before commencing work in connection with the Contract. The Contractor shall not use or permit to be used any Confidential Information it receives from the Employer otherwise than for the purposes of the Contract.
- 1.9.4 Subject to Sub-Clause 1.9.7, the Contractor shall not use or permit to be used any Confidential Information it receives from the Employer otherwise than for the purposes of the Contract.
- 1.9.5 Subject to Sub-Clause 1.9.7, the Contractor further undertakes to the Employer that it shall, upon written demand from the Employer, promptly:
 - 1.9.5.1 return or procure the return to the Employer of any Confidential

Information (and any and all copies, extracts or reproductions thereof or of any part thereof, whether made by the Contractor or any of the Contractor's Personnel, insurers, insurance brokers, sureties, Subcontractors, Suppliers and/or professional advisors) where the same are no longer required to be retained for or in connection with the Contract or the Works;

1.9.5.2 delete or procure the deletion in a secure manner of any and all data, records or other stored information from any disc, software, computer, word processor, or other system or device in the possession, custody or control of the Contractor, the Contractor's Personnel, Subcontractors, Suppliers and/or professional advisors to the extent containing any Confidential Information where the same are no longer required to be retained for or in connection with the Contract or the Works; and

1.9.5.3 destroy or procure the destruction in a secure manner of all copies of any notes, analyses, computations, studies or other documents prepared by or on behalf of the Contractor or by any of the Contractor's Personnel, Subcontractors, Suppliers and/or professional advisors, to the extent containing or reflecting any of the Confidential Information where the same are no longer required to be retained for or in connection with the Contract or the Works.

1.9.6 Notwithstanding Sub-Clause 1.9.1, the Employer may disclose Confidential Information to its shareholders, the Employer's Personnel, the Employer's legal, financial, technical or insurance advisers and, where the Employer is in receipt of financing in respect of the Project from any financing institution, any financing institution.

1.9.7 The restrictions on use and disclosure as set forth in Sub-Clauses 1.9.1, 1.9.2, 1.9.4 and 1.9.5 shall not apply to any information:

1.9.7.1 which at the date of its disclosure is public knowledge or which subsequently becomes public knowledge other than by any act or failure to act on the part of the receiving Party or persons for whom the receiving Party has assumed responsibility under this Contract;

1.9.7.2 which the receiving Party can establish by written proof was already in its lawful possession (without restriction as to its disclosure) at the time of disclosure by the disclosing Party and was not acquired directly or indirectly from the disclosing Party;

1.9.7.3 which has been acquired from any third party who lawfully acquired it and who is under no obligation restricting its disclosure, and who did not acquire such information directly or indirectly from the disclosing Party or from the disclosing Party's employees or professional advisers;

1.9.7.4 which by proof in writing has been independently developed by the receiving Party without the use of Confidential Information;

- 1.9.7.5 which is required to be disclosed by law, parliament or order of a court of competent jurisdiction, or government, department, government agency or other public authority; or
 - 1.9.7.6 which the disclosing Party necessarily provides to the Line Pipe Supplier, the Owner's Engineer, the Construction Supervision Entity or the Third Party Inspector; or
 - 1.9.7.7 in respect of the Employer, any information which is disclosed to the Employer, the Employer's Personnel and/or the Employer's legal advisers in connection with the Contract and/or the Project generally; or
 - 1.9.7.8 any registration of information in respect of the Permissions and any property registration required; or
 - 1.9.7.9 any disclosure for the purpose of the audit, examination and certification of the Employer's or the Contractor's accounts; or
 - 1.9.7.10 any disclosure for the purpose of prosecuting or defending any action relating to the Contract, including any proceedings under the Dispute Resolution Procedure.
- 1.9.8 The obligations set forth in this Sub-Clause 1.9 (*Confidentiality*) shall expire three (3) years after the date of issue of the Performance Certificate or the termination of this Contract (whichever is the earlier).

1.10 Employer's Use of Contractor's Documents

- 1.10.1 As between the Parties, the Contractor shall retain the Contractor's IPR.
- 1.10.2 The Contractor hereby grants to the Employer, with effect from the Commencement Date, a non-terminable, transferable, non-exclusive and royalty-free licence to use the Contractor's IPR, for purposes specified below, including making and using modifications of it and reproducing the designs and works contained in it and making both two (2) and three (3) dimensional adaptations and reproductions of it. This licence shall:
 - 1.10.2.1 apply in perpetuity;
 - 1.10.2.2 entitle the Employer and any person authorised by the Employer to use the Contractor's IPR and to reproduce the designs and works contained in it for the purposes of (i) designing, constructing, completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, (ii) future development of the Pipeline, (iii) connection of the Pipeline to new or existing pipelines, and (iv) erection of new over ground installations (including compressor stations);
 - 1.10.2.3 in the case of Contractor's IPR which is in the form of computer programs and other software, permit their use on any computer for the purposes specified in Sub-Clause 1.10.2.2; and
 - 1.10.2.4 entitle the Employer to grant non-exclusive, irrevocable, non-

assignable and royalty-free sub-licences to any third party for such lengths of time as the Employer may reasonably require, to use the Contractor's IPR solely in so far as is necessary for such third party to use such Contractor's IPR in relation to (i) the Works (ii) future development of the Pipeline, (iii) connection of the Pipeline to new or existing pipelines, and (iv) erection of new over ground installations (including compressor stations).

- 1.10.3 For the purposes of this Sub-Clause 1.10 (*Employer's Use of Contractor's Documents*) and Sub-Clause 1.11 (*Contractor's Use of Employer's Documents*) "use" shall include the acts of copying, modifying, adapting or translating the material in question and/or incorporating it with other materials together with a right to load, store and execute it.
- 1.10.4 The Contractor shall not be liable for the use by any person of any of the Contractor's IPR for any purpose other than that for which the same was provided by or on behalf of the Contractor.
- 1.10.5 The Contractor shall provide to the Employer the Contractor's Documents which comprise the outputs derived from the In-House Software in a format which may be read and effectively used by software generally available at reasonable prices in the market at the relevant time and in hard copy format.
- 1.10.6 The Contractor's IPR shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under Sub-Clause 1.10.2.2.

1.11 Contractor's Use of Employer's Documents

As between the Parties, the Employer shall retain the Intellectual Property Rights in the Technical Specification, any drawings and other documents made by (or on behalf of) the Employer (together the "**Employer Documents**"). The Employer hereby grants to the Contractor a non-exclusive and royalty-free licence to use the Employer Documents solely for the purposes of performing his obligations under this Contract, including, at the Contractor's cost, making and using modifications of them and reproducing the designs and works contained in it and making both two (2) and three (3) dimensional adaptations and reproductions of it. This licence shall entitle the Contractor to grant non-exclusive and royalty-free sub-licences to any Subcontractor, Supplier or consultant engaged by him for the purposes of the Works to use the Employer Documents solely for the purposes of performing their respective obligations in respect of the Works. Subject to the foregoing, the Employer Documents shall not, without the Employer's consent, be copied by, used by or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract and subject always to Sub-Clause 1.9 (*Confidentiality*).

1.12 Not used

1.13 Compliance with Laws

- 1.13.1 The Contractor shall, in performing the Contract, comply with applicable Laws.
- 1.13.2 Provided always that the Contractor has made timely provision to the

Employer of copies of all required drawings (in the required form and content), the Employer shall have obtained (or shall obtain) the planning, zoning or similar permission for the Permanent Works, and any other permissions described in the Technical Specification as having been (or being) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so.

- 1.13.3 The Contractor shall give all notices, pay all Taxes, duties and fees, and obtain all Permissions (including, without limitation, those Permissions identified in the Technical Specification), as required by the Laws in relation to the design, execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so, save to the extent that the Contractor is impeded or prevented from complying with its obligations under this Sub-Clause 1.13.3 as a result of a breach by the Employer of its obligations pursuant to Sub-Clause 2.2.1.
- 1.13.4 While designing, executing and completing the Works and remedying any defects therein and performing its other obligations under this Contract, the Contractor and its Subcontractors and Suppliers shall observe all applicable Laws, regulations, standards and other requirements related to the subject matter of this Contract and in particular all applicable rules and requirements relating to the construction, environmental, social and labour law, applicable collective agreements and/or provisions of the international environmental, social and labour law in accordance with Appendix 10 attached to Art. 115 of the PPA. The applicability of English law as the governing law of this Contract shall not contravene, or derogate from, the mandatory requirements of Bulgarian and Greek law that are applicable to the design, execution and completion of the Works (and the remedying of any defects therein), including any requirements in respect of construction and commissioning, and environmental, social, immigration and labour law, such that in case of any such contravention or derogation said mandatory requirements shall prevail.
- 1.13.5 The Contractor shall provide copies to the Employer of all notices given and received and all Permissions obtained by him. Acknowledgement by the Employer of such copies shall not in any way affect the Contractor's obligations or relieve the Contractor from his obligations under this Sub-Clause 1.13 (*Compliance with Laws*).
- 1.13.6 The Contractor shall comply with all the legally mandatory and/or binding requirements of any notice which may be served upon any of the Contractor, or the Employer (where timeously notified by the Employer to the Contractor) in relation to the design, execution and/or completion of the Works by any Regulator.
- 1.13.7 Neither Party shall do (or fail to do) any act or thing which would:
- 1.13.7.1 cause (or might reasonably be expected to cause) the other Party to be in breach of any Permissions; or
- 1.13.7.2 render the other Party liable to pay any penalty imposed by or to bear any expense incurred under any Laws.

1.13.8 Notwithstanding the foregoing, in the event that there is any change in Law (excluding therefrom any change resulting directly or indirectly from the acts or omissions of the Contractor or any Subcontractor) enacted after the Base Date, Sub-Clause 13.8 (*Adjustments for Changes in Law*) shall apply.

1.14 Joint and Several Liability

If the Contractor constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two (2) or more persons:

1.14.1 these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract and references to the Contractor in this Contract shall include references to each and any of these persons;

1.14.2 these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and

1.14.3 the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

1.15 Anti-Corruption

1.15.1 In the performance of their obligations under this Contract, the Contractor, their agents and employees shall comply with all laws, rules, regulations, and orders of any applicable jurisdiction including without limitation those relating to anti-corruption and bribery. The Parties shall also comply with the standards provided in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

1.15.2 The Contractor hereby represents, warrants and covenants that:

1.15.2.1 it shall not participate directly or indirectly in bribery, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money laundering, use of insider information, the possession of illegally obtained information or any other criminal activity; and

1.15.2.2 it shall never receive nor offer, pay or promise to pay either directly or indirectly, anything of value to a "public official" as defined below) in connection with any business opportunities which are the subject of this Contract. Furthermore, the Contractor shall immediately give notice to the Employer with full particulars in the event that the Contractor received a request from any public official requesting illicit payments.

1.15.3 A "public official" is:

1.15.3.1 any official or employee of any government agency or government-owned or controlled enterprise; or

1.15.3.2 any person performing a public function; or

1.15.3.3 any official or employee of a public international organization including without limitation donor or funding agencies or the Employer;

1.15.3.4 any candidate for political office; or

1.15.3.5 any political party or an official of a political party.

1.15.4 In conjunction with the requirements of this Sub-Clause 1.15 (*Anti-Corruption*), the Contractor shall, at the Employer's request, demonstrate that it adheres to a documented code of conduct in respect to the prevention of corruption and bribery. As a minimum, the Contractor shall comply with the FIDIC Code of Ethics and the FIDIC Integrity Management System available at <http://www.fidic.org>.

1.16 Severability

If any term or provision of this Contract is held to be illegal or unenforceable in whole or in part then such term or provision shall be disregarded without affecting the enforceability of the remainder of the Contract. Where either Party cannot rely on any term or provision, the Parties shall negotiate in good faith for an alternative term or provision with similar contractual effect for both Parties.

1.17 Entire Agreement

1.17.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) given or made before the Effective Date by, or on behalf of, the Parties and relating to its subject matter (notwithstanding the terms of any such former agreement or arrangement expressed to survive termination).

1.17.2 Each Party confirms that it has not relied upon, and (subject to Sub-Clause 1.17.4 below) shall have no remedy in respect of, any agreement, warranty, statement, representation, understanding or undertaking made by any party (whether or not a party to this Contract) unless that warranty, statement, representation, understanding or undertaking is expressly set out in this Contract.

1.17.3 Subject to Sub-Clause 1.17.4 neither Party shall be entitled to the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, understanding or undertaking whether or not it is set out in this Contract.

1.17.4 Nothing in this Contract shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

1.18 Amendments

This Contract can only be amended with the written agreement of the Parties. Further, and without prejudice to the foregoing, the Contract may only be amended where the circumstances set out in Art. 116 the PPA are satisfied.

1.19 Waiver

- 1.19.1 The rights and remedies of each Party under, or in connection with, this Contract may be waived only by express written notice. Any waiver shall apply only in the instance, and for the purpose for which, it is given.
- 1.19.2 No right or remedy under, or in connection with, this Contract shall be precluded, waived or impaired by:
- 1.19.2.1 any failure to exercise or delay in exercising it;
 - 1.19.2.2 any single or partial exercise of it;
 - 1.19.2.3 any earlier waiver of it, whether in whole or in part; or
 - 1.19.2.4 any of the above in relation to any other right or remedy (be it of similar or different character).

1.20 Survival

All provisions of this Contract which are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Contract, including without limitation Sub-Clause 1.9 (*Confidentiality*), Sub-Clause 1.10 (*Employer's Use of Contractor's Documents*), Sub-Clause 1.11 (*Contractor's Use of Employer's Documents*), Sub-Clause 4.1 (*Contractor's General Obligations*), Clause 14 (*Contract Price and Payment*), Sub-Clause 15.4 (*Payment after Termination*), Sub-Clause 16.3 (*Cessation of Work and Removal of Contractor's Equipment*), Sub-Clause 16.4 (*Payment on Termination*), Clause 17 (*Risk and Responsibility*), Sub-Clause 18.1.2 (*Contractor's Insurances*), Sub-Clause 19.6 (*Optional Termination, Payment and Release*), Sub-Clause 19.7 (*Release from Performance under the Law and Impossibility of Performance*) and Clause 20 (*Claims, Disputes and Arbitration*) shall remain in effect and be enforceable following such expiration or termination, subject to the applicable statute of limitation.

1.21 No Third Party Rights

Except as expressly stated in the Contract, the Contract shall not and shall not purport to confer on any third party any benefit or right to enforce any term of the Contract whether by way of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

1.22 Relationship of Parties

Nothing contained in this Contract is intended to or shall be construed as creating a partnership, agency, joint venture or legal relationship of any kind between the Parties that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other. Save where expressly stated in this Contract, neither Party shall have authority to make representations, act in the name or on behalf of, or otherwise to bind the other.

1.23 Conflict of Interest

The Contractor hereby represents, warrants and covenants that it does not and will not have during the period of the performance of the Works any interest in any matter where there is or is reasonably likely to be a Conflict of Interest save to the extent

fully and fairly disclosed to and approved by the Employer in writing. The Contractor shall inform the Employer immediately if it becomes aware of any such circumstances or matters. If a Conflict of Interest arises then the Parties shall agree, in good faith, on measures to manage such Conflict of Interest.

1.24 Counterparts

This Contract may be executed in any number of counterparts, and by the Parties as separate counterparts but will not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Contract, but all the counterparts shall together constitute one and the same Contract.

1.25 Cumulative remedies

The rights and remedies arising under, or in connection with, this Contract are cumulative and, except where otherwise expressly provided in this Contract, do not exclude rights and remedies provided by law or otherwise.

1.26 Further assurance

Each Party shall at the request and cost of the other use all reasonable endeavours to do or procure the doing of all such further acts, and execute or procure the valid execution of all such documents, as may from time to time be necessary in the requesting Party's reasonable opinion to give full effect to this Contract and to vest in the requesting Party the full benefit of the assets, rights and benefits to be transferred to the requesting Party under this Contract.

2 THE EMPLOYER

2.1 Right of Access to the Site

2.1.1 For the purposes of the design, execution and completion of the Works excluding the remedying of defects (in respect of which access is dealt with in accordance with Sub-Clause 11.7 (*Right of Access*)), the Employer shall give the Contractor right of access to, and possession of:

2.1.1.1 the section of the Site located in the Republic of Bulgaria ("**Bulgarian Site**") within fifteen (15) days after the Commencement Date; and

2.1.1.2 from Greek – Bulgarian border to Komotini in the section of the Site located in the Republic of Greece ("**Greek Pipeline Site**") within fifteen (15) days after the Commencement Date; and

2.1.1.3 the sites necessary for the above ground installations as specified in the Technical Specification in the section of the Site located in the Republic of Greece ("**Greek Station Site**") within four (4) months after the Commencement Date.

The right of access to, and possession of the Site shall not be exclusive to the Contractor.

2.1.2 The right of access to, and possession of the Site referred to in Sub-Clause 2.1.1 shall subsist for the purposes of the design, execution and

completion of the Works excluding the remedying of defects (in respect of which access is dealt with in accordance with Sub-Clause 11.7 (*Right of Access*)) and for no other purposes, and shall not grant or be deemed to grant any other interest in the Site.

- 2.1.3 If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any right of access or possession to the Bulgarian Site or the Greek Pipeline Site or the Greek Station Site within the relevant time indicated in Sub-Clause 2.1.1, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 (*Contractor's Claims*) to:
 - 2.1.3.1 an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*); and
 - 2.1.3.2 payment of any such Cost, which shall be added to the Contract Price.
- 2.1.4 After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 (*Determination*) to agree or determine these matters.
- 2.1.5 If and to the extent that the Employer's failure identified in any notice issued pursuant to Sub-Clause 2.1.3 was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents or breach of Contract by the Contractor or any negligence, wilful act, or wilful omission by the Contractor, the Contractor's Personnel, Subcontractors and/or Suppliers, the Contractor shall not be entitled to such extension of time or Cost.
- 2.1.6 The Employer does not warrant the sufficiency or adequacy of the Site to allow the Works to be designed, executed and completed in accordance with the Contract. The Contractor shall not be relieved of any obligation under the Contract on the grounds of any insufficiency or inadequacy.

2.2 Permits, Licences or Approvals

- 2.2.1 Subject to Sub-Clause 2.2.2, the Employer shall provide reasonable assistance to the Contractor at the request of the Contractor in respect of the Contractor's applications for any Permissions which the Contractor is required to obtain under Sub-Clause 1.13 (*Compliance with Laws*).
- 2.2.2 The provision of any such reasonable assistance by the Employer pursuant to Sub-Clause 2.2.1 and efficacy or otherwise of any such reasonable assistance shall not in any way affect the Contractor's obligations or relieve the Contractor from his obligations pursuant to Sub-Clause 1.13 (*Compliance with Laws*) or otherwise, and the Contractor shall not be entitled to any extension of time, Cost or any other payment arising from any such reasonable assistance.
- 2.2.3 The Contractor shall provide all information and reasonable assistance to the Employer at the reasonable request of the Employer for the Employer's applications for any planning permissions, permits, licences or approvals required for the Project and/or pursuant to this Contract.

2.3 Employer's Personnel

The Employer shall procure that the Employer's Personnel and the Employer's other contractors on the Site take actions similar to those which the Contractor is required to take under Sub-Clauses 4.8.1.1, 4.8.1.2 and 4.8.1.3 and under Sub-Clause 4.18 (*Protection of the Environment*), so far as relevant to any works or activities being carried out by the Employer's Personnel and the Employer's other contractors on the Site.

2.4 Not used

2.5 Employer's Claims

2.5.1 If the Employer considers himself to be entitled to any payment under or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, he shall give notice and particulars to the Contractor.

2.5.2 Any notice given pursuant to Sub-Clause 2.5.1 shall be given as soon as practicable after the Employer became aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

2.5.3 The particulars in any notice given pursuant to Sub-Clause 2.5.1 shall specify the Sub-Clause or other basis of the claim or entitlement, and shall include substantiation of the amount of any payment and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Employer shall then proceed in accordance with Sub-Clause 3.5 (*Determination*) to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 (*Extension of Defects Notification Period*).

2.5.4 Subject to Sub-Clause 2.5.5, the Employer may deduct any amount from any moneys due, or to become due, to the Contractor or may recover the same from the Contractor as a debt immediately due and payable.

2.5.5 The Employer shall serve notice on the Contractor if the Employer intends to withhold any payment due to the Contractor pursuant to the Contract and any notice of intention to withhold payment shall be served by the Employer at least three (3) days prior to the final date for payment calculated in accordance with Sub-Clauses 14.4.5, 14.5.3, 14.6.3, 14.7.5 and 14.10.1 (as appropriate) and such notice shall state the sums being withheld and the detailed reason or detailed reasons for such withholding. Where an effective notice of intention to withhold payment is given, but on the matter being referred to the Dispute Resolution Procedure for a binding decision, it is decided that the whole or part of the amount should be paid to the Contractor, the decision shall be construed as requiring payment not later than:

2.5.5.1 seven (7) days from the date of the decision; or

2.5.5.2 the date which, apart from the notice, would have been the final

date for payment,

whichever is the later.

2.5.6 The Contractor shall be entitled to payment of interest as provided in Sub-Clause 14.11 (*Delayed Payment*) in respect of the relevant part of any payments which have been withheld in accordance with Sub-Clause 2.5.5 but are subsequently determined as being payable by the Employer to the Contractor either by agreement between the Parties or a decision following a referral to the Dispute Resolution Procedure. The interest shall be calculated for the period between the date when the relevant part of the payment should have been paid but for withholding and the date on which payment is made by the Employer in accordance with Sub-Clause 2.5.5.

2.5.7 The Contractor may deduct any amount agreed under the Contract or determined pursuant to the Dispute Resolution Procedure to be payable by the Employer to the Contractor under the Contract from any amount payable by the Contractor to the Employer under the Contract.

3 EMPLOYER'S ADMINISTRATION

3.1 The Employer's Representative, Owner's Engineer, Third Party Inspector and Construction Supervision Entity

Employer's Representative

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

3.1.2 The Employer shall procure that the Employer's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him, by the Employer. Unless and until the Employer notifies the Contractor otherwise, the Employer's Representative shall be deemed to have the full authority of the Employer under the Contract, except in respect of Clause 15 (*Termination by Employer*). and service of a Notice to Proceed as described in Sub-Clause 1.6.6.

3.1.3 If the Employer wishes to replace any person appointed as Employer's Representative, the Employer shall give the Contractor not less than seven (7) days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

Owner's Engineer

3.1.4 The Employer shall notify the Contractor of the identity and contact details of the Employer's engineer (the "**Owner's Engineer**") appointed by the Employer to manage this Contract on behalf of the Employer in accordance with the terms of a services agreement entered into between the Owner's Engineer and the Employer (as may be amended from time to time). The Contractor shall allow the Owner's Engineer such access (including to facilities, sites, personnel and information) as is necessary to enable the Owner's Engineer to satisfy its service obligations and fulfil its

contract management functions, (subject to Sub-Clause 3.1.5) as a representative of the Employer.

- 3.1.5 The Employer shall notify the Contractor in writing (from time to time) of the scope of the Owner's Engineer's authority to act on behalf of the Employer (and to bind the Employer) under this Contract (if any), including in respect of the giving of any instruction or other notice to the Contractor, or the receipt of any notice or other communication from the Contractor, under this Contract.
- 3.1.6 The Employer shall notify the Contractor in writing as soon as reasonably practicable of any change of the Owner's Engineer or his contact details.

Third Party Inspector and Construction Supervision Entity

- 3.1.7 The Employer, or the Owner's Engineer on behalf of the Employer, shall notify the Contractor of the identity and contact details of the third party inspector (appointed by the Owner's Engineer and whose scope falls within the scope of the Owner's Engineer) (the "**Third Party Inspector**") who shall be responsible for conducting field inspections in respect of the performance of the Works in the Republic of Greece.
- 3.1.8 The Employer, or the Owner's Engineer on behalf of the Employer, shall notify the Contractor in writing of any change of the Third Party Inspector or his contact details.
- 3.1.9 The Employer, or the Owner's Engineer on behalf of the Employer, shall notify the Contractor of the identity and the contact details of the Construction Supervision Entity. The Contractor shall allow the Construction Supervision Entity such access (including to facilities, sites, personnel and information) as is necessary to enable the Construction Supervision Entity to fulfil its functions and to perform its obligations under the SDA and its contract with the Employer. The Construction Supervision Entity may issue instructions from time to time to the Contractor as described in Sub-Clause 3.4.5.

No relief from responsibility

- 3.1.10 Any approval, check, issue of a certificate (including a Performance Certificate), consent, examination, inspection, instruction, notice or similar act by the Employer's Representative, Owner's Engineer, Construction Supervision Entity or Third Party Inspector (or from an assistant of the Employer's Representative, Owner's Engineer, Construction Supervision Entity or Third Party Inspector to whom the appropriate authority has been delegated by the Employer's Representative, Owner's Engineer or Third Party Inspector (respectively)) (including absence of disapproval) shall not relieve the Contractor from any responsibility hereunder, including responsibility for errors, omissions, discrepancies and non-compliances.

3.2 Other Employer's Personnel

- 3.2.1 The Contractor acknowledges that the Employer or the Employer's Representative may from time to time delegate duties and authority to

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

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 Sub-Clause 1.4 (*Law and Language*).

3.3 Delegated Persons

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

3.3.1.1 unless otherwise stated in the delegated person's communication relating to such act, it shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances;

3.3.1.2 any failure to disapprove any Contractor's Documents, work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Employer to reject the Contractor's Document, work, Plant or Materials; and

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

3.4 Instructions

3.4.1 The Employer may issue to the Contractor instructions which may be necessary for the Contractor to perform his obligations under the Contract and the Contractor shall, except where Sub-Clause 13.1.2 applies, initiate compliance forthwith with each such instruction, and complete compliance with each such instruction within a reasonable time having regard to the nature of such instruction. Each instruction shall be given in writing except where, in the reasonable opinion of the Employer, it is necessary in order to obviate the risk of imminent damage to or loss of property or bodily injury or death of any person to give such instruction orally, in which case, such oral instruction shall be confirmed in writing by the Employer within three (3) days.

3.4.2 Each written instruction and written confirmation of an oral instruction shall, where appropriate, state the obligations to which it relates and the Sub-Clause (or other term of the Contract) in which the obligations are

specified.

- 3.4.3 The Contractor shall take instructions from the Employer, or from the Employer's Representative or an assistant to whom the appropriate authority has been delegated under this Clause 3 (*Employer's Administration*), or from the Owner's Engineer (to the extent the authority to make such instruction has been notified by the Employer to the Contractor pursuant to Sub-Clause 3.1.5). In the event of any conflict between any such instructions from the Employer (or the Employer's Representative or assistant to whom the appropriate authority has been delegated under this Clause 3 (*Employer's Administration*)) and the Owner's Engineer in respect of the same matter, the instructions of the Employer (or the Employer's Representative or assistant to whom the appropriate authority has been delegated under this Clause 3 (*Employer's Administration*)) shall prevail.
- 3.4.4 If, having received an instruction from the Employer, the Employer's Representative or any assistant with appropriate authority, or the Owner's Engineer (to the extent the authority to make such instruction has been notified by the Employer to the Contractor pursuant to Sub-Clause 3.1.5)), which is not expressly identified as being a Variation under Clause 13 (*Variations and Adjustments*), the Contractor considers that compliance with the instruction amounts to a Variation then, except where Sub-Clause 13.1.2 applies, the Contractor shall give notice of such to the Employer under Sub-Clause 20.1.1 and thereafter the remaining provisions of Sub-Clause 20.1 (*Contractor's Claims*) shall apply.
- 3.4.5 In respect of the Bulgarian Section, the Contractor shall comply with the instructions of the Construction Supervision Entity which have been issued pursuant to Article 168 Paragraph 4 of the SDA. The Contractor shall notify the Employer and Owner's Engineer in respect of any instructions which are received from the Construction Supervision Entity. Compliance by the Contractor with such instructions shall not be treated as a Variation and the Contractor shall not be entitled to any extension of time, Cost in complying with such an instruction.

3.5 Determination

- 3.5.1 Where this Contract provides that the Employer shall proceed in accordance with this Sub-Clause 3.5 (*Determination*) to agree or determine any matter, the Employer shall consult with the Contractor in an endeavour to reach agreement. If agreement is not achieved within three (3) days following such consultation, within fourteen (14) days following expiry of that three (3) day period, the Employer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.
- 3.5.2 The Employer shall give notice to the Contractor of each agreement or determination made pursuant to Sub-Clause 3.5.1, with supporting particulars. Each Party shall give effect to each agreement or determination, unless the Contractor gives notice, to the Employer, of his dissatisfaction with a determination within fourteen (14) days of receiving it. Either Party may then refer the dispute for resolution in accordance with Clause 20 (*Claims, Disputes and Arbitration*).

4 THE CONTRACTOR

4.1 Contractor's General Obligations

- 4.1.1 The Contractor shall design, execute and complete the Works and shall remedy any defects in the Works, and perform the other obligations of the Contractor under this Contract, in accordance with and so as to comply in all respects with the Contract.
- 4.1.2 The Contractor warrants and guarantees that when completed, the Works shall be fit for the purposes for which the Works are intended as described in the Contract and that the Works shall meet the Performance Levels.
- 4.1.3 The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, transport to, from, in and about the Site, consumables and other things and services, whether of a temporary or permanent nature, required in and for the design, execution, completion of the Works and remedying of defects, other than the Line Pipe which shall be supplied by the Line Pipe Supplier in accordance with Clause 4B (*Delivery of Line Pipe*).
- 4.1.4 The Works shall include any work which is necessary to satisfy the Technical Specification, or is implied by the Contract, and all works which (although not mentioned in the Contract) are necessary for stability or for the completion, or safe and proper operation, of the Works.
- 4.1.5 The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works.
- 4.1.6 The Contractor shall, whenever required by the Employer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Employer.
- 4.1.7 The Contractor represents, warrants and undertakes to the Employer that it shall not use, require or permit the use of any Prohibited Materials for incorporation in the Works.
- 4.1.8 Subject to Sub-Clause 4.1.7, the Contractor warrants that any Materials shall be in accordance with the Employer's Requirements.
- 4.1.9 The Contractor warrants and undertakes to the Employer that the Contractor shall carry out the design, execution and completion of the Works and the other obligations of the Contractor under the Contract:
- 4.1.9.1 in accordance with and so as to comply with all applicable Laws and Permissions; and
 - 4.1.9.2 so as to ensure that the environmental impact is not worse than the residual impact identified in the EIA Permit;
 - 4.1.9.3 so as to ensure that the design of the Works is buildable in such a manner which is not likely to be injurious to persons or

property; and

4.1.9.4 it will perform its obligations under this Contract so that the Employer will not be in breach of any contract entered into by the Employer with any third party provided that the terms of such contract have been notified by the Employer to the Contractor.

4.1.10 The Contractor shall at all times keep himself fully informed about current professional and technical standards relating to the design, execution and completion of the Works.

4.1.11 The Contractor's duties and obligations under or pursuant to the Contract shall not be released, diminished or in any other way affected by any independent inquiry into any matter which may be made or carried out by the Employer or by any firm, company or party on the Employer's behalf nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Employer.

4.2 Performance Guarantee

4.2.1 Upon the execution of the Contract, the Contractor shall, at its discretion, provide to the Employer a performance guarantee of any one of the following types:

4.2.1.1 a cash deposit;

4.2.1.2 bank guarantee; or

4.2.1.3 insurance securing performance by covering the liability of the Contractor,

in each case for the amount equal to five per cent (5%) of the Contract Price, and whichever form is selected by the Contractor is the "**Performance Guarantee**". The Contractor shall ensure that the Performance Guarantee is at all times valid and enforceable and fully recoverable in accordance with its terms until the date on which it is released by the Employer pursuant to Sub-Clause 4.2.6.

4.2.2 If the Performance Guarantee is paid in the form of a cash deposit, the amount shall be transferred (either by the Contractor or by a third party on behalf of the Contractor) to the following bank account of the Employer: *[insert bank details]*.

4.2.3 If the Performance Guarantee is provided in the form of a bank guarantee, it shall be provided by an Approved Bank and the Contractor shall provide to the Employer an original of the bank guarantee issued in favour of the Employer, the form of which shall be subject to the prior approval of the Employer and which shall meet the following requirements:

4.2.3.1 be an unconditional and irrevocable bank guarantee which obliges the issuing bank to pay upon first written demand by the Employer, stating a default of the Contractor or any other

grounds for enforcing the Performance Guarantee under this Contract, regardless of the objections of the Contractor or third persons;

4.2.3.2 be on such terms that the Approved Bank will pay within five (5) days to the Employer the sum of the due payment or part thereof as stated by the Employer in a written request; and

4.2.3.3 be valid until the date which is sixty (60) days following the date on which the Contractor has become entitled to receive the Performance Certificate and, if required, the bank guarantee validity shall be extended or it shall be replaced with a new one in order to give effect to this requirement,

and any bank charges for issuing and maintaining the bank guarantee, as well as administering a demand by the Employer on the guarantee where there are grounds for that, shall be at the expense of the Contractor.

4.2.4 If the Performance Guarantee is provided in the form of insurance, then it shall be provided by an Approved Insurer and the Contractor shall provide to the Employer the original of the insurance policy issued in favour of the Employer (which policy shall be subject to the prior approval of the Employer), the Employer shall be referred to as a third party beneficiary within it, and it shall meet the following requirements:

4.2.4.1 secure the Contractor's performance of the Contract by covering the Contractor's liability under the Contract;

4.2.4.2 be an unconditional and irrevocable obligation upon the insurer to pay upon first written demand by the Employer, stating a default of the Contractor or any other grounds for enforcing the Performance Guarantee under this Contract, regardless of the objections of the Contractor or third persons;

4.2.4.3 be on such terms that the Approved Insurer will pay within five (5) days to the Employer the sum of the due payment or part thereof as stated by the Employer in a written request; and

4.2.4.4 be valid until sixty (60) days following the date on which the Contractor has become entitled to receive the Performance Certificate and, if required, the insurance validity shall be extended or it shall be replaced with a new one in order to give effect to this requirement,

and the costs of taking out the insurance contract and maintaining the validity of the insurance over the required period as well as the insurer's costs of administering an indemnity in favour of the Employer where there are grounds for that shall be at the expense of the Contractor.

4.2.5 If the Contract Price payable to the Contractor under this Contract increases because of a Variation, the Contractor shall take necessary action to bring the amount of the Performance Guarantee up to the amount of five per cent (5%) of the revised Contract Price payable to the Contractor as a consequence of the Variation, by the following measures

(which shall be at the discretion of the Contractor):

- 4.2.5.1 depositing an additional amount into the bank account of the Employer, subject to the requirements of Sub-Clause 4.2.2; and/or
 - 4.2.5.2 providing a document amending the original bank guarantee or a new bank guarantee, subject to the requirements of Sub-Clause 4.2.3; and/or
 - 4.2.5.3 providing a document amending the original insurance or new insurance, subject to the requirements of Sub-Clause 4.2.4.
- 4.2.6 The Employer shall release the Performance Guarantee after sixty (60) days following the date the Contractor has become entitled to receive the Performance Certificate provided (in the case of a cash deposit) that there are no grounds for enforcing it which have arisen prior to the expiry of such period or (where the Performance Guarantee takes the form of a bank guarantee or insurance policy) a claim has not been notified under the Performance Guarantee prior to the expiry of such period.
- 4.2.7 The release of the Performance Guarantee shall be effected as follows:
- 4.2.7.1 if provided in the form of a cash deposit, by transferring the amount into a bank account specified by the Contractor; or
 - 4.2.7.2 if provided in the form of a bank guarantee, by returning its original to the Contractor's Representative or another authorised person; or
 - 4.2.7.3 if provided in the form of an insurance policy, by returning the original of the insurance policy/insurance certificate to the Contractor's Representative or another authorised person and sending a written notice to that effect to the insurer.
- 4.2.8 The Employer may enforce the Performance Guarantee in the following circumstances:
- 4.2.8.1 where the Contractor is in breach of its obligations under this Contract; or
 - 4.2.8.2 where the Contractor has been subject to a formal insolvency or analogous event, as described in Sub-Clause 15.2.1.9; or
 - 4.2.8.3 without prejudice to the generality of Sub-Clause 4.2.8.1, where the Employer is entitled to terminate under Sub-Clause 15.2 (*Termination by Employer*), irrespective of whether notice of termination has been given.
- 4.2.9 Where the Performance Guarantee takes the form of a cash deposit, in each case in which the Employer wishes to make a retention from such deposit, the Employer shall notify the Contractor of such retention and its grounds. Retention of any amount from the cash deposit, or any valid claim by the Employer on a bank guarantee or insurance policy (where the

Performance Guarantee takes such form) shall not be construed as a waiver of the Employer's rights to claim greater amounts as damages under this Contract.

- 4.2.10 If the Employer enforces the Performance Guarantee in whole or in part and this Contract is still in effect, the Contractor shall within five (5) days replenish the Performance Guarantee by paying the amount enforced by the Employer to the account of the Employer or provide a document amending the original bank guarantee or a new bank guarantee (satisfying the requirements of Sub-Clause 4.2.3), or a document amending the original insurance or a new insurance (satisfying the requirements of Sub-Clause 4.2.4), so as to ensure that while this Contract is still in effect the amount of the Performance Guarantee is in accordance with Sub-Clause 4.2.1.

4.3 Contractor's Representative

- 4.3.1 The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.
- 4.3.2 If the Employer's consent to the appointment of the Contractor's Representative is subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall submit to the Employer the name and particulars of another suitable person for such appointment.
- 4.3.3 The Contractor shall not, without the prior consent of the Employer, revoke the appointment of the Contractor's Representative or appoint a replacement.
- 4.3.4 The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.4 (*Instructions*).
- 4.3.5 The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Employer has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked (such notice to be provided, where practicable, not less than fourteen (14) days in advance of such delegation or revocation taking effect).
- 4.3.6 The Contractor's Representative and any persons to whom any powers, functions and authority are delegated as described in Sub-Clause 4.3.5 shall be fluent in the language for communications defined in Sub-Clause 1.4 (*Law and Language*).

4.4 Subcontractors and Suppliers

- 4.4.1 The Contractor shall not subcontract the whole of the Works.
- 4.4.2 Subject to Sub-Clauses 4.4.3 and 4.4.4, the Contractor shall not subcontract any part of its obligations under this Contract without the prior

written consent of the Employer.

4.4.3 The Contractor shall enter into the subcontracts with the following Subcontractors (as identified in the Tender):

4.4.3.1 *[a list of named pre-approved subcontractors and the role that they will perform will be set out here (as set out in the Tender from the successful bidder)],*

and the Contractor shall notify the Employer of any changes to the above Subcontractors and shall seek the Employer's consent to such changes in accordance with Sub-Clause 4.4.2 provided that:

4.4.3.2 the grounds for excluding participants, as stated in the Procurement Documentation and PPA, are not applicable to the proposed Subcontractor;

4.4.3.3 the proposed Subcontractor meets the same selection criteria that were met by the existing or previous Subcontractor, including in relation to the part and type of the activities which the proposed Subcontractor shall perform, taking into account the activities which have been already performed to the date of the replacement or inclusion; and

4.4.3.4 the Contractor provides such documents as the Employer may request to demonstrate the satisfaction of the circumstances set out in Sub-Clauses 4.4.3.2 and 4.4.3.3.

4.4.4 Within seven (7) days after the Commencement Date, the Contractor shall provide the Employer with contact details and representatives for each of the Subcontractors. In the event that:

4.4.4.1 such contact details and representatives change, the Contractor shall provide the Employer with updated information within three (3) days of such changes; and/or

4.4.4.2 any further subcontracts are entered into, the Contractor shall provide the contact details and representatives of such Subcontractor to the Employer within three (3) days after entering into such subcontract.

4.4.5 The Employer shall:

4.4.5.1 have the right to obtain from the Contractor copies of any subcontracts upon written request (prior to and following execution); and

4.4.5.2 without prejudice to the foregoing, within three (3) days prior to the Contractor entering into a subcontract, be provided with a draft copy of such subcontract by the Contractor; and

4.4.5.3 without prejudice to the foregoing, within three (3) days after the Contractor entering into a subcontract, be provided with a copy of such subcontract by the Contractor.

- 4.4.6 Review of or approval by the Employer of the Contractor's subcontracts, and approval of the Contractor's selection of Subcontractors, shall not create any contractual relationship between the Employer and any such Subcontractors and shall not relieve the Contractor of its obligations hereunder or effect the Employer's rights and remedies.
- 4.4.7 In the event that this Contract is terminated, the Contractor shall, upon the Employer's written request, but only to the extent that the Contractor has been replaced as contractor in accordance with Article 116 of the PPA, assign to the Employer, the rights under such of the subcontracts with Subcontractors relating to this Contract as the Employer may request. The Contractor shall ensure that the terms of each subcontract shall permit such assignment without further consent of the Subcontractor.
- 4.4.8 The Contractor further agrees and undertakes with respect to its Subcontractors that:
- 4.4.8.1 it shall conduct appropriate due diligence prior to appointing or engaging such Subcontractors to ensure that they are duly qualified to perform the tasks for which they have been engaged and that they are of good reputation;
 - 4.4.8.2 it shall cause all such Subcontractors to agree, in writing, to compliance with obligations and undertakings substantially equivalent to those identified in this Contract, such that the Employer shall have the same rights with respect to any Subcontractors that the Employer has with respect to the Contractor under this Contract; and
 - 4.4.8.3 such Subcontractors shall be prohibited from sub-subcontracting any of the activities forming part of its subcontract with the Contractor to any person.
- 4.4.9 The Contractor shall be solely responsible for paying each Subcontractor and Supplier. The Contractor indemnifies and holds the Employer harmless against any loss, cost or liability incurred by the Employer due to the Contractor's failure to pay amounts due and payable to Subcontractors and Suppliers.
- 4.4.10 The Employer shall not have or be deemed to have by virtue of this Contract any contractual obligation to or relationship with any Subcontractor or Supplier. The Contractor shall include a clause to this effect in each subcontract with Subcontractors and Suppliers. No Subcontractor or Supplier of the Contractor is intended to be or shall be deemed a third party beneficiary of this Contract.
- 4.4.11 The Contractor is entirely responsible for the acts and omissions of Subcontractors and Suppliers, and coordination of all Subcontractors' and suppliers' works and supplies, and the Contractor shall be liable for the works and supplies of the Subcontractors and Suppliers as if the works and supplies included in each Subcontractor's or Supplier's subcontract or purchase order had been performed by the Contractor itself. Without prejudice to the Contractor's responsibility and authority as aforesaid, the Employer may give written notification to the Contractor, if in the opinion

of the Employer, any Subcontractor or Supplier has failed, or is failing, to comply with its obligations (including any deficiency in quality of its works or supplies) specifying the nature of the failure. The Contractor shall investigate and correct the failure without delay and at the cost of the Contractor, and shall provide a full report to the Employer on the matter complained of in the Employer's notice and future precautionary measures to be taken at the cost of the Contractor. If the Employer is not satisfied with the corrective or precautionary measures undertaken or to be undertaken by the Contractor and/or any Subcontractor or Supplier, the Employer shall be entitled to apply its own corrective or precautionary measures at the cost of the Contractor.

4.4.12 The Contractor shall, and shall procure that every Subcontractor and Supplier shall, provide and employ in connection with the execution and completion of the Works:

4.4.12.1 only such personnel as are skilled, experienced and assessed as competent for undertaking a specific range of activities in their respective occupations and, as appropriate, such sub-agents, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise; and

4.4.12.2 such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Works.

4.4.13 If any Subcontractor or Supplier persistently and in a material respect (a) misconducts himself or (b) is incompetent or negligent in the performance of his duties or (c) fails to conform with any particular provisions with regard to safety which may be set out in the Contract or (d) persists in any conduct which is prejudicial to safety or health, then the Employer may, acting reasonably, request the Contractor (at his cost) to:

4.4.13.1 take remedial measures (including the provision of additional training) to ensure that such behaviour by any Subcontractor or Supplier is not repeated; and/or

4.4.13.2 in the event that (i) such behaviour is repeated following such remedial measures or (ii) results in a serious breach of health and safety Laws, remove such Subcontractor or Supplier from the Works, and, if removed, such Subcontractor or Supplier shall not be again employed upon the Works without the permission of the Employer.

4.5 Not used

4.6 Co-operation

4.6.1 The Contractor shall, as identified in the Technical Specification and/or the Contract and/or as instructed by the Employer, allow appropriate opportunities for carrying out work or carrying out supervisory activities to:

4.6.1.1 the Employer's Personnel;

- 4.6.1.2 the Construction Supervision Entity;
- 4.6.1.3 the Archaeology Entity; and
- 4.6.1.4 any other contractors employed by the Employer who may be employed in the execution on or near the Site of any work not included in the Contract.

4.6.2 Compliance with Sub-Clause 4.6.1 including any instruction from the Employer pursuant to Sub-Clause 4.6.1, shall not be treated as a Variation and the Contractor shall not be entitled to any extension of time, Cost in complying with such an instruction.

4.6.3 The Contractor shall be responsible for his construction activities on the Site, and shall co-ordinate his own activities with those of any other contractors employed by the Employer on or near the Site so as to minimise delay and disruption to the Works.

4.7 Setting Out

4.7.1 The Contractor shall set out the Works. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

4.8 Safety Procedures

4.8.1 The Contractor shall:

4.8.1.1 comply with all applicable safety regulations;

4.8.1.2 be responsible for the safety of all persons on the Site;

4.8.1.3 use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons;

4.8.1.4 provide fencing, lighting, guarding, warning signs and watching of the Works until completion of the Works and taking over under Clause 10 (*Employer's Taking Over*); and

4.8.1.5 provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

4.9 Quality Assurance

4.9.1 The Contractor shall institute and maintain for the full duration of the Works 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 Technical Specification (including section 2.4 of the Technical Specification). The Employer shall be entitled to carry out audits and Surveillance of any aspect of the system.

- 4.9.2 Details of all procedures and compliance documents shall be submitted to the Employer for review before each design and execution stage (as described in the Technical Specification and/or notified by the Employer to the Contractor) is commenced. When any document of a technical nature is issued to the Employer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.
- 4.9.3 The Contractor shall submit to the Employer all compliance certificates in respect of the Works in accordance with the requirements and procedures for the submission of such certificates identified in the Technical Specification.
- 4.9.4 Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

4.10 Site Data

- 4.10.1 The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on subsurface and hydrological conditions at the Site, including environmental aspects.
- 4.10.2 The Contractor shall be responsible for verifying and interpreting all such data provided as described in Sub-Clause 4.10.1 and any other information provided by the Employer from time to time after the Base Date in relation to matters which are the responsibility of the Contractor under this Contract. The Employer shall have no responsibility for the accuracy, sufficiency or completeness of such data and information.
- 4.10.3 No failure on the part of the Contractor to discover or foresee any condition, risk, contingency or circumstance at or affecting the Site, whether the same ought reasonably to have been discovered or foreseen or not, shall relieve the Contractor of any of its obligations under the Contract or entitle the Contractor to an additional payment or to an extension of the Time for Completion.

4.11 Sufficiency of the Contract Price

- 4.11.1 The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price.
- 4.11.2 Unless otherwise stated in the Contract, the Contract Price covers all the Contractor's obligations under the Contract and all things necessary for the proper design, execution and completion of the Works and the remedying of any defects.

4.12 Unforeseen and Unforeseeable Conditions and Difficulties

Except as otherwise stated in the Contract:

- 4.12.1 the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the design, execution and/or completion of the Works;

- 4.12.2 by signing the Contract, the Contractor accepts total responsibility for having foreseen all conditions, difficulties and costs of successfully completing the Works; and
- 4.12.3 the Contractor is not entitled to an extension of time or any Costs or any adjustment to the Contract Price arising out of or in connection with any unforeseen conditions or difficulties or costs, or any unforeseeable conditions or difficulties or costs.

4.13 Rights of Way and Facilities

- 4.13.1 The Contractor shall bear all costs and charges for any special and/or temporary rights-of-way or similar rights which he may require, including those for access to the Site or required for carrying out the also obtain, at his risk and cost, any additional facilities outside the Site which he may require for the purposes of the design, execution and completion of the Works.

4.14 Avoidance of Interference

- 4.14.1 The Contractor shall not interfere unnecessarily or improperly with:
 - 4.14.1.1 the convenience of the public; or
 - 4.14.1.2 the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

4.15 Access Route

- 4.15.1 The Contractor shall be deemed to have satisfied himself as to the suitability and availability of access routes to the Site, and if the Contractor is not satisfied as to the suitability and availability of access routes to the Site, the Contractor shall be responsible for securing access routes to the Site. The Contractor shall use all reasonable endeavours to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These endeavours shall include the proper use of appropriate vehicles and routes.
- 4.15.2 The Contractor shall comply with his obligations under the Technical Specification regarding access routes to the Site. Without prejudice to the generality of the foregoing:
 - 4.15.2.1 the Contractor shall be responsible for and shall pay the cost of paving, widening or extending any access route and strengthening any bridges or altering or improving any road communicating with the Site to facilitate the movement of Goods;
 - 4.15.2.2 the Contractor shall be responsible for any maintenance, alteration or improvement which may be required for his use of access routes;
 - 4.15.2.3 the Contractor shall provide all necessary signs or directions

along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;

4.15.2.4 the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route;

4.15.2.5 the Employer does not guarantee the suitability or availability of particular access routes; and

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

4.15.3 The Contractor may gain entry to the Site via private land only with the prior express agreement in writing of the land owner and/or occupier (where relevant). The Contractor shall ensure that any access to private land from a public road shall be to the satisfaction of the relevant roads authority. The Contractor shall bear full responsibility for negotiation, paying for and bearing all costs relating to any such entry and/or access and for any matters arising with parties who consider themselves to be affected by such entry and/or access.

4.16 Transport of Goods

Unless otherwise stated in this Contract:

4.16.1 the Contractor shall give the Employer not less than twenty one (21) days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site. In respect of any Goods, the notice shall contain detail about the Goods and the destination of such Goods so as to enable the Employer to exercise Surveillance in respect of such Goods, if required by the Employer; and

4.16.2 the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works.

4.17 Contractor's Equipment

4.17.1 The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. Where any of such Contractor's Equipment is hired, the Contractor shall procure that any contract of hire shall include a provision whereby the Employer, or others appointed by the Employer, can use such Contractor's Equipment where permitted to do so under this Contract.

4.18 Protection of the Environment

4.18.1 The Contractor shall take (and shall procure that the Contractor's Personnel, the Subcontractors and the Suppliers shall take) all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution,

noise and other results of his operations. The Contractor shall comply with (i) the provisions of the EIA Permit and all relevant documents related to environmental protection, such as environmental protection plans, and (ii) the HSE manual and plan as approved by the Employer pursuant to the Technical Specification.

- 4.18.2 The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values prescribed by applicable Laws.
- 4.18.3 The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of any contravention of any environmental Law and the EIA Permit caused or contributed to by the Contractor during performance of its obligations under this Contract on or before expiry of the Defects Notification Period.
- 4.18.4 The Contractor shall at all times during the performance of the Works be responsible for the protection of any and all electric lines and poles, telephone lines and poles, highways, bridges, waterways, railroads, sewer lines, natural gas pipelines (other than the Pipeline), drainage ditches, culverts and any and all property of third parties from damage as a result of the performance of the Works.
- 4.18.5 Where ingress and egress to and from the Site requires the traverse of public or private lands, the Contractor shall: (a) limit the movement of its labour and equipment and of all Subcontractors as far as possible so as to cause as little damage as possible to any property; and (b) shall use its best efforts to avoid damaging such property.

4.19 Electricity, Water and Gas

- 4.19.1 The Contractor shall be responsible for, and shall be liable for and shall bear all costs of whatsoever nature in connection with, the provision of all power, water, sewerage, gas, telephone lines and similar utilities, including the provision of new connections, and other services he may require, save for gas required for the purposes of commissioning of the Works which shall be made available by the Employer.
- 4.19.2 The Contractor shall comply with the instructions of any utility providers in respect of the provision of all power, water, sewerage, gas (including gas for the purposes of commissioning), telephone lines and similar utilities, including the provision of new connections, and other services he may require, including those instructions which have been included in the Procurement Documentation and/or the Technical Specification, and the Contractor shall bear all costs of whatsoever nature in respect of his compliance with such instructions.

4.20 Free-Issue Material

- 4.20.1 The Employer shall supply, free of charge, the Line Pipe, as described in and in accordance with the Technical Specification. Subject to compliance by the Contractor with its obligations under this Contract, the

Employer shall procure the delivery of the Line Pipe by the Line Pipe Supplier, to the Delivery Points in accordance with the Delivery Schedule, in accordance with Clause 4B (*Delivery of Line Pipe*) below.

4.21 Progress Reports

- 4.21.1 Monthly progress reports shall be prepared by the Contractor and submitted to the Employer electronically. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted every month thereafter, each within three (3) days after the last day of the period to which it relates.
- 4.21.2 Unless otherwise instructed by the Employer, reporting shall continue on a monthly basis until the date of issue of the Performance Certificate.
- 4.21.3 Each report shall include:
 - 4.21.3.1 a "dashboard" report summarising key issues and progress;
 - 4.21.3.2 charts and detailed descriptions of progress, including each stage of design, Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation;
 - 4.21.3.3 photographs showing the status of manufacture, of construction and of progress on the Site in accordance with the requirements for the same identified in the Technical Specification;
 - 4.21.3.4 for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual and expected dates of:
 - (a) commencement of manufacture;
 - (b) Contractor's inspections;
 - (c) tests; and
 - (d) shipment and arrival at the Site;
 - 4.21.3.5 the details described in Sub-Clause 6.10 (*Records of Contractor's Personnel and Equipment*);
 - 4.21.3.6 copies of quality assurance documents, quality statistics, test results and certificates of Materials;
 - 4.21.3.7 list of Variations, notices given under Sub-Clause 2.5 (*Employer's Claims*) and notices given under Sub-Clause 20.1 (*Contractor's Claims*);
 - 4.21.3.8 safety statistics, including details of any hazardous incidents, lost time incidents and activities relating to environmental aspects and public relations;

4.21.3.9 comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays;

4.21.3.10 a three (3) months "look ahead" schedule containing the information identified in the Technical Specification; and

4.21.3.11 all other information reasonably requested by the Employer.

4.22 Security of the Site

4.22.1 The Contractor shall be responsible for keeping unauthorised persons off the Site.

4.22.2 Authorised persons who are permitted to be on the Site shall be limited to the Contractor's Personnel and the Employer's Personnel, the Construction Supervision Entity, relevant public officials and any other persons notified to the Contractor, by (or on behalf of) the Employer as authorised persons of the Employer, which may include authorized personnel of the Employer's other contractors on the Site.

4.22.3 The Contractor shall, throughout the progress of the Works, take or procure all reasonable measures which may be necessary to:

4.22.3.1 secure and protect the Site, the Works, the Contractor's office and storage facilities, and all Plant and Materials from obstruction of occupation, obstruction of access, obstruction of use, loss and damage; and

4.22.3.2 prevent theft from or injury to any persons entitled to be upon the Site, in connection with any unauthorised persons being on the Site.

4.22.4 Except where the Employer chooses to be responsible for removing or procuring the removal of any unauthorised persons from the Site, subject to consultation with the Employer and the direction of relevant public officials, the Contractor shall be responsible for removing or procuring the removal of any unauthorised persons as soon as reasonably practicable.

4.22.5 The Contractor shall take all reasonable measures to mitigate any impact on the design, execution and/or completion of the Works that shall result from unauthorised persons being on the Site.

4.22.6 All such measures taken by the Contractor pursuant to his obligations under this Sub-Clause 4.22 (*Security of the Site*) must be acceptable to both the Employer (acting reasonably) and relevant public officials, and the Contractor shall consult and liaise with the Employer and the relevant public officials as may be necessary in the event of any unauthorised persons being on the Site.

4.22.7 The cost of complying with all of the Contractor's obligations under this Sub-Clause 4.22 (*Security of the Site*) shall be deemed to be included in the Contract Price.

4.23 Contractor's Operations on Site

- 4.23.1 The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Employer as working areas. The Contractor shall keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and keep them off adjacent land.
- 4.23.2 Without prejudice to the generality of Sub-Clause 4.23.1, the Contractor shall ensure that there is no trespass on or over any adjoining or neighbouring property arising out of or in the course of or caused by the execution of the Works. If the execution of any part of the Works is likely to necessitate any interference (including, without limitation, the over sailing of tower crane jibs) with the rights of adjoining or neighbouring owners or occupiers, then the Contractor shall, at no cost to the Employer, obtain the prior written agreement of such owners and/or occupiers to the execution of such part of the Works, and such agreement shall require the consent of the Employer before its execution. The Contractor shall comply in every respect with any conditions contained in any such agreement.
- 4.23.3 No Materials or Plant brought on to the Site for the purposes of the Contract shall be removed without the written consent of the Employer.
- 4.23.4 During the execution and completion of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.
- 4.23.5 As soon as reasonably practicable following the issue of the Taking-Over Certificate for the Works, the Contractor shall clear away and remove all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave the Site and the Works in a clean and safe condition. However, the Contractor may retain, with the prior consent of the Employer, on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil his obligations under the Contract.

4.24 Discovery of Fossils and Natural Physical Things

- 4.24.1 The Contractor acknowledges that the archaeological surveys will be carried out at the Site by the Archaeology Entity, before and after the Commencement Date, in accordance with applicable Laws.
- 4.24.2 All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer, and shall vest in the relevant Country (or as otherwise required in accordance with applicable Laws. The Contractor shall take all precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.
- 4.24.3 If at any time during the execution of the Works, the Contractor shall find

on the Site any natural physical thing (whether animal, vegetable or mineral) which is protected by Laws, the Contractor shall take all steps to avoid unlawful removal, unlawful damage or unlawful disturbance to such thing and shall comply with any requirement of the Laws relating to him.

- 4.24.4 The Contractor shall, upon discovery of any such finding as described in Sub-Clause 4.24.2 or 4.24.3, promptly give notice to the Employer and, if the finding is the type of as described in Sub-Clause 4.24.2, the Archaeology Entity, and the Employer and/or the Archaeology Entity (as appropriate) shall issue instructions for dealing with it. The Contractor shall comply with any instructions issued by the Employer and/or the Archaeology Entity. Where required by Laws, the Contractor shall also notify and cooperate with applicable Regulators and relevant public authorities in respect of any such findings, and shall comply with the instructions for such applicable Regulators and relevant public authorities.
- 4.24.5 If the Contractor suffers delay and/or incurs Cost as a result of complying with any instructions issued pursuant to Sub-Clause 4.24.4, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 4.24.7 and Sub-Clause 20.1 (*Contractor's Claims*) to:
- 4.24.5.1 an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*); and
- 4.24.5.2 payment of any such Cost, which shall be added to the Contract Price.
- 4.24.6 After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 (*Determination*) to agree or determine these matters.
- 4.24.7 The Contractor shall not be entitled to any extension of time or associated Costs at all where the findings described in Sub-Clauses 4.24.2 or 4.24.3 have already been identified in the EIA Permit or Technical Specification and instructions relating to the discovery of such findings have been included in the EIA Permit or Technical Specification or notified by the Employer to the Contractor on or prior to the Base Date.

4.25 Contractor Warranties

- 4.25.1 The Contractor hereby represents, warrants and undertakes to the Employer that:
- 4.25.1.1 all information included in the Contractor's Tender and Price Offer was when given and is at the Effective Date true, complete and accurate in all material respects and not misleading and as at the Effective Date there is no fact or matter not disclosed in writing to the Employer which:
- (a) renders any such information untrue, inaccurate or misleading; or
 - (b) might, if disclosed, adversely affect the decision of anyone considering whether or not to contract with

the Contractor; and

4.25.1.2 the Contractor:

- (a) is constituted as a company duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation, has the lawful power to engage in the business it presently conducts and contemplates conducting and is duly licensed or qualified and in good standing as a foreign corporation in each jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary; and
- (b) has full power and authority (and does not require the consent, authority or licence of any third party) to enter into and perform this Contract and to perform its obligations hereunder and all such actions have been duly authorised by all necessary corporate proceedings on its part; and
- (c) the execution, delivery and performance of this Contract will not conflict with, result in the breach of, constitute a default under or accelerate performance required by, any of the terms of its memorandum or articles of association or any laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected; and

4.25.1.3 this Contract has been duly and validly executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of it, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity. No authorisation, approval, exemption or consent by any governmental or public body or authority is required in connection with the authorisation, execution and delivery of this Contract; and

4.25.1.4 there are no litigations, arbitrations, actions, suits, proceedings or investigations pending or, to its knowledge or that of its officers, threatened against it at law or in equity before any court or before any governmental or other public department, commission, board, agency or fiscal or regulatory authority which individually or in the aggregate may result in any materially adverse effect on its business, properties or assets or the condition, financial or otherwise, of it or in any impairment of its ability to perform its obligations under this Contract. Neither it nor any of its officers has knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any government or other public department, commission, board, agency or fiscal or regulatory

authority which may result in any such materially adverse effect or such impairment; and

4.25.1.5 as at the Effective Date neither the Contractor nor to the best of his knowledge and belief (having made full enquiry) any of his professional advisers, Subcontractors or Suppliers use any processes or are engaged in any activities which involve the misuse of any confidential or proprietary information belonging to any third party; and

4.25.1.6 the Contractor owns or possesses all the patents, trademarks, service marks, tradenames, copyrights, licenses, franchises, permits and rights with respect to the foregoing, necessary to carry out and complete the Works and other work hereunder and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of others; and

4.25.1.7 the Contractor has complied with all laws such that it has not been subject to any fines, penalties, injunctive relief or criminal liabilities which have materially affected or may materially affect its business operations or financial condition or its ability to carry out and complete the Works or perform its obligations under this Contract; and no representation or warranty by it contained herein, or in any other document furnished by the Contractor to the Employer contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made; and

4.25.1.8 the Contractor has, and will furnish, the technical, management and organisational experience, resources and capability, including (without limitation) sufficient suitably qualified, experienced and competent engineering, procurement, management, supervisory and other personnel, to carry out and complete the Works in accordance with the terms of this Contract or perform its obligations under this Contract; and

4.25.1.9 as at the Effective Date there has been no material adverse change to the financial condition of the Contractor since the audited accounts for the financial year [2017/2018] including any matter resulting in a downgrade of the credit rating of any such person with Standard & Poors, Moody's, Fitch, or any other commercially acknowledged independent rating agency reporting the construction sector; and

4.25.1.10 neither the entering into of the Contract by the Contractor nor the performance of his obligations under the Contract creates any Conflict of Interest and the Contractor does not and will not have during the period of the performance of this Contract any interest in any matter where there is or is reasonably likely to be a Conflict of Interest with the Employer.

- 4.25.2 Each of the warranties, representations and undertakings given under this Sub-Clause 4.25 (*Contractor Warranties*) shall be construed as a separate and independent warranty, representation and undertaking and shall not be limited or restricted by reference to or inference from any other terms of the Contract.
- 4.25.3 The Contractor shall immediately disclose in writing to the Employer any event or circumstance which may arise or become known to him after the Effective Date which is materially inconsistent with any of the warranties, representations or undertakings given under this Sub-Clause 4.25 (*Contractor Warranties*) and which has or is likely to have a material adverse effect on the Works.
- 4.25.4 For the purposes of this Sub-Clause 4.25 (*Contractor Warranties*) any reference to Subcontractors, Suppliers or professional advisers shall mean only such Subcontractors, Suppliers or professional advisers with whom the Contractor has entered into contracts as at the Effective Date.

4.26 Requirements of financiers

- 4.26.1 Where the Employer is in receipt of financing in respect of the Project from any financing institution, the Contractor shall, in addition to and without prejudice to any of its other obligations under this Contract, comply with any applicable requirements of such financing institutions, including under the European Commission's European Energy Programme for Recovery, the European Structural and Investment Funds for each of Bulgaria and Greece and any other applicable financing institutions such as the European Bank for Reconstruction and Development and/or the European Investment Bank, as may be applicable to the performance by the Contractor of its obligations under this Contract, in respect of:
- 4.26.1.1 the provision or filing of any documentation or records in respect of payments received or made under this Contract;
 - 4.26.1.2 details or documentation to be provided in support of any invoice or application for payment under this Contract;
 - 4.26.1.3 restrictions or requirements in respect of publicity; and/or
 - 4.26.1.4 access to and disclosure of documentation.

4A. COLLABORATIVE WORKING AND INTERFACE

4A.1 Collaborative Working between the Contractor and the Employer

- 4A.1.1 The Parties agree to work in mutual co-operation to fulfil their agreed roles and responsibilities and apply their expertise to carry out and complete the Works in accordance with this Contract.
- 4A.1.2 Subject to Sub-Clause 4A.1.3, each Party ("**First Party**") undertakes to co-operate with the other ("**Second Party**") in order to facilitate the performance of this Contract and in particular the First Party shall:
- 4A.1.2.1 use reasonable endeavours to avoid unnecessary complaints,

disputes and claims against or with the Second Party;

4A.1.2.2 comply with the provisions of Clause 20 (*Claims, Disputes and Arbitration*) in relation to any such complaints, disputes and claims with or against the Second Party;

4A.1.2.3 not interfere with the rights of the Second Party in performing its obligations under this Contract, nor in any other way hinder or prevent the Second Party from performing those obligations or from enjoying the benefits of its rights;

4A.1.2.4 take reasonable steps to mitigate any foreseeable losses and liabilities of the Second Party which are likely to arise out of any failure by the First Party to take any of the steps referred to in Sub-Clauses 4A.1.2.1 to 4A.1.2.3 (inclusive); and

4A.1.2.5 take all reasonable steps to manage, minimise and mitigate all costs in respect of this Contract.

4A.1.3 Nothing in Sub-Clause 4A.1.2 shall:

4A.1.3.1 interfere with the right of each of the Parties to arrange its affairs in whatever manner it considers fit (in compliance with law) in order to exercise its rights and perform its obligations under this Contract (in compliance with law); or

4A.1.3.2 relieve either Party from any obligation contained in this Contract or from any obligation to pay any debt due and payable under this Contract; or

4A.1.3.3 limit, restrict or otherwise prejudice the exercise by the Employer of any express or implied right it may have under this Contract or at law.

4A.2 Collaborative Working between the Contractor and the Line Pipe Supplier

4A.2.1 The Employer shall notify the Contractor of the identity of the Line Pipe Supplier as soon as reasonably practicable following the Effective Date or, if later, the date of execution by the Employer and the Line Pipe Supplier of the Line Pipe Supply Agreement, and of the commencement date under the Line Pipe Supply Agreement. Without prejudice to the Employer's other rights, and the Contractor's other obligations, under this Contract, the Contractor shall work collaboratively with the Line Pipe Supplier at all times in order to:

4A.2.1.1 maximise productivity during the supply of the Goods and the carrying out of the Works and avoid disruption for the Employer, the public and third parties;

4A.2.1.2 ensure the effective discharge of the Line Pipe Supplier's obligations to supply the Line Pipe, the Contractor's obligation to deliver the Project and to ensure system integration throughout the Pipeline;

- 4A.2.1.3 safeguard proper performance of all obligations under this Contract and the Line Pipe Supply Agreement;
- 4A.2.1.4 mutually support adherence to the Delivery Schedule and the Project Execution Plan and to share with the Line Pipe Supplier on a systematic basis key information connected with such adherence;
- 4A.2.1.5 minimise and give early warning to one another and to the Employer of any proposed matter which is likely to or will have a material impact on the Project or the performance of any obligations owed to the Employer or the exercise of rights under this Contract and/or the Line Pipe Supply Agreement (as appropriate) by the Contractor and/or the Line Pipe Supplier, and to jointly inform the Employer regarding measures proposed to avoid or mitigate such impact;
- 4A.2.1.6 to use best endeavours to agree and implement, whenever appropriate, measures to avoid the likelihood of disputes or claims arising from or in connection with the interface between the Contractor's rights and obligations pursuant to this Contract and the Line Pipe Supplier's rights and obligations pursuant to the Line Pipe Supply Agreement respectively; and
- 4A.2.1.7 to use best endeavours to agree and implement whenever appropriate measures to minimise any delay and/or costs arising in respect of the occurrence of a Force Majeure event or a Change in Law.

4A.3 Interface Meetings

- 4A.3.1 Senior representatives from the Parties and the Line Pipe Supplier (and, if so required by the Employer, the Owner's Engineer, the Construction Supervision Entity and/or the Third Party Inspector) shall meet on a monthly basis (or as may be otherwise agreed by the Parties and the Line Pipe Supplier) to review:
 - 4A.3.1.1 any matter which has adversely affected or may adversely affect:
 - (a) the implementation of the Project by all relevant parties in accordance with the Project Execution Plan;
 - (b) the performance of the Pipeline;
 - (c) the Contractor's ability to perform its obligations under this Contract;
 - (d) the Line Pipe Supplier's ability to perform its obligations under the Line Pipe Supply Agreement;
 - (e) the timetable for the Project (as described in the

Project Execution Plan); and/or

- (f) the economics of the Employer with respect to implementation of the Project (including the overall cost of the Project); and/or

4A.3.1.2 any proposal from either Party or the Line Pipe Supplier to:

- (a) reduce the Project costs and avoid any additional costs; and/or
- (b) optimise the future performance of the Pipeline (once operational).

4A.3.2 Either Party or the Line Pipe Supplier may propose measures to address the matters set out in Sub-Clause 4A.3.1.1 and a determination of what measures (if any) should be undertaken by the Contractor, the Line Pipe Supplier and/or the Employer to address such matters shall be considered in accordance with and subject to (i) in respect of matters relating to this Contract, each Party's existing rights, obligations and the existing contractual mechanisms under this Contract, including Clause 13 (*Variations and Adjustments*), and (ii) in respect of matters relating to the Line Pipe Supply Agreement, the Line Pipe Supplier's and the Employer's existing rights, obligations and the existing contractual mechanisms under the Line Pipe Supply Agreement.

4A.3.3 Any proposal from either Party pursuant to Sub-Clause 4A.3.1.2 in respect of matters relating to this Contract shall be reviewed in accordance with Clause 13 (*Variations and Adjustments*), and any proposal from the Employer or the Line Pipe Supplier as described in Sub-Clause 4A.3.1.2 in respect of matters relating to the Line Pipe Supply Agreement shall be reviewed in accordance with the contractual variation and adjustment mechanisms of the Line Pipe Supply Agreement.

4A.3.4 If so required by the Employer, the Contractor shall procure the attendance of any of the Subcontractors at the meetings described in Sub-Clause 4A.3.1.

4A.3.5 The format and detailed requirements for such meetings shall be as may be specified by the Employer, acting reasonably, from time to time.

4A.4 Line Pipe Supplier Events

4A.4.1 If the Contractor suffers delay and/or incurs additional Cost as a result of the occurrence of any of the events or circumstances defined as Line Pipe Supplier Events, the Contractor shall give notice to the Employer and, subject to Sub-Clause 20.1 (*Contractor's Claims*), shall be entitled to:

4A.4.1.1 an extension of time for any such delay, if completion is or will be delayed under Sub-Clause 8.4 (*Extension of Time for Completion*); and

4A.4.1.2 payment of any such Cost, which shall be added to the

Contract Price.

- 4A.4.2 The Contractor shall be under a continuing obligation to report promptly to the Line Pipe Supplier and to the Employer any incident, matter or operational irregularity which may precede the occurrence or indicate the existence of a Line Pipe Supplier Event.

4A.5 Line Pipe Supply Changes

- 4A.5.1 If required by the Employer, the Contractor shall respond with comments ("**LPSA Change Response**") within seven (7) days of being notified by the Employer of any proposed variation under the Line Pipe Supply Agreement (an "**LPSA Change**"), identifying the impact (if any) of the LPSA Change on the performance by the Contractor of its obligations under this Contract and any potential or actual Line Pipe Supplier Event or Variation which the Contractor believes (acting reasonably) may be required as a result of the proposed LPSA Change, and/or any modification proposed by the Contractor to the proposed LPSA Change in order to avoid or mitigate that potential or actual Line Pipe Supplier Event or Variation.
- 4A.5.2 In the event that the LPSA Change Response from the Contractor identifies a potential or actual Line Pipe Supplier Event or a Variation and/or proposes a modification to the proposed LPSA Change in order to avoid or mitigate that potential or actual Line Pipe Supplier Event or Variation, the Contractor shall provide the Employer and the Line Pipe Supplier with a written report within fourteen (14) days of provision of comments under Sub-Clause 4A.5.1, setting out how the LPSA Change will affect this Contract.
- 4A.5.3 The Employer shall review the LPSA Change Response in accordance with Sub-Clause 13 (*Variations and Adjustments*) and if the Employer is satisfied that modification to the proposed LPSA Change is required to address any issue arising from the LPSA Change Response, the Employer shall instruct such modification under the change provisions of the Line Pipe Supply Agreement and any change required to this Contract shall be deemed to be a Variation pursuant to Clause 13 (*Variations and Adjustments*).
- 4A.5.4 Failure by the Contractor to respond as stipulated in Sub-Causes 4A.5.1 to 4A.5.3 inclusive shall be a bar to any claim for any extension of time or reimbursement of Costs under Clause 13 (*Variations and Adjustments*) or otherwise.

4B DELIVERY OF LINE PIPE

4B.1 Delivery Points and Delivery Schedule

- 4B.1.1 No later than two (2) months following the Effective Date, the Contractor shall confirm to the Employer in writing the locations and details of each of the Delivery Points, satisfying all requirements of the Technical Specification in respect of such Delivery Points. The Contractor shall ensure that each of the Delivery Points is available for receipt and storage of Line Pipe, in each case satisfying the requirements of the Technical

Specification for such Delivery Points, no later than three (3) months following the Commencement Date.

4B.1.2 No later than one (1) month following the Commencement Date, the Contractor shall notify the Employer in writing of:

4B.1.2.1 the ratio of each Pipe Length of Relevant Line Pipe; and/or

4B.1.2.2 any increase or decrease in the quantity of any Type of Line Pipe (including any change in the quantity of any Relevant Line Pipe of a particular Pipe Length (other than as described in Sub-Clause 4B.1.2.1)); and

4B.1.2.3 the delivery schedule for the Line Pipe,

required by the Contractor for the Works, as a result of the Contractor's review of the Technical Specification, any technical documentation received from the Employer and/or as a result of the Contractor's development of its detailed design of the Works and provided that:

4B.1.2.4 the total quantity required of Line Pipe, other than any Pipe Length Ratio Change, shall not exceed the Variable Volume Threshold; and

4B.1.2.5 in setting out its requirements for the delivery schedule for the Line Pipe, the Contractor shall not propose any amendments to:

- (a) any Guaranteed Delivery Date;
- (b) the Delivery Periods; and/or
- (c) the Delivery Requirements,

and if the Contractor does propose any amendments to (a), (b) and/or (c), the Employer may consider any such amendments but is not bound to approve any such amendments, and any such amendments shall not be approved unless they have been approved in advance in writing by the Employer.

4B.1.3 Following receipt by the Employer of the draft delivery schedule from the Line Pipe Supplier in accordance with the Line Pipe Supply Agreement, and receipt of the Contractor's required delivery schedule pursuant to Sub-Clause 4B.1.2.3, the Employer shall call a meeting with the Contractor, the Owner's Engineer and (if so required by the Employer) the Line Pipe Supplier and any other party nominated by the Employer, to discuss and seek to agree the Delivery Schedule, in light of the Contractor's requirements notified to the Employer under Sub-Clause 4B.1.2 above. Following such meeting, the Employer shall issue to the Contractor the Delivery Schedule for the purposes of this Contract.

4B.1.4 Subject to Sub-Clause 4B.1.7, the Employer (or the Owner's Engineer) shall be entitled to issue to the Contractor, from time to time, amendments to or updates of the Delivery Schedule (such amended or

updated delivery schedule becoming the Delivery Schedule for the purposes of this Contract).

4B.1.5 The Employer shall consider (acting reasonably) any reasonable objections raised by the Contractor in respect of any amendment or update to the Delivery Schedule issued by the Employer or the Owner's Engineer, or any request by the Contractor for the Employer to issue any amendment or update to the Delivery Schedule, but (subject to Sub-Clause 4B.1.7) shall not be bound by such objections or request.

4B.1.6 Upon any update or amendment to the Delivery Schedule issued pursuant to Sub-Clause 4B.1.4, the Contractor shall update or amend the time schedule to be provided and revised by the Contractor pursuant to Sub-Clause 8.3 (*Time Schedule*) and the Project Execution Plan to be provided and updated pursuant to section 2.2.2 of the Technical Specification, as may be appropriate to reflect the updated or amended Delivery Schedule, and shall submit the same to the Employer for approval.

4B.1.7 If any change to the Delivery Schedule made by the Employer (or the Owner's Engineer) pursuant to Sub-Clause 4B.1.4, changes:

4B.1.7.1 any Guaranteed Delivery Date; or

4B.1.7.2 the Delivery Periods; or

4B.1.7.3 the Delivery Requirements,

and, as a direct result of such change, the Contractor incurs or will incur additional Costs, the Contractor shall be entitled to treat such change as a Variation pursuant to Clause 13 (*Variations and Adjustments*), provided that this Sub-Clause 4B.1.7 shall not apply (and the Contractor shall not be entitled to treat the change as a Variation) if and to the extent the change to the Delivery Schedule is made as a result of:

4B.1.7.4 any delay caused by or contributed to any act or omission of the Contractor or its Subcontractors or any other failure by the Contractor to comply with its obligations under this Contract; or

4B.1.7.5 an event of Force Majeure, in which case Clause 19 (*Force Majeure*) shall apply.

4B.1.8 Without prejudice to Sub-Clauses 8.2 (*Time for Completion*) or 8.7 (*Delay Damages*):

4B.1.8.1 the Contractor shall notify the Employer and the Line Pipe Supplier as soon as reasonably becoming aware of a likely delay to it being available to accept any delivery of the relevant Line Pipe in accordance with the Delivery Schedule; and

4B.1.8.2 the Employer shall notify the Contractor upon receipt of any notice from the Line Pipe Supplier in accordance with the

terms of the Line Pipe Supply Agreement indicating a delay or likely delay to the date for delivery of any Line Pipe in accordance with the Delivery Schedule.

4B.1.9 The Contractor shall be entitled to propose further changes to the quantity required of any Type of Line Pipe from time to time, provided that:

4B.1.9.1 no change to any Pipe Length Ratio shall be made less than three (3) months; and

4B.1.9.2 no change to the quantity of any Type of Line Pipe shall be made less than four (4) months,

prior to the last Guaranteed Delivery Date in respect of the relevant type of Line Pipe; and

4B.1.9.3 any such proposed change shall be subject to Sub-Clauses 4B.1.2.4 and 4B.1.2.5.

4B.2 Delivery, Transit and Handover of Line Pipe

4B.2.1 The Line Pipe Supplier shall confirm to the Contractor in writing, on not less than fourteen (14) days' notice, the date of delivery of the Line Pipe to each applicable Delivery Point in accordance with the Delivery Schedule (the proposed "**Delivery Date**").

4B.2.2 The Contractor shall confirm to the Employer and the Line Pipe Supplier in writing, no later than four (4) days after being notified by the Line Pipe Supplier of the proposed Delivery Date pursuant to Sub-Clause 4B.2.1, either:

4B.2.2.1 that the Contractor will be available to accept delivery of the Line Pipe to the applicable Delivery Point on the proposed Delivery Date; or

4B.2.2.2 that the Contractor will not be available to accept delivery of the Line Pipe to the applicable Delivery Point on the proposed Delivery Date, in which case the Contractor shall specify the date on which it will be available to accept the relevant delivery of Line Pipe and the Contractor shall reimburse to the Employer any and all costs, losses, liabilities and/or expenses incurred by the Employer as a result of the delay in the Contractor accepting storage of the Line Pipe from the proposed Delivery Date until such time as the Contractor is available to accept the delivery.

4B.2.3 The Contractor and the Employer shall be entitled to inspect the Line Pipe upon arrival at the Delivery Point, prior to unloading. The Owner's Engineer and/or the Construction Supervision Entity shall also be entitled to be present at the receipt of the Line Pipe deliveries at the Delivery Points. Upon delivery of Line Pipe to a Delivery Point, the unloading and subsequent storage of the Line Pipe shall be carried out by the Contractor in the presence of a representative of the Line Pipe Supplier.

- 4B.2.4 In the event that the Contractor is unable or otherwise fails to accept or to provide storage for the Line Pipe in compliance with the requirements of this Contract, at any time following delivery by the Line Pipe Supplier of such Line Pipe to the Delivery Point in accordance with the terms of this Contract, the Contractor shall reimburse to the Employer any and all costs, losses, liabilities and/or expenses incurred by the Employer as a result of such failure to accept or provide such storage in compliance with the requirements of this Contract.
- 4B.2.5 Following delivery by the Line Pipe Supplier of Line Pipe to a Delivery Point in accordance with this Contract, the Contractor shall be entitled to perform an inspection of the Line Pipe delivered, and shall within eight (8) days of completion in full of the relevant delivery:
- 4B.2.5.1 if and to the extent that the Line Pipe within that delivery meets the specification for that Line Pipe as attached to the Technical Specification, deliver to the Employer a certificate (the "**Site Acceptance Certificate**") in respect of that Line Pipe in which case "**Site Acceptance**" shall have occurred in respect of such Line Pipe on the date of such written notification from the Contractor; and/or
- 4B.2.5.2 if and to the extent any part of the relevant delivery of the Line Pipe does not meet the specification for that Line Pipe as attached to the Technical Specification, notify the Employer in writing that Site Acceptance has not been achieved in respect of such Line Pipe, stating the reasons therefor.
- 4B.2.6 The Contractor shall notify the Employer immediately upon becoming aware of any damage to or defect in any Line Pipe, and or any shortage of Line Pipe, from the Contractor's inspection of the Line Pipe pursuant to Sub-Clause 4B.2.3 and/or 4B.2.5.

4B.3 Line Pipe Defects

- 4B.3.1 The Line Pipe Supplier shall be responsible for remedying all Line Pipe Defects and repairing or replacing Line Pipe which is the subject of any Line Pipe Defect, notified in writing to the Line Pipe Supplier during the Line Pipe Warranty Period and any applicable Extended Pipe Warranty Period, and the Contractor shall notify the Employer promptly upon becoming aware of any such Line Pipe Defect.
- 4B.3.2 If the Contractor suffers delay and/or incurs additional Cost as a result of the discovery of any Line Pipe Defect during the Line Pipe Warranty Period and/or any applicable Extended Pipe Warranty Period, the Contractor shall give notice to the Employer and, subject to Sub-Clause 20.1 (*Contractor's Claims*), shall be entitled to:
- 4B.3.2.1 an extension of time for any such delay, if completion is or will be delayed under Sub-Clause 8.4 (*Extension of Time for Completion*); and
- 4B.3.2.2 payment of any such Cost, which shall be added to the

Contract Price.

- 4B.3.3 Where the Line Pipe Supplier fails to repair or replace a Line Pipe Defect within a reasonable time following such written notice from the Contractor to the Employer, the Contractor may correct such Line Pipe Defect, or engage another contractor to correct such Line Pipe Defect and, subject to Sub-Clause 20.1 (*Contractor's Claims*), the Contractor shall be entitled to claim its Costs of doing so in accordance with Sub-Clause 4B.3.2.
- 4B.3.4 If and to the extent any Line Pipe Defect discovered during any Line Pipe Warranty Period (or any Extended Pipe Warranty Period) relates to Line Pipe which has already been incorporated by the Contractor into the Works (or, following commissioning of the Works, the operational Pipeline), the Employer shall require the Line Pipe Supplier to rectify such Line Pipe Defect by delivering to the Employer or the Contractor replacement Line Pipe (in place of the Line Pipe affected by the Line Pipe Defect) for incorporation by the Contractor into the Works (or, following commissioning of the Works, into the operational Pipeline). The Employer shall procure that any such replacement Line Pipe shall be delivered by the Line Pipe Supplier to a Delivery Point, or to the Site, or as may otherwise be reasonably requested by the Contractor. Subject to Sub-Clause 20.1 (*Contractor's Claims*), the Contractor shall be entitled to claim its Costs of such incorporation in accordance with Sub-Clause 4B.3.2.
- 4B.3.5 The Contractor shall make available reasonable access to the Line Pipe Supplier at any Delivery Point, Contractor storage yard or at the Site (as the case may be) at which Line Pipe is located following Site Acceptance of that Line Pipe, for the purposes of attending on and inspecting any Line Pipe for any Line Pipe Defect (including any Latent Line Pipe Defect), and (subject to Sub-Clause 4B.3.4) for the purposes of carrying out any repair or replacement of any Line Pipe which is the subject of any Line Pipe Defect.
- 4B.3.6 Notwithstanding Sub-Clause 4B.3.1, the Line Pipe Supplier shall be liable for any Latent Line Pipe Defects in the Line Pipe until expiry of the period which shall be the later of twenty (20) years after the last date of Provisional Acceptance or such longer period as is stipulated pursuant to applicable Laws. If the Contractor suffers delay and/or incurs additional Cost as a result of the discovery of any Latent Line Pipe Defect during such period, the Contractor shall give notice to the Employer and, subject to Sub-Clause 20.1 (*Contractor's Claims*), shall be entitled to:
- 4B.3.6.1 an extension of time for any such delay, if completion is or will be delayed under Sub-Clause 8.4 (*Extension of Time for Completion*); and
 - 4B.3.6.2 payment of any such Cost, which shall be added to the Contract Price.
- 4B.3.7 The Contractor shall work together with the Line Pipe Supplier with the continual objective that the completion of the Pipeline is not delayed and,

once commissioned, that operation of the Pipeline can continue without interruption. Without limitation:

4B.3.7.1 the Contractor shall notify the Employer and the Line Pipe Supplier promptly upon becoming aware of any requirement for Line Pipe Defect rectification; and

4B.3.7.2 the Contractor shall co-operate with the Line Pipe Supplier in relation to the planning and execution of any Line Pipe Defect rectification.

4B.4 Safety

4B.4.1 The Contractor shall take all required measures during the operations performed by it, including the unloading, storage and transportation of the Line Pipe, and the carrying out and completion of the Works, to ensure the safety of all persons affected by such operations.

4B.4.2 The Contractor shall liaise effectively with the Line Pipe Supplier in coordination of health and safety issues at the Delivery Points and (if the Line Pipe Supplier is required to access the Site or any Contractor storage yard for the purposes of rectification of any Line Pipe Defect), the Site and any applicable Contractor storage yard.

5 DESIGN

5.1 General Design Obligations

5.1.1 The design of the Works shall be undertaken by the Contractor to meet the requirements set out in the Technical Specification and the Contractor warrants and guarantees that the design for the Works shall ensure that (i) the Works shall be fit for the purposes for which the Works are intended as described in the Contract and (ii) the Works shall meet the Performance Levels.

5.1.2 The Contractor shall be deemed to have scrutinised, prior to the Base Date, the Technical Specification. The Contractor shall be responsible for the design of the Works including any designs prepared by or on behalf of the Employer, and for the accuracy of such Technical Specification, except as stated below in Sub-Clause 5.1.4. With respect to the Works relating to the Bulgarian Section, the design shall be carried out by the Contractor in accordance with the “working design” (*работен проект*) requirements set out in Ordinance 4 on the Scope and Content of Investment Designs (promulgated SG, Issue 51, dated 05.06.2001) and in compliance with the provisions of Ordinance 6 on the Technical Rules and Norms for Design, Construction and Operation of Sites and Facilities for Transportation, Storage, Distribution and Supply of Natural Gas (promulgated SG, Issue 107, dated 07.12.2004). Such working design shall be developed by the Contractor based on the duly approved “technical design” (*технически проект*), provided that any changes to, or deviations from, the technical design which may need to be incorporated in the working design can only be so incorporated following the requirements and procedures set out in Article 154 of the SDA.

- 5.1.3 The Employer shall not be responsible for any error, inaccuracy or omission of any kind in the Technical Specification 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 in Sub-Clause 5.1.4. Any data or information received by the Contractor, from the Employer or otherwise, and any approval or review by the Employer, shall not relieve the Contractor from his responsibility for the design and execution of the Works.
- 5.1.4 The Employer shall be responsible for the correctness of the following portions of the Technical Specification and of the following data and information provided by (or on behalf of) the Employer:
- 5.1.4.1 descriptions of intended purposes of the Works or any parts thereof; and
- 5.1.4.2 criteria for the testing and performance of the completed Works.

5.2 Contractor's Documents

- 5.2.1 Unless otherwise stated in the Technical Specification, the Contractor's Documents shall be written in the language for communications defined in Sub-Clause 1.4 (*Law and Language*).
- 5.2.2 The Contractor shall prepare all Contractor's Documents, and shall also prepare any other documents necessary to instruct the Contractor's Personnel.
- 5.2.3 In addition to the requirements of this Contract (including the Technical Specification), the Employer shall notify the Contractor in respect of which additional Contractor's Documents are to be submitted to the Employer for review, and the Contractor's Documents identified in the Contract (including the Technical Specification) and those notified by the Employer to the Contractor shall be submitted accordingly, together with a notice as described in Sub-Clause 5.2.4. In Sub-Clauses 5.2.4 to 5.2.7 (inclusive) (i) "review period" means the period required by the Employer for review, and (ii) "Contractor's Documents" exclude any documents which are not notified by the Employer to the Contractor as being required to be submitted for review or which have not been identified in this Contract (including the Technical Specification).
- 5.2.4 Each review period shall not exceed twenty one (21) days, calculated from the date on which the Employer receives a Contractor's Document and the Contractor's notice. This notice shall state that the Contractor's Document is considered ready, both for review in accordance with this Sub-Clause 5.2 (*Contractor's Documents*) and for use. The notice shall also:
- 5.2.4.1 state that the Contractor's Document complies with the Contract, or the extent to which it does not comply; and
- 5.2.4.2 where the Technical Specification requires the Contractor to obtain the approval of the Employer to the Contractor's Document or any part thereof, specify the Contractor's Document or part thereof in respect of which approval is sought.

- 5.2.5 The Employer may, within the review period, give notice to the Contractor that a Contractor's Document fails (to the extent stated) to comply with the Contract. If a Contractor's Document so fails to comply, it shall be rectified, resubmitted and reviewed in accordance with this Sub-Clause 5.2 (*Contractor's Documents*), at the Contractor's cost.
- 5.2.6 For each part of the Works, and except to the extent that the Parties otherwise agree:
- 5.2.6.1 the Contractor shall be entitled to commence execution (which, for the purposes of this Sub-Clause 5.2 (*Contractor's Documents*), shall include, where relevant, the execution of design) of such part of the Works on the expiry of the review periods for all such Contractor's Documents which the Employer has notified the Contractor require to be submitted by the Contractor to the Employer for review prior to the execution of that part except where the Employer has given notice to the Contractor in accordance with Sub-Clause 5.2.5 that such Contractor's Documents have failed to comply with the Contract in respect of that part and the review periods for the Contractor's Documents which are the subject of such notice have not expired; and
- 5.2.6.2 execution of such part of the Works shall be in accordance with these Contractor's Documents, as are relevant to the design and execution of that part, as submitted for review; and
- 5.2.6.3 if the Contractor wishes to modify any design or document which has previously been submitted for review, the Contractor shall immediately give notice to the Employer. Thereafter, the Contractor shall submit revised documents to the Employer in accordance with this Sub-Clause 5.2 (*Contractor's Documents*).
- 5.2.7 Any such agreement (under Sub-Clause 5.2.6) or any review or approval (under this Sub-Clause 5.2 (*Contractor's Documents*) or otherwise) shall not relieve the Contractor from any obligation or responsibility.
- 5.2.8 To the extent that any of the Contractor's Documents are generated by or maintained on a computer or similar system, the Contractor shall use all reasonable endeavours to procure for the benefit of the Employer, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant Third Party Software on reasonable terms to enable the Employer or his nominee to access and otherwise use (subject to the payment by the Employer of the relevant fee, if any) such Contractor's Documents. As an alternative, the Contractor may provide such Contractor's Documents in a format which may be read and effectively used by software generally available at reasonable prices in the market at the relevant time or in hard copy format.
- 5.2.9 The Contractor shall ensure the back-up and storage in safe custody of the Contractor's Documents in accordance with good industry practice. Without prejudice to this obligation, the Contractor shall submit to the Employer for approval, his proposals for the back-up and storage in safe custody of the Contractor's Documents and the Employer shall be entitled

to object if the same is not in accordance with good industry practice. The Contractor shall comply, and shall procure that the Contractor's Personnel, Subcontractors and Suppliers comply, with all such proposals to which the Employer has given his approval. The Contractor may vary his procedures for such back-up and storage subject to submitting his proposals for change to the Employer, who shall be entitled to object on the basis set out above.

5.2.10 For the purposes of this Sub-Clause 5.2 (*Contractor's Documents*), "use" shall include the acts of copying, modifying, adapting or translating the material in question and/or incorporating it with other materials together with a right to load, store and execute it.

5.2.11 The provisions of this Sub-Clause 5.2 (*Contractor's Documents*) shall apply during the continuance of the Contract and after its termination howsoever arising, and immediately following termination howsoever arising, the Contractor shall provide to the Employer the Contractor's Documents which comprise the outputs derived from the Third Party Software in a format which may be read and effectively used by software generally available at reasonable prices in the market at the relevant time and in hard copy format.

5.3 Contractor's Undertaking

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

5.3.1 Laws and Permissions; and

5.3.2 the Contract.

5.4 Technical Standards and Regulations

5.4.1 The design, the Contractor's Documents, the execution of the Works and the completed Works shall comply with Laws, and other standards identified in the Technical Specification, applicable to the Works, or defined by the applicable Laws.

5.4.2 For the purposes of Sub-Clause 5.4.1, Laws shall, in respect of the Works, be those prevailing when the Works are taken over by the Employer under Clause 10 (*Employer's Taking Over*). References in this Contract to published standards shall be understood to be references to the edition current on the Base Date, unless stated otherwise.

5.4.3 If changed or new applicable standards come into force in the Country after the Base Date, the Contractor shall give notice to the Employer and (if appropriate) submit proposals for compliance. In the event that:

5.4.3.1 the Employer determines that compliance is required; and

5.4.3.2 the proposals for compliance constitute a variation,

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

5.5 Training

- 5.5.1 The Contractor shall carry out the training of Employer's Personnel and any other persons nominated by the Employer in the operation and maintenance of the Works to the extent specified in the Technical Specification. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 (*Taking Over of the Works*) until this training has been completed.

5.6 As-Built Documents

- 5.6.1 The Contractor shall prepare, keep up-to-date and make available for review by the Employer, a complete set of "as-built" records and documents in respect of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed and these "as-built" records and documents shall be otherwise in accordance with the requirements for such as-built documents identified in the Technical Specification. These records shall be kept on the Site. Two (2) copies of the then current "as-built" records shall be supplied to the Employer prior to the commencement of the Tests on Completion. With respect to the Bulgarian Section, the "as-built" documents shall be prepared following the requirements of the SDA (Article 175 in connection with Article 154) and Ordinance No. 3 (Article 8). The electronic requirements for as-built records are set out in the Technical Specification.
- 5.6.2 In addition to the requirements of Sub-Clause 5.6.1, the Contractor shall supply to the Employer as-built drawings of the Works, showing all Works as executed, and submit them to the Employer for review under Sub-Clause 5.2 (*Contractor's Documents*). The Contractor shall obtain the consent of the Employer as to their size, the referencing system, and other relevant details.
- 5.6.3 Prior to the issue of the Taking-Over Certificate, the Contractor shall supply to the Employer the specified numbers and types of copies of the relevant as-built drawings, in accordance with the Technical Specification. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 (*Taking Over of the Works*) until the Employer has received these required as-built drawings and any other as-built documents in accordance with the Technical Specification, and in sufficient detail in combination with the Operation and Maintenance Manuals to allow the Employer to operate and maintain the Works in a safe and effective manner and the Employer has confirmed this in writing to the Contractor. The Employer's decision on whether such as-built documents are in accordance with the Technical Specification, and in sufficient detail in combination with Operation and Maintenance Manuals to allow the Employer to operate and maintain the Works in a safe and effective manner may be referred to the Dispute Resolution Procedure.
- 5.6.4 Within twenty eight (28) days after the expiry of Defects Notification Period, the Contractor shall supply to the Employer the numbers and types of copies of any as-built documents identified in the Technical Specification which have been updated during that period by the Contractor as a consequence of his compliance with Clause 11 (*Defects Liability*). The Contractor's obligation to provide such as-built documents

shall not be considered to be completed until the Employer has received these required as-built documents in accordance with the Technical Specification and in sufficient detail in combination with the Operation and Maintenance Manuals to allow the Employer to operate and maintain the Works in a safe and effective manner and the Employer has confirmed this in writing to the Contractor. The Employer's decision on whether such as-built documents are in accordance with the Technical Specification and in sufficient detail in combination with the Operation and Maintenance Manuals to allow the Employer to operate and maintain the Works in a safe and effective manner may be referred to the Dispute Resolution Procedure.

5.7 Operation and Maintenance Manuals

- 5.7.1 Prior to commencement of the Tests on Completion, the Contractor shall supply to the Employer provisional operation and maintenance manuals and any other manuals identified in the Technical Specification as being required in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Permanent Works including any Plant.
- 5.7.2 The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 (*Taking Over of the Works*) until the Employer has received final operation and maintenance manuals in such detail, and any other manuals specified in the Technical Specification for these purposes. In accordance with the Technical Specification and in sufficient detail to allow the Employer to operate and maintain the Works in a safe and effective manner and the Employer has confirmed this in writing to the Contractor. The Employer's decision on whether such operation and maintenance manuals, and any other manuals are in accordance with the Technical Specification and in sufficient detail to allow the Employer to operate and maintain the Works in a safe and effective manner may be referred to the Dispute Resolution Procedure.
- 5.7.3 Within twenty eight (28) days after the expiry of the Defects Notification Period, the Contractor shall supply to the Employer operation and maintenance manuals, and any other manuals identified in the Technical Specification which have been updated during that period by the Contractor as a consequence of his compliance with Clause 11 (*Defects Liability*).
- 5.7.4 The Contractor's obligation to provide such operation and maintenance manuals, and any other manual shall not be considered to be completed until the Employer has received these required operations and maintenance manuals, and any other manuals in accordance with the Technical Specification and in sufficient detail to allow the Employer to operate and maintain the Works in a safe and effective manner and the Employer has confirmed this in writing to the Contractor. The Employer's decision on whether such operation and maintenance manuals and any other manuals are in accordance with the Technical Specification and in sufficient detail to allow the Employer to operate and maintain the Works in a safe and effective manner may be referred to the Dispute Resolution Procedure.

5.8 Design Error

- 5.8.1 If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, they and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval under the Contract. Should the Contractor become aware of any errors, omissions, ambiguities, inconsistencies, inadequacies or other defects within or between any of the Contractor's Documents, the Contractor shall notify the Employer immediately, giving full details of such errors, omissions, ambiguities, inconsistencies, inadequacies or other defects. Where any errors, omissions, ambiguities, inconsistencies, inadequacies or other defects cannot be resolved by reference to the provisions of the Contract, the Contractor shall provide the Employer with proposals for resolving such errors, omissions, ambiguities, inconsistencies, inadequacies or other defects which comply with the Contract. The Employer shall review such proposals as soon as reasonably practicable, and in any event within fourteen (14) days after receipt of such proposals, and if such proposals are acceptable to the Employer (acting reasonably), the Employer shall approve such proposals, and the Contractor shall give immediate effect to such proposals. If such proposals are not acceptable to the Employer, the Employer may either:
- 5.8.1.1 request the Contractor to submit alternative proposals for resolving such errors, omissions, ambiguities, inconsistencies, inadequacies or other defects which comply with the Contract. The Employer shall review such alternative proposals as soon as reasonably practicable, and in any event within fourteen (14) days after receipt of such proposals, and if such alternative proposals are acceptable to the Employer (acting reasonably), the Employer shall approve such alternative proposals, and the Contractor shall give immediate effect to such alternative proposals; or
 - 5.8.1.2 issue an instruction to the Contractor for resolving such errors, omissions, ambiguities, inconsistencies, inadequacies or other defects which comply with the Contract, and the Contractor shall give immediate effect to such instruction.
- 5.8.2 Any approval or instruction by the Employer pursuant to this Sub-Clause 5.8 (*Design Error*) (i) shall not be treated as a Variation and no costs or delay incurred by the Contractor in giving effect to such approval or instruction shall be recoverable by the Contractor, and (ii) shall not relieve the Contractor from any responsibility under this Contract, including responsibility for errors, omissions, discrepancies and non-compliances.

6 STAFF AND LABOUR

6.1 Engagement of Staff and Labour

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

6.3 Persons in the Service of Others

The Contractor shall not (except with the prior written consent of the Employer) recruit or solicit or entice away (or attempt to recruit, solicit or entice away) from the employment of the Employer, directly or indirectly, any person employed or engaged by the Employer in respect of the Works at any time during the term of the Contract and for a period of twelve (12) months after the termination thereof.

6.4 Labour Laws

6.4.1 The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, tax, social security, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

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

6.4.3 The Contractor shall not (and shall procure that the Contractor's Personnel, Subcontractors and Suppliers shall not) unlawfully discriminate within the scope of any applicable labour Laws.

6.5 Not used

6.6 Facilities for Staff and Labour

6.6.1 The Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Technical Specification.

6.6.2 The Contractor shall not (except for the purposes of health and safety and security at the Site) permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters on the Site.

6.7 Health and Safety

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

prevention of epidemics.

- 6.7.2 The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.
- 6.7.3 The Contractor shall send, to the Employer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Employer may reasonably require.
- 6.7.4 With respect to the Works relating to the Bulgarian Section, the Contractor shall comply with all applicable health and safety local law provisions, including, but not limited to the provisions of Ordinance No. 2 on the Minimum Requirements for Health and Safety Labour Conditions upon Performance of Construction and Mounting Works (promulgated SG, Issue 37, 4.05.2004).

6.8 Contractor's Superintendence

- 6.8.1 Throughout the design and execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations under this Contract, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.
- 6.8.2 Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 (*Law and Language*)) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works. This obligation shall include ensuring that there is sufficient staff to cover periods of holiday, sickness and other absences, and anticipated and actual peaks in servicing the requirements for the Works.

6.9 Contractor's Personnel

- 6.9.1 The Contractor's Personnel shall be appropriately qualified, skilled, experienced and, where appropriate, certified in their respective trades or occupations.
- 6.9.2 The Employer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:
 - 6.9.2.1 persists in any unsocial behaviour, misconduct or lack of care;
 - 6.9.2.2 carries out duties incompetently or negligently;
 - 6.9.2.3 fails to conform with any provisions of the Contract; or

6.9.2.4 persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

Any Costs incurred by the Contractor in removing (or causing to be removed) any such person employed on the Site or Works, including the Contractor's Representative, shall be borne by the Contractor. Any such person shall not be employed again in respect of the Works without the permission of the Employer.

6.9.3 If appropriate following a removal of any person pursuant to Sub-Clause 6.9.2, the Contractor shall (having received the prior consent of the Employer, such consent not to be unreasonably withheld or delayed) appoint (or cause to be appointed) a suitable replacement person.

6.9.4 The Contractor shall ensure that the Key Personnel shall have day-to-day responsibility for and be involved in the design, execution and completion of the Works.

6.9.5 The Contractor shall ensure that there are no changes to the Key Personnel without the Employer's prior consent (such consent not to be unreasonably withheld or delayed) and that any replacement persons shall be of at least equivalent status and ability to the person whom they replace.

6.9.6 The Contractor shall use all reasonable endeavours to ensure the continuity of the personnel assigned to perform the Works and shall select Key Personnel having careful regard to those persons' existing work load and other planned commitments.

6.9.7 The Contractor shall ensure that his Key Personnel shall:

6.9.7.1 have the level of skill, experience and authority appropriate to (i) the tasks to which such staff are allocated, and (ii) the standards to be achieved pursuant to the Contract; and

6.9.7.2 receive such training and supervision as is necessary to ensure the proper performance of the Contract and compliance with all regulatory requirements appropriate to and required for the design, execution and completion of the Works in accordance with the Contract.

6.9.8 All Key Personnel shall have a nominated deputy who shall be capable of fulfilling the duties of the person to whom they are deputising in the event of their absence and who shall be kept fully informed of project status in the relevant area.

6.9.9 The Contractor shall locate staff at such locations as the Contractor considers convenient for the Works, provided that:

6.9.9.1 the Contractor acknowledges that he shall not be entitled to any reimbursement from the Employer in relation to the travel, accommodation or subsistence of any person; and

6.9.9.2 the Employer may require the Contractor to make the Key Personnel available for meetings in the Republic of Bulgaria

and the Republic of Greece at such times as the Employer may, in his absolute discretion, direct.

- 6.9.10 The Contractor shall comply (and shall procure that the Contractor's Personnel, the Subcontractors, and those of the Suppliers who are on the Site comply) with any rules, regulations and instructions from the Employer and all legally binding regulatory requirements appropriate to and required for the design, execution and completion of the Works and the EIA Permit.

6.10 Records of Contractor's Personnel and Equipment

- 6.10.1 The Contractor shall submit, to the Employer, with each monthly progress report, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment and Plant on the Site. Details shall be submitted each calendar month, with each monthly progress report submitted pursuant to Sub-Clause 4.21 (*Progress Reports*) in a form approved by the Employer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works. The Contractor shall procure that his Subcontractors and Suppliers who are on Site also comply with the provisions of this Sub-Clause 6.10 (*Records of Contractor's Personnel and Equipment*).
- 6.10.2 The Employer reserves the right to audit the Contractor's records, where he reasonably believes that the information provided pursuant to Sub-Clause 6.10.1 is not satisfactory. Any costs involved in such an audit, where such audit has shown that any information provided by the Contractor pursuant to Sub-Clause 6.10.1 is not correct, shall be paid by the Contractor or shall be deducted by the Employer from any moneys due or to become due or shall be deducted by the Employer as a debt immediately due and payable.

6.11 Disorderly Conduct

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

7 PLANT, MATERIALS AND WORKMANSHIP

7.1 Manner of Executions

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

- 7.1.1 in the manner (if any) specified in the Contract;
- 7.1.2 in a proper workmanlike and careful manner;
- 7.1.3 subject to Sub-Clause 7.1.1, in accordance with recognised good practice; and
- 7.1.4 with properly equipped facilities and non-hazardous Materials, except as

otherwise identified in the Contract.

7.2 Samples

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

7.3 Inspection

7.3.1 The Employer's Personnel and the Construction Supervision Entity shall at all reasonable times:

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

7.3.1.2 during production, manufacture and construction (at the Site and all locations elsewhere), be entitled to carry out Surveillance activities, audit records, examine, inspect, measure and/or check the progress of:

(a) materials and workmanship; and

(b) the manufacture of Plant; and

(c) the production and manufacture of Materials.

7.3.2 The Contractor shall give the Employer's Personnel and the Construction Supervision Entity full opportunity to carry out these Surveillance activities, including providing access, facilities, permissions and safety equipment. While such activities are being carried out, the Contractor shall ensure that all relevant health and safety requirements applicable to the location where such activities are being carried out are complied with. In exercising any of his rights under Sub-Clause 7.3.1, the Employer shall procure that the Employer's Personnel and the Construction Supervision Entity are required to comply with any site rules and health and safety requirements which are notified to him by the Contractor. No such activity shall relieve the Contractor from any obligation or responsibility.

7.3.3 Following receipt by the Employer of any Contractor's Documents for review under Sub-Clause 5.2 (*Contractor's Documents*), the Employer may by no later than the expiry of the review period for such Contractor's Documents notify a Hold Point in relation to any part of the Works or work activity to which the Contractor's Documents relate and require that the Contractor shall not proceed to execute such part of the Works or work activity pending the inspection and consent of the Employer.

7.3.4 In respect of any part of the Works or work activity which is the subject of a notice by the Employer under Sub-Clause 7.3.3, the Contractor shall give notice to the Employer whenever the execution of the part of the Works or work activity which is to be inspected by the Employer is ready to commence. The period of notice to be given by the Contractor shall be sufficient so as to allow the Employer's Personnel and the Construction

Supervision Entity (as appropriate) reasonable opportunity to arrange for the inspection taking into account the nature and location of the part of the Works or work activity at that time and so that the progress of the execution of the Works shall not be adversely affected or delayed. The Employer shall then carry out the required inspection in compliance with the notice given by the Contractor and subsequently provide his consent to proceed or otherwise in sufficient time so as not to adversely affect or delay the progress of the execution of the Works.

- 7.3.5 Provided that, in relation to each Hold Point, the Employer carries out his inspection under Sub-Clause 7.3.4 in compliance with the notice given by the Contractor and that he subsequently provides his consent to proceed or otherwise in sufficient time so as not to adversely affect or delay the progress of the execution of the Works, then notwithstanding any other provisions of the Contract, the Contractor shall not be entitled to any extension of time for any delay under Sub-Clause 8.4 (*Extension of Time for Completion*) or payment of any Cost caused by or incurred as a consequence of such Hold Point.
- 7.3.6 In respect of any Witness Point, the Contractor shall give notice to the Employer whenever the work which is to be examined, inspected, measured, tested and/or checked by the Employer is ready. The period of notice given by the Contractor shall be sufficient so as to allow the Employer's Personnel and the Construction Supervision Entity (as appropriate) reasonable opportunity to arrange for the examination, inspection, measuring, testing and/or checking of the work (as may be appropriate) taking into account the nature and location of the work at that time. The Employer shall then either carry out the examination, inspection, measurement, testing and/or checking, or give notice to the Contractor that the Employer does not require to do so, in either case without unreasonable delay and in sufficient time so as not to adversely affect or delay the progress of the execution of the Works. If the Contractor fails to give the notice, he shall, if and when required by the Employer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost, and the Contractor shall not be entitled to any extension of time for any delay under Sub-Clause 8.4 (*Extension of Time for Completion*) or payment of any Cost caused by or incurred as a consequence of such failure to give notice.
- 7.3.7 The Contractor shall uncover any such part or parts of the Works as the Employer may under Clause 13 (*Variations and Adjustments*) from time to time instruct and shall reinstate and make good such part or parts to the satisfaction of the Employer (acting reasonably). If any such part or parts are not found to have been executed in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor and, notwithstanding other provisions of the Contract, the Contractor shall not be entitled to any adjustment to the Contract Price or any extension of time in respect of such work of uncovering and reinstatement. Except where such part or parts were the subject of a Witness Point and the Contractor failed to give notice under Sub-Clause 7.3.6, if any such part or parts are found to have been executed in accordance with the Contract and if the Contractor suffers delay and/or incurs Cost as a result of undertaking such work of uncovering and reinstatement, the Contractor shall give

notice to the Employer and shall be entitled subject to Sub-Clause 20.1 (*Contractor's Claims*) to:

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

7.4 Testing

- 7.4.1 This Sub-Clause 7.4 (*Testing*) shall apply to the Pre-Commissioning and Mechanical Completion Tests, the Tests on Completion and all tests specified in the inspection and testing plan included within the quality control plan (as described in section 2.4 of the Technical Specification) in accordance with section 2.6.7 of the Technical Specification, other than the Tests after Completion (if any).
- 7.4.2 The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the identified tests efficiently and competently, other than natural gas for the purposes of commissioning which shall be provided by the Employer. The Contractor shall agree, with the Employer, the time and place for the specified testing of any Plant, Materials and other parts of the Works in the coordination plan prepared in accordance with section 2.6.7 of the Technical Specification.
- 7.4.3 The Employer may, under Clause 13 (*Variations and Adjustments*), vary the location or details of identified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the Employer may issue such instructions under Sub-Clause 7.3.7 as are reasonable in all the circumstances to establish to the reasonable satisfaction of the Employer the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. The cost of carrying out varied and/or additional tests where such tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract and/or such instructions under Sub-Clause 7.3.7 (including additional uncovering and reinstatement) shall be borne by the Contractor and, notwithstanding other provisions of the Contract, the Contractor shall not be entitled to any adjustment to the Contract Price or any extension of time in respect of such varied and/or additional tests and/or such instructions. Except where such part or parts were the subject of a Witness Point and the Contractor failed to give notice under Sub-Clause 7.3.6, if any such varied and/or additional tests and/or compliance with such instructions under Sub-Clause 7.3.7 show that the tested Plant, Materials or workmanship is in accordance with this Contract and if the Contractor suffers delay and/or incurs Cost as a result of carrying out varied and/or additional tests and/or undertaking work of uncovering and reinstatement, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 (*Contractor's Claims*) to:

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

7.4.3.2 payment of any such Cost, which shall be added to the Contract Price.

7.4.4 The Employer shall give the Contractor not less than twenty four (24) hours' notice of the Employer's intention to attend the tests. If the Employer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Employer. The Contractor shall not be relieved of any obligation, responsibility or liability by reason only of the fact that the Employer has not attended such tests or provided any comment on the results of them. All tests in respect of the Greek Section shall be carried out with the attendance of the Third Party Inspector. The Contractor shall be responsible for procuring the attendance at any required tests of any authority's or authorities' representative(s) as required in accordance with applicable Laws.

7.4.5 If the Employer instructs the Contractor not to proceed with the tests, the Contractor shall rearrange the tests and shall agree with the Employer the time and place for those tests pursuant to Sub-Clause 7.4.2. If the Contractor suffers delay and/or incurs Cost from complying with these rearranged tests, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 (*Contractor's Claims*) to:

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

7.4.5.2 payment of any such Cost, which shall be added to the Contract Price.

7.4.6 The Contractor shall submit duly certified reports of the tests for the Employer's review under Sub-Clause 5.2 (*Contractor's Documents*). Where any specified test has not been passed, the Contractor shall notify the Employer as soon as possible. If the Employer has not attended the tests, he shall be deemed to have accepted the readings as accurate unless the Employer can provide any evidence to the contrary.

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 Employer may reject the Plant, Materials, design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

7.5.2 If the Employer requires the Plant, Materials, design or workmanship which has been rejected pursuant to Sub-Clause 7.5.1 to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 (*Employer's Claims*) pay these

costs to the Employer or these costs may be deducted by the Employer from any monies due or which may become due to the Contractor under the Contract.

7.6 Remedial Work

7.6.1 Notwithstanding any previous test or certification, the Employer may at any time instruct the Contractor to:

7.6.1.1 remove from the Site and replace any Plant or Materials which is not in accordance with the Contract; and/or

7.6.1.2 repair any parts of the Works which are not in accordance with the Contract; and/or

7.6.1.3 remove and re-execute any other work which is not in accordance with the Contract and which is not reasonably capable of being repaired; and/or

7.6.1.4 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 The Contractor shall comply with any Employer's instruction issued pursuant to Sub-Clause 7.6.1 as soon as may be practicable or, in the case of an instruction issued pursuant to Sub-Clause 7.6.1.4, immediately. If the Contractor fails to comply with any such instruction, which complies with Sub-Clause 3.4 (*Instructions*), the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work in accordance with the Contract, the Contractor shall subject to Sub-Clause 2.5 (*Employer's Claims*) pay to the Employer all costs arising from this failure or such costs may be deducted by the Employer from any monies due or which may become due to the Contractor under the Contract.

7.7 Ownership of Plant and Materials

7.7.1 Each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer, free from liens and other encumbrances, when it is delivered to the Site.

7.7.2 The Contractor shall not have, nor shall the Contractor permit any Subcontractor or Supplier to have, a lien on any Plant or Materials for any sum due to the Contractor, Subcontractor, Supplier or other person and the Contractor shall ensure that the title of the Employer and the exclusion of any such lien are brought to the notice of Subcontractors, Suppliers and other persons dealing with any such Plant or Materials.

7.7.3 The Contractor shall incorporate a provision equivalent to Sub-Clause 7.7.2 in every subcontract and supply contract in respect of Plant and Materials.

7.8 Royalties

Unless otherwise stated in the Technical Specification, the Contractor shall pay all royalties, rents, Taxes, levies and other payments for:

- 7.8.1 natural Materials obtained from outside the Site; and
- 7.8.2 the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), or waste (including any transport costs for disposal of such materials or waste) except to the extent that disposal areas within the Site are specified in the Contract.

8 COMMENCEMENT, SEQUENCE OF ACTIVITIES, DELAYS AND SUSPENSION

8.1 Commencement of Works and Sequence of Activities

- 8.1.1 The Contractor shall commence the performance of its obligations under this Contract as soon as is reasonably practicable after the Commencement Date and shall then proceed with the Works with due expedition and without delay.
- 8.1.2 Without prejudice to the other obligations of the Contractor in this Contract and the Technical Specification, the Contractor shall carry out and complete the following sequence of activities from the Commencement Date:
 - 8.1.2.1 appointment of the Contractor's Representative in accordance with Sub-Clause 4.3 (*Contractor's Representative*);
 - 8.1.2.2 preparation of the draft PEP in accordance with section 2.2.2 of the Technical Specification and submission of the draft PEP to the Employer within twenty-eight (28) days after the Commencement Date. The draft PEP shall be subject to approval by the Employer and the Employer shall review the draft PEP within seven (7) days after its submission. If the Employer approves the draft PEP, the Employer shall notify the Contractor within such seven (7) day period. If the Employer requires any amendments to the draft PEP, the Employer shall notify the Contractor within such seven (7) day period. The Contractor shall promptly make such amendments within seven (7) days after the Contractor has been notified of such amendments, and the Contractor shall re-submit the amended PEP to the Employer for approval. If the Employer fails to approve or reject the draft PEP or the re-submitted draft PEP within seven (7) days after submission of the draft PEP or the re-submitted draft PEP, the draft PEP or the re-submitted draft PEP shall be deemed to have been approved by the Employer;
 - 8.1.2.3 preparation of the draft quality assurance manual ("**QAM**") and quality control plan ("**QCP**") and submission of the draft QAM and QCP to the Employer within twenty-eight (28) days after the Commencement Date. The draft QAM and QCP shall be subject to approval by the Employer and the Employer shall

review the draft QAM and QCP within seven (7) days after their submission. If the Employer approves the draft QAM and QCP, the Employer shall notify the Contractor within such seven (7) day period. If the Employer requires any amendments to the draft QAM and QCP, the Employer shall notify the Contractor within such seven (7) day period. The Contractor shall promptly make such amendments within seven (7) days after the Contractor has been notified of such amendments, and the Contractor shall re-submit the amended QAM and QCP to the Employer for approval. If the Employer fails to approve or reject the draft QAM and QCP or the re-submitted draft QAM and QCP within seven (7) days after submission of the draft QAM and QCP or the re-submitted draft QAM and QCP, the draft QAM and QCP or the re-submitted draft QAM and QCP shall be deemed to have been approved by the Employer;

- 8.1.2.4 preparation of a time schedule in accordance with Sub-Clause 8.3 (*Time Schedule*);
- 8.1.2.5 preparation of a coordination procedure within twenty-eight (28) days after the Commencement Date in accordance with section 2.6.7 of the Technical Specification, for the purpose of coordinating the inspection and testing activities in accordance with the inspection and test plan contained in the QAM and QCP;
- 8.1.2.6 definition of the Delivery Points and the Delivery Schedule of the Line Pipe in accordance with Sub-Clause 4B.1 (*Delivery Points and Delivery Schedule*);
- 8.1.2.7 performance of the design activities in accordance with the time schedule, including preparation of construction documents and the Contractor's Documents, and relevant approval for each section of the Pipeline in accordance with Sub-Clause 5.2 (*Contractor's Documents*) and section 2.3.1 of the Technical Specification;
- 8.1.2.8 performance of the activities described in Sub-Clause 4B.2 (*Delivery, Transit and Handover of Line Pipe*) in accordance with the time schedule in respect of the receipt of the Line Pipe inside the storage areas of the Delivery Points;
- 8.1.2.9 performance of the procurement and construction activities in accordance with the time schedule, Clause 7 (*Plant, Materials and Workmanship*), the Technical Specification and the Contractor's Documents;
- 8.1.2.10 preparation of the documentation in accordance with Sub-Clauses 5.6 (*As-Built Documents*) and 5.7 (*Operation and Maintenance Manuals*);
- 8.1.2.11 preparation of (i) the Mechanical Completion and Pre-Commissioning Activities Programme and (ii) the pre-commissioning and commissioning plans and programmes in

accordance with Sub-Clause 7.4 (*Testing*), sections 2.8.4 and 3.4.6 of the Technical Specification and Clause 9.A (*Mechanical Completion and Pre-Commissioning Activities*);

- 8.1.2.12 performance of the Mechanical Completion and Pre-Commissioning Tests in accordance with Sub-Clause 7.4 (*Testing*) and Sub-Clause 9A (*Mechanical Completion and Pre-Commissioning Activities*) until satisfactory completion of those Mechanical Completion and Pre-Commissioning Tests in accordance with Sub-Clause 9A.5 (*Completion of the Mechanical Completion and Pre-Commissioning Activities*);
- 8.1.2.13 preparation of the final technical documentation in accordance with section 2.8.5 of the Technical Specification;
- 8.1.2.14 completion of the personnel training in accordance with Sub-Clause 5.5 (*Training*) and section 2.8.5 of the Technical Specification;
- 8.1.2.15 preparation of the Tests on Completion Programme and performance of the relevant Tests on Completion in accordance with Sub-Clause 7.4 (*Testing*) and Clause 9 (*Tests on Completion*);
- 8.1.2.16 preparation of a commissioning plan in accordance with sections 2.8.4.2 and 3.4.6 of the Technical Specification; and
- 8.1.2.17 completion of all activities described in Clause 10 (*Employer's Taking Over*) in respect of the Taking-Over Certificate.

8.2 Time for Completion

The Contractor shall complete the whole of the Works within the Time for Completion for the Works, including:

- 8.2.1 achieving the passing of all Tests on Completion; and
- 8.2.2 completing the other requirements which are stated in Sub-Clause 10.1.1 as being required for the Works to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 (*Taking Over of the Works*).

8.3 Time Schedule

- 8.3.1 The Contractor shall submit a time schedule to the Employer within twenty eight (28) days after the Commencement Date. The time schedule must show each of the activities stated in Schedule 5 (*Payment*) and the anticipated dates for completion of those activities and demonstrate progress of the Works sufficient to enable achievement of such dates. The Contractor shall also submit to the Employer a revised time schedule whenever the previous time schedule is inconsistent with actual progress or with the Contractor's obligations, and such revised time schedule shall be submitted within seven (7) days of the occurrence of such inconsistency. Each time schedule shall include:

- 8.3.1.1 the order in which the Contractor intends to carry out the Works, including the anticipated timing of each major stage of the Works;
 - 8.3.1.2 the periods for reviews under Sub-Clause 5.2 (*Contractor's Documents*);
 - 8.3.1.3 the sequence and timing of inspections and tests specified in the Contract;
 - 8.3.1.4 a supporting report which includes:
 - (a) a general description of the methods which the 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 and of each type of Contractor's Equipment for each major stage; and
 - 8.3.1.5 such other matters as are specified in the Technical Specification to be included in the time schedule.
- 8.3.2 Unless the Employer, within fifteen (15) days after receiving a time schedule, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the time schedule, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the time schedule when planning their activities. No approval of nor failure to approve or comment on any revised time schedule submitted under this Sub-Clause 8.3.2 shall entitle the Contractor to any extension of time or otherwise relieve the Contractor from any of its obligations under the Contract.
- 8.3.3 The Contractor shall promptly give notice to the Employer of specific probable future events or circumstances which may adversely affect or delay the execution of the Works. In this event, or if the Employer gives notice to the Contractor that a time schedule fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised time schedule to the Employer in accordance with this Sub-Clause 8.3 (*Time Schedule*).
- 8.3.4 With respect to the Bulgarian Section, the time schedule shall, among others, include, or make appropriate reference to, the legally binding certification (with formal protocols) of key construction milestones set out in Ordinance No. 3 and the mandatory orders issued by the Construction Supervision Entity and recorded in the "order book" (заповедната книга) in accordance with the SDA (Articles 168 and 170) which the Contractor is required to implement in its execution of the Works.

8.4 Extension of Time for Completion

- 8.4.1 The Contractor shall be entitled subject to Sub-Clause 20.1 (*Contractor's*

Claims) to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 (*Taking Over of the Works*) is or will be delayed by any of the following causes:

- 8.4.1.1 a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 (*Variation Procedure*); or
- 8.4.1.2 the occurrence of a Line Pipe Supplier Event as described in Sub-Clause 4A.4; or
- 8.4.1.3 failure by the Employer to give any right of access or possession to the Bulgarian Site or the Greek Pipeline Site or the Greek Station Site within the relevant time indicated in Sub-Clause 2.1.1, as described in Sub-Clause 2.1.3; or
- 8.4.1.4 compliance by the Contractor with instructions by the Employer to deal with any findings, as described in Sub-Clause 4.24.5 and subject to Sub-Clause 4.24.7; or
- 8.4.1.5 discovery of any Line Pipe Defect during the Line Pipe Warranty Period and/or any applicable Extended Pipe Warranty Period, as described in Sub-Clause 4B.3.2; or
- 8.4.1.6 discovery of any Latent Line Pipe Defect during the period set out in and as described in Sub-Clause 4B.3.6; or
- 8.4.1.7 the Contractor being required to undertake work of uncovering and reinstatement where the part or parts of the Works to which such work relates are found to have been executed in accordance with the Contract, as described in Sub-Clause 7.3.7; or
- 8.4.1.8 the Contractor being required to carry out varied and/or additional tests and/or undertaking work of uncovering and reinstatement where such varied and/or additional tests and/or compliance with such instructions under Sub-Clause 7.4.3 show that the tested Plant, Materials or workmanship is in accordance with the Contract, as described in Sub-Clause 7.4.3; or
- 8.4.1.9 the Contractor being instructed by the Employer to carry out rearranged tests as described in Sub-Clause 7.4.5; or
- 8.4.1.10 compliance by the Contractor with the Employer's instructions to suspend progress of part or all of the Works in accordance with Sub-Clause 8.8 (*Suspension of Work*) and/or from resuming the work, as described in Sub-Clause 8.9.1; or
- 8.4.1.11 the Contractor being prevented for more than fourteen (14) days from carrying out the Mechanical Completion and Pre-Commissioning Tests by a cause for which the Employer is responsible, as described at Sub-Clause 9A.6.2; or
- 8.4.1.12 the Contractor being prevented for more than fourteen (14) days

from carrying out the Tests on Completion by a cause for which the Employer is responsible, as described at Sub-Clause 10.3.2 (*Tests on Completion*); or

- 8.4.1.13 the occurrence of a Qualifying Change in Law; or
 - 8.4.1.14 a suspension of work (or reduction in the rate of work) by the Contractor due to a failure by the Employer to make a payment due to the Contractor as described in Sub-Clause 16.1.4; or
 - 8.4.1.15 the rectification of any loss or damage to the Works, Goods or Contractor's Documents as a result of any of the risks listed in Sub-Clause 17.3 (*Employer's Risks*), as described in Sub-Clause 17.4.2; or
 - 8.4.1.16 compliance by the Contractor with his obligations under Sub-Clauses 17.7.3 to 17.7.6 and/or with any requests or directions made to him by the Employer thereunder, as described in Sub-Clause 17.7.7; or
 - 8.4.1.17 the Contractor being prevented from performing any of his obligations under the Contract due to Force Majeure of which notice has been given under Sub Clause 19.2 (*Notice of Force Majeure*), as described in Sub-Clause 19.4.1; or
 - 8.4.1.18 the Contractor suffers delay by reason of delay and disruption caused by relevant legally constituted public authorities in the Country, as described in Sub-Clause 8.5 (*Delays Caused by Authorities*).
 - 8.4.1.19 any delay, impediment or prevention (not otherwise described in this Sub-Clause 8.4.1 (*Extension of Time for Completion*)) which is caused by or attributable to the Employer provided always that for the purposes of this Sub-Clause 8.4.1.19 delay, impediment or prevention shall not include any delay, impediment or prevention which arises out of any act or omission by the Employer which is permitted under this Contract.
- 8.4.2 The Contractor shall use all reasonable endeavours to mitigate the effects of any delay to the progress and completion of Works resulting from the causes listed at Sub-Clause 8.4.1, and the Employer's determination of the Contractor's entitlement to an extension of time shall be abated by the extent to which the Contractor has failed to comply with this Sub-Clause 8.4.2.
- 8.4.3 The Contractor's entitlement to an extension of the Time for Completion under this Clause 8 (*Commencement, SEQUENCE OF ACTIVITIES, Delays and Suspension*) shall exclude any delay to the completion of the Works which would in any event have occurred as a consequence of one or more causes other than those listed in Sub-Clause 8.4.1 (*Extension of Time for Completion*) (including any breach of the Contract by the Contractor or any negligence or default of the Contractor or the Contractor's Personnel, the Subcontractors or the Suppliers), except to the

extent that such delay to completion occurs as a consequence of the concurrent effect of one of the causes listed in Sub-Clauses 8.4.1.1, 8.4.1.3, 8.4.1.4, 8.4.1.7, 8.4.1.8, 8.4.1.9, 8.4.1.10, 8.4.1.11, 8.4.1.12, 8.4.1.14, 8.4.1.16 and 8.4.1.19 (whether the causes having such concurrent effect occur at the same point in time or at different times). Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time in respect of any delay to completion caused by one of the events listed in this Sub-Clause 8.4.3 where such event occurs as a direct consequence of any breach of the Contract by the Contractor or any negligence or default of the Contractor or the Contractor's Personnel, the Subcontractors or the Suppliers.

- 8.4.4 If the Contractor considers himself to be entitled to an extension of the Time for Completion or considers that the circumstances which excluded or limited entitlement to an extension of time under Sub-Clause 8.4.3 have changed beyond the assumption on which any previous extension of time was considered by the Employer, the Contractor shall give notice to the Employer in accordance with Sub-Clause 20.1 (*Contractor's Claims*). When determining each extension of time under Sub-Clause 20.1 (*Contractor's Claims*), the Employer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

8.5 Delays Caused by Authorities

If the following conditions apply, namely:

- 8.5.1 the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country; and
- 8.5.2 such authorities delay or disrupt the Contractor's work without due cause; and
- 8.5.3 the delay or disruption was not reasonably foreseeable by an experienced contractor by the date for submission of the Tender,

and the Contractor suffers delay by reason of such delay and disruption caused by such authorities, the Contractor shall be entitled subject to Sub-Clause 20.1 (*Contractor's Claims*) to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*). The Contractor shall not be entitled to any costs arising out of any such delay or disruption caused by such authorities.

8.6 Rate of Progress

- 8.6.1 If, at any time:
- 8.6.1.1 actual progress is too slow to complete the Works within the Time for Completion; and/or
- 8.6.1.2 progress has fallen (or will or is likely to fall) behind the current time schedule under Sub-Clause 8.3 (*Time Schedule*),
- other than as a result of a cause listed in Sub-Clause 8.4.1 (subject to Sub-Clause 8.4.3) then the Employer may instruct the Contractor to submit,

under Sub-Clause 8.3 (*Time Schedule*) a revised time schedule and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

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

8.7 Delay Damages

8.7.1 If the Contractor fails to comply with Sub-Clause 8.2 (*Time for Completion*), the Employer shall give notice and particulars to the Contractor under Sub-Clause 2.5 (*Employer's Claims*) stating that the Contractor has so failed to comply and that the Employer shall be entitled to payment by the Contractor of delay damages for this default (provided that the provision of such notice shall not be a pre-condition to the entitlement of the Employer to payment of such delay damages). The Contractor shall subject to Sub-Clause 2.5 (*Employer's Claims*) pay delay damages in the amount of ninety thousand Euros (€90,000) which shall be paid for every day which shall elapse between the Time for Completion and the date stated in the Taking-Over Certificate ("**Delay Liquidated Damages**"). However, the total amount of Delay Liquidated Damages due to the Employer from the Contractor under this Sub-Clause shall not exceed an amount equal to ten per cent (10%) of the Contract Price.

8.7.2 The Employer and the Contractor hereby acknowledge and agree that the sum stated as Delay Liquidated Damages in Sub-Clause 8.7.1 represents a genuine and reasonable pre-estimate of the losses that the Employer will incur in the event of a failure by the Contractor to comply with Sub-Clause 8.2 (*Time for Completion*).

8.7.3 Notwithstanding the foregoing, if and to the extent that the Delay Liquidated Damages payable under this Contract are not enforceable for any reason, the balance of this Clause 8 (*Commencement, Sequence of Activities, Delays and Suspension*) and this Contract shall remain in full force and effect and the Contractor shall be liable to the Employer for damages for the failure by the Contractor to comply with Sub-Clause 8.2 (*Time for Completion*), provided that any such liability shall not exceed the amount that would have been due if the liquidated damages provisions of this Sub-Clause 8.7 (*Delay Damages*) had remained effective.

8.7.4 Payment by the Contractor of Delay Liquidated Damages (or damages pursuant to Sub-Clause 8.7.3), or any deduction of Delay Liquidated Damages (or damages) from moneys due, or to become due, to the Contractor, shall not:

8.7.4.1 affect the Employer's rights to terminate this Contract, nor its associated rights to receive compensation or claim damages or exercise any other remedy under this Contract or otherwise at

law in respect of such termination; nor

8.7.4.2 relieve the Contractor from its obligations to carry out or complete the Works or from any other duties, obligations or responsibilities which the Contractor may have under this Contract.

8.7.5 The Contractor shall not be relieved of any liability on account of:

8.7.5.1 any failure by or delay in the Employer requiring payment of delay damages by the Contractor or deduction of delay damages from moneys due, or to become due, to the Contractor; or

8.7.5.2 the Employer requiring payment of or deducting delay damages of a lower sum than that stated in Sub-Clause 8.7.1.

8.7.6 The Employer's rights and entitlements to claim Delay Liquidated Damages (or damages) pursuant to this Sub-Clause 8.7 (*Delay Damages*) shall be without prejudice to any other claim, right or entitlement the Employer may have against the Contractor in respect of the delay or the circumstances giving rise to the delay.

8.8 Suspension of Work

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

8.8.2 If and to the extent that the cause is notified and:

8.8.2.1 is attributable to or is the responsibility of the Contractor; or

8.8.2.2 the consequences of the Employer issuing instructions (which could include an instruction to suspend) are otherwise expressly dealt with in the Contract; or

8.8.2.3 the suspension is necessary for the safety of persons or the Works or any part thereof arising from an issue or event for which the Contractor is responsible under the Contract,

8.8.3 the following Sub-Clauses 8.9 (*Consequences of Suspension*) and 8.11 (*Prolonged Suspension*) shall not apply.

8.9 Consequences of Suspension

8.9.1 Subject to Sub-Clause 8.8.2, if the Contractor suffers delay and/or incurs Cost from complying with the Employer's instructions under Sub-Clause 8.8 (*Suspension of Work*) and/or from resuming the work, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 (*Contractor's Claims*) to:

8.9.1.1 an extension of time for any such delay, if completion is or will

be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*); and

8.9.1.2 payment of any such Cost, which shall be added to the Contract Price.

8.9.2 After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 (*Determination*) to agree or determine these matters.

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

8.10 Not used

8.11 Prolonged Suspension

Subject to Sub-Clause 8.8.2, if the suspension under Sub-Clause 8.8 (*Suspension of Work*) has continued for more than twelve (12) months, the Contractor may request the Employer's permission to proceed. If the Employer does not give permission within twenty eight (28) days after being requested to do so, the Contractor may, by giving notice to the Employer, treat the suspension as an omission under Clause 13 (*Variations and Adjustments*) of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 (*Termination by Contractor*).

8.12 Resumption of Work

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

8.13 Longstop Date

If the Contractor fails to complete the whole of the Works by the Longstop Date, the Employer may (at his option) terminate the Contract as a whole, or in respect of any major part of the Works which is incomplete as at the Longstop Date, and at its option:

8.13.1 instruct the Contractor to dismantle the Works (or major part thereof, as applicable) and the Employer shall be entitled, without prejudice to any other rights or remedies, under the Contract, or otherwise, to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor; or

8.13.2 apply Sub-Clause 15.2.1.18.

8.14 Site Meetings

8.14.1 The Employer's Representative shall summon all parties concerned to the

first Site meeting ("Site Meeting") where he shall decide upon and advise the proposed timing of future Site Meetings, to be held on a fortnightly basis throughout the execution and completion of the of the Works. It is the duty of the Contractor's Representative to participate in the Site Meetings.

- 8.14.2 The purpose of the Site Meetings is to coordinate the various work components of the Contractor, to register the progress of the Works in relation to the current time schedule under Sub-Clause 8.3 (*Time Schedule*) and to record agreements made.
- 8.14.3 The minutes of the Site Meetings shall be numbered consecutively. Minutes shall be prepared and circulated by the Employer and shall be deemed to have been received by the Contractor unless the Contractor gives notice at the following Site Meeting that the minutes were not received.
- 8.14.4 Any objections to the minutes of a Site Meeting shall be raised:
 - 8.14.4.1 in writing to the Employer's Representative before the following Site Meeting or, at the latest, at the following Site Meeting; or
 - 8.14.4.2 if the Contractor at the time of the following Site Meeting has not received the minutes of the previous Site Meeting, any objection must be given in writing to the Employer's Representative not later than seven (7) days after the subsequent receipt of the said minutes except in the case of any agreement which directly conflicts with the terms of the Contract in which case the Contractor shall have until the Site Meeting following receipt of the said minutes to raise any objection.

9A MECHANICAL COMPLETION AND PRE-COMMISSIONING ACTIVITIES

9A.1 Contractor's Obligations

- 9A.1.1 The Contractor shall carry out the Mechanical Completion and Pre-Commissioning Activities in accordance with this Clause 9A (*Mechanical Completion and Pre-Commissioning Activities*) and Sub-Clause 7.4 (*Testing*), after providing any Contractor's Documents which are required in accordance with the Technical Specification or which have been required by the Employer to be provided prior to the commencement of the Mechanical Completion and Pre-Commissioning Activities.
- 9A.1.2 The Contractor shall, within fourteen (14) days before the planned commencement of the Mechanical Completion and Pre-Commissioning Activities, submit to the Employer, for the Employer's approval, a proposed programme for the carrying out of all Mechanical Completion and Pre-Commissioning Activities in respect of the Works ("**Mechanical Completion and Pre-Commissioning Activities Programme**"). The Mechanical Completion and Pre-Commissioning Activities Programme shall set out, as a minimum, all those Mechanical Completion and Pre-Commissioning Activities specified in the Technical Specification and such other tests as are proposed by the Contractor.

- 9A.1.3 The Employer shall be entitled to require (acting reasonably) the Contractor to make amendments to or revisions of the Mechanical Completion and Pre-Commissioning Activities Programme, in which case the Contractor shall, within seven (7) days of notice of such requirement, reissue the programme for the Employer's approval and this Sub-Clause 9A.1 (*Contractor's Obligations*) shall be repeated until such programme has been approved by the Employer.
- 9A.1.4 The Contractor shall carry out the Mechanical Completion and Pre-Commissioning Activities (including the Mechanical Completion and Pre-Commissioning Tests) in accordance with the Mechanical Completion and Pre-Commissioning Activities Programme and the Employer and the Employer's Personnel shall be entitled to rely upon the programme when planning their activities. No approval or failure to approve or comment on, nor any requirement to make amendments to or revisions of, any Mechanical Completion and Pre-Commissioning Activities Programme pursuant to this Sub-Clause 9A.1 (*Contractor's Obligations*) shall entitle the Contractor to any extension of time or otherwise relieve the Contractor from any of its obligations under the Contract.
- 9A.1.5 The Contractor shall carry out the Mechanical Completion and Pre-Commissioning Activities (including the Mechanical Completion and Pre-Commissioning Tests) in accordance with all applicable Laws.
- 9A.1.6 In considering whether the Mechanical Completion and Pre-Commissioning Tests have been completed in accordance with this Contract, appropriate allowances shall be made for (i) the effects of any use of the Works by the Employer on the performance or other characteristics of the Works, and (ii) the requirements for the Tests on Completion.
- 9A.1.7 The Mechanical Completion and Pre-Commissioning Tests shall comprise the pre-commissioning tests, inspections and activities (including completion of major snagging items) required to demonstrate that certain of the Mechanical Completion and Pre-Commissioning Activities have been completed in accordance with the requirements of this Contract, satisfying in all respects the requirements of the Technical Specification.
- 9A.1.8 The Contractor shall give to the Employer, Owner's Engineer and the Third Party Inspector and/or the Construction Supervision Entity (as appropriate) not less than twenty one (21) days' notice of the date after which the Contractor will be ready to carry out each of the Mechanical Completion and Pre-Commissioning Tests in accordance with the Mechanical Completion and Pre-Commissioning Activities Programme. Unless otherwise agreed, the Mechanical Completion and Pre-Commissioning Tests shall be carried out within fourteen (14) days after this date, on such day or days as the Employer, the Owner's Engineer, the Third Party Inspector and the Construction Supervision Entity (as appropriate) shall instruct.
- 9A.1.9 All Mechanical Completion and Pre-Commissioning Tests shall be carried out with the attendance of the Third Party Inspector and the

Construction Supervision Entity (as appropriate).

- 9A.1.10 The Contractor shall be responsible for procuring the attendance at any required Mechanical Completion and Pre-Commissioning Tests of any authority's or authorities' representative(s) as required by any applicable Laws for the purposes of satisfying the requirements of the Mechanical Completion and Pre-Commissioning Tests.
- 9A.1.11 As soon as the Works have passed each of the Mechanical Completion and Pre-Commissioning Tests, the Contractor shall submit a certified report of the results of those Mechanical Completion and Pre-Commissioning Tests to the Employer.

9A.2 Delayed Tests

- 9A.2.1 If the Mechanical Completion and Pre-Commissioning Tests are being unduly delayed by the Employer, Sub-Clause 7.4.5 (Testing) and/or Sub-Clause 9A.6 (*Interference with Mechanical Completion and Pre-Commissioning Tests*) shall be applicable.
- 9A.2.2 If the Mechanical Completion and Pre-Commissioning Tests are being unduly delayed by the Contractor, the Employer may by notice require the Contractor to carry out the Mechanical Completion and Pre-Commissioning Tests within twenty one (21) days after receiving the notice. The Contractor shall carry out the Mechanical Completion and Pre-Commissioning Tests on such day or days within that period as the Contractor may fix and of which he shall give not less than seven (7) days' notice to the Employer.
- 9A.2.3 If the Contractor fails to carry out the Mechanical Completion and Pre-Commissioning Tests within the period of twenty one (21) days, the Employer's Personnel may proceed with the Mechanical Completion and Pre-Commissioning Tests at the risk and cost of the Contractor. These Mechanical Completion and Pre-Commissioning Tests shall then be deemed to have been carried out in the presence of the Contractor and the results of the Mechanical Completion and Pre-Commissioning Tests shall be accepted as accurate.

9A.3 Retesting

- 9A.3.1 If the Works fail to pass the Mechanical Completion and Pre-Commissioning Tests, Sub-Clause 7.5 (*Rejection*) shall apply, and the Employer or the Contractor may require the failed Mechanical Completion and Pre-Commissioning Tests, and Mechanical Completion and Pre-Commissioning Tests on any related work, to be repeated under the same terms and conditions.
- 9A.3.2 The Contractor shall have the right to repeat the Mechanical Completion and Pre-Commissioning Tests under this Sub-Clause 9A.3 (Retesting) a maximum of two (2) times following the initial Mechanical Completion and Pre-Commissioning Tests. If the Employer (in his absolute discretion) gives prior approval, the Contractor may carry out additional repeats of the Mechanical Completion and Pre-Commissioning Tests under this Sub-Clause 9A (*Retesting*).

9A.4 Failure to Pass Mechanical Completion and Pre-Commissioning Tests

- 9A.4.1 If the Works fail to pass the Mechanical Completion and Pre-Commissioning Tests repeated under Sub-Clause 9A.3 (*Retesting*), the Employer shall be entitled to:
- 9A.4.1.1 order further repetition of the Mechanical Completion and Pre-Commissioning Tests under Sub-Clause 9A.3 (*Retesting*); or
 - 9A.4.1.2 if the failure deprives the Employer of substantially the whole benefit of the Works, reject the Works, in which event the Employer shall have the same remedies as are provided in Sub-Clause 11.4.3 (*Failure to Remedy Defects*).

9A.5 Completion of the Mechanical Completion and Pre-Commissioning Activities

- 9A.5.1 Except as stated in Sub-Clause 9.4A (*Failure to Pass Mechanical Completion and Pre-Commissioning Tests*), the Mechanical Completion and Pre-Commissioning Activities shall be completed when:
- 9A.5.1.1 the Mechanical Completion and Pre-Commissioning Activities have been completed in accordance with the Contract, except as allowed in Sub-Clause 9A.5.3.1 below; and
 - 9A.5.1.2 the Works have passed all Mechanical Completion and Pre-Commissioning Tests identified in or developed pursuant to the Technical Specification; and
 - 9A.5.1.3 all major punch list items have been completed by the Contractor to the reasonable satisfaction of the Employer in accordance with the requirements of the Technical Specification; and
 - 9A.5.1.4 a Greek Operational Permit has been granted in respect of the Greek Section; and
 - 9A.5.1.7 all Contractor's Documents which the Employer requires to be submitted for review prior to the completion of the Mechanical Completion and Pre-Commissioning Activities have been so submitted and the review periods for such Contractor's Documents have expired.
- 9A.5.2 The Contractor shall apply by notice to the Employer for a Mechanical Completion and Pre-Commissioning Completion Certificate not later than fourteen (14) days before the date on which, in the Contractor's reasonable opinion, the conditions of Sub-Clause 9A.5.1 shall be satisfied, and the Contractor shall state such date in his notice to the Employer.
- 9A.5.3 The Employer shall, upon receiving the Contractor's application pursuant to Sub-Clause 9A.5.2 or his updated notice pursuant to Sub-Clause 9A.5.3.2, notify the Contractor that he has received the same (such

notification not to be unreasonably withheld or delayed) and shall as soon as practicable and in any event within fourteen (14) days after the date on which the Contractor stated in his application pursuant to Sub-Clause 9A.5.2 or in his updated notice pursuant to Sub-Clause 9A.5.3.2 that the conditions of Sub-Clause 9A.5.1 shall be satisfied:

9A.5.3.1 issue the Mechanical Completion and Pre-Commissioning Completion Certificate to the Contractor, stating the date on which the Mechanical Completion and Pre-Commissioning Activities were completed in accordance with the Contract, except for any minor outstanding work and defects (minor punch list items) which will not substantially affect the commencement carrying out or completion of the Tests on Completion (either until or whilst this work is completed and these defects are remedied); or

9A.5.3.2 reject the application, giving reasons and specifying the work required to be done, and/or conditions to be satisfied, by the Contractor to enable the Mechanical Completion and Pre-Commissioning Completion Certificate to be issued. The Contractor shall then at any time after the issue of such notice of rejection issue an updated notice containing the revised date on which, in the Contractor's reasonable opinion, the conditions of Sub-Clause 9A.5.1 have been or shall be satisfied and shall complete this work, and/or satisfy such conditions. The Employer shall respond to the updated notice in accordance with Sub-Clause 9A.5.3.

9A.5.4 If the Employer fails either to issue the Mechanical Completion and Pre-Commissioning Completion Certificate or to reject the Contractor's application within the relevant period referred to in Sub-Clause 9A.5.3, and if the conditions of Sub-Clause 9A.5.1 are satisfied in respect of the Works:

9A.5.4.1 the Mechanical Completion and Pre-Commissioning Completion Certificate shall be deemed to have been issued on the last day of such relevant period; and

9A.5.4.2 the date on which the Works were completed in accordance with Sub-Clause 9A.5.1, except for any minor outstanding work and defects as referred to in Sub-Clause 9A.5.3.1, shall be the earlier of (a) the last day of such relevant period or (b) such earlier date on or following the date on which the Contractor stated in his application pursuant to Sub-Clause 9A.5.2 or in his updated notice pursuant to Sub-Clause 9A.5.3.2 that the conditions of Sub-Clause 9A.5.1 can be shown to be satisfied.

9A.6 Interference with Mechanical Completion and Pre-Commissioning Tests

9A.6.1 If the Contractor is prevented, for more than fourteen (14) days, from carrying out the Mechanical Completion and Pre-Commissioning Tests by a cause for which the Employer is responsible, the Contractor shall carry out the Mechanical Completion and Pre-Commissioning Tests as

soon as practicable.

- 9A.6.2 If the Contractor suffers delay and/or incurs Cost as a result of being prevented, for more than fourteen (14) days, from carrying out the Mechanical Completion and Pre-Commissioning Tests by a cause for which the Employer is responsible, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 (*Contractor's Claims*) to:
- 9A.6.2.1 an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*); and
- 9A.6.2.2 payment of any such Cost, which shall be added to the Contract Price.
- 9A.6.3 After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 (*Determination*) to agree or determine these matters.

9 TESTS ON COMPLETION

9.1 Contractor's Obligations

- 9.1.1 The Contractor shall not carry out the Tests on Completion until after a Mechanical Completion and Pre-Commissioning Completion Certificate has been issued by the Employer to the Contractor pursuant to Sub-Clause 9A.5.3 or a Mechanical Completion and Pre-Commissioning Completion Certificate is deemed to have been issued by the Employer to the Contractor pursuant to Sub-Clause 9A.5.4.
- 9.1.2 The Contractor shall carry out the Tests on Completion in accordance with this Clause 9 (*Tests on Completion*) and Sub-Clause 7.4 (*Testing*), after providing the Contractor's Documents in accordance with Sub-Clause 5.6 (*As-Built Documents*) and Sub-Clause 5.7 (*Operation and Maintenance Manuals*).
- 9.1.3 The Contractor shall, within fourteen (14) days before the planned commencement of the Tests on Completion submit to the Employer, for the Employer's approval, a proposed programme for the carrying out of all Tests on Completion in respect of the Works ("**Tests on Completion Programme**"). The Tests on Completion Programme shall set out, as a minimum, all those tests on completion specified in the Technical Specification and such other tests as are proposed by the Contractor.
- 9.1.4 The Employer shall be entitled to require (acting reasonably) the Contractor to make amendments to or revisions of the Tests on Completion Programme, in which case the Contractor shall, within seven (7) days of notice of such requirement, reissue the programme for the Employer's approval and this Sub-Clause 9.1 (*Contractor's Obligations*) shall be repeated until such programme has been approved by the Employer.

- 9.1.5 The Contractor shall carry out the Tests on Completion in accordance with the Tests on Completion Programme and the Employer and the Employer's Personnel shall be entitled to rely upon the Tests on Completion Programme when planning their activities. No approval or failure to approve or comment on, nor any requirement to make amendments to or revisions of, any Tests on Completion Programme pursuant to this Clause 9 (*Tests on Completion*) shall entitle the Contractor to any extension of time or otherwise relieve the Contractor from any of its obligations under the Contract.
- 9.1.6 The Tests on Completion shall be carried out in accordance with all applicable Laws.
- 9.1.7 In considering the results of the Tests on Completion, appropriate allowances shall be made for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works.
- 9.1.8 The Tests on Completion shall comprise the tests, inspections and activities required to demonstrate that the Works have been completed in accordance with the requirements of this Contract, satisfying in all respects the requirements of the Technical Specification and the requirements which are set out in Schedule 2 (*Performance Levels*), including:
- 9.1.8.1 in respect of the Bulgarian Section, the seventy-two (72) hour tests required pursuant to Article 7 Paragraph 3 Item 17 of Ordinance No. 3 and the Ordinance on the Structure and the Safe Exploitation of Transportation and Distribution Gaspipelines and of Natural Gas Facilities, Installations and Devices (promulgated in SG, Issue 67, Dated 2.08.2004); and
- 9.1.8.2 all commissioning tests, which shall include the specified operational tests to demonstrate that the Works can be operated safely and as specified, under all available operating conditions.
- 9.1.9 Once the seventy-two (72) hour tests described in Sub-Clause 9.1.8.1 have been successfully completed, trial operation shall take place, which shall demonstrate that the Works perform reliably and in accordance with the Contract. During trial operation, when the Works are operating under stable conditions, the Contractor shall give notice to the Employer that the Works are ready for any other Tests on Completion, including performance tests to demonstrate whether the Works conform with criteria specified in the Technical Specification and with the Performance Levels.
- 9.1.10 Trial operation shall not constitute a taking-over under Clause 10 (*Employer's Taking Over*).
- 9.1.11 The Contractor shall give to the Employer and the Owner's Engineer Construction Supervision Entity and the Third Party Inspector (as appropriate) not less than twenty one (21) days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion in accordance with the Tests on Completion Programme. Unless otherwise agreed, Tests on Completion shall be carried out within fourteen (14) days after this date, on such day or days as the Employer,

Owner's Engineer, Construction Supervision Entity and Third Party Inspector(as appropriate) shall instruct.

- 9.1.12 All Tests on Completion in respect of the Works shall be carried out before a commission of three (3) members appointed by the Employer, presided over by the Owner's Engineer, and with the attendance of the Construction Supervision Entity and Third Party Inspector (as appropriate). The seventy-two (72) hour tests described in Sub-Clause 9.1.8.1 shall be carried out before a commission of three (3) members appointed by the Employer, presided over by the Owner's Engineer, and with the attendance of the Construction Supervision Entity and Third Party Inspector (as appropriate).
- 9.1.13 The Contractor shall be responsible for procuring the attendance at any required Tests on Completion of any authority's or authorities' representative(s) as required by any applicable Laws.
- 9.1.14 As soon as the Works have passed each of the Tests on Completion the Contractor shall submit a certified report of the results of those Tests on Completion to the Employer.
- 9.1.15 Provided:
- 9.1.15.1 the Bulgarian Section has been completed in accordance with the Contract (except for any minor outstanding work and defects (minor punch list items) which will not substantially affect the use of the Bulgarian Section for its intended purpose (either until or whilst this work is completed and these defects are remedied)) and all applicable Laws; and
- 9.1.15.2 all Tests on Completion in respect of the Bulgarian Section have been passed,
- the Parties shall each sign Protocol 15 in the form, with the contents and following the procedure set out in Ordinance No. 3.
- 9.1.16 The Contractor shall not be entitled to apply for commissioning of the Bulgarian Section before the Bulgarian state authorities if Protocol 15 has not been signed by the Employer or if it has been signed in the absence of the Employer.

9.2 Delayed Tests

- 9.2.1 If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 7.4.5 (*Testing*) and/or Sub-Clause 10.3 (*Interference with Tests on Completion*) shall be applicable.
- 9.2.2 If the Tests on Completion are being unduly delayed by the Contractor, the Employer may by notice require the Contractor to carry out the Tests on Completion within twenty one (21) days after receiving the notice. The Contractor shall carry out the Tests on Completion on such day or days within that period as the Contractor may fix and of which he shall give not less than fourteen (14) days' notice to the Employer.

9.2.3 If the Contractor fails to carry out the Tests on Completion within the period of twenty one (21) days, the Employer's Personnel may proceed with the Tests on Completion at the risk and cost of the Contractor. These Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests on Completion shall be accepted as accurate.

9.3 Retesting

9.3.1 If the Works fail to pass the Tests on Completion, Sub-Clause 7.5 (*Rejection*) shall apply, and the Employer or the Contractor may require the failed Tests on Completion, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

9.3.2 The Contractor shall have the right to repeat the Tests on Completion under this Sub-Clause 9.3 (*Retesting*) a maximum of two (2) times following the initial Tests on Completion. If the Employer (in his absolute discretion) gives prior approval, the Contractor may carry out additional repeats of the Mechanical Completion and Pre-Commissioning Tests under this Sub-Clause 9.3 (*Retesting*).

9.4 Failure to Pass Tests on Completion

9.4.1 If the Works fail to pass the Tests on Completion repeated under Sub-Clause 9.3 (*Retesting*), the Employer shall be entitled to:

9.4.1.1 order further repetition of Tests on Completion under Sub-Clause 9.3 (*Retesting*); or

9.4.1.2 if the failure deprives the Employer of substantially the whole benefit of the Works, reject the Works, in which event the Employer shall have the same remedies as are provided in Sub-Clause 11.4 (*Failure to Remedy Defects*).

10 EMPLOYER'S TAKING OVER

10.1 Taking Over of the Works

10.1.1 Except as stated in Sub-Clause 9.4 (*Failure to Pass Tests on Completion*), the Works shall be taken over by the Employer when:

10.1.1.1 the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 (*Time for Completion*) and except as allowed in Sub-Clause 10.1.3.1 below; and

10.1.1.2 the Works have passed all the Tests on Completion; and

10.1.1.3 all major punch list items have been completed by the Contractor to the reasonable satisfaction of the Employer; and

10.1.1.4 Protocol 15 has been signed by each of the Contractor and the Employer in respect of the Bulgarian Section; and

- 10.1.1.5 all relevant as-built documents have been provided in accordance with Sub-Clause 5.6.3 and the Employer has confirmed this in writing to the Contractor; and
 - 10.1.1.6 all relevant operation and maintenance manuals and any other manuals identified in the Technical Specification have been provided in accordance with Sub-Clause 5.7.2, and the Employer has confirmed this in writing to the Contractor; and
 - 10.1.1.7 all other Contractor's Documents which the Employer requires to be submitted for review prior to the completion of the Works have been so submitted and the review periods for such Contractor's Documents have expired; and
 - 10.1.1.8 the Contractor has provided all training required for the Works which is to be carried out before taking over pursuant to Sub-Clause 5.5.1 (*Training*) and all other tasks expressed in the Technical Specification as required to be completed before taking over, have been completed.
- 10.1.2 The Contractor shall apply by notice to the Employer for a Taking-Over Certificate not later than fourteen (14) days before the date on which, in the Contractor's reasonable opinion, the conditions of Sub-Clause 10.1.1 shall be satisfied, and the Contractor shall state such date in his notice to the Employer.
- 10.1.3 The Employer shall, upon receiving the Contractor's application pursuant to Sub-Clause 10.1.2 or his updated notice pursuant to Sub-Clause 10.1.3.2, notify the Contractor that he has received the same (such notification not to be unreasonably withheld or delayed) and shall as soon as practicable and in any event within fourteen (14) days after the date on which the Contractor stated in his application pursuant to Sub-Clause 10.1.2 or in his updated notice pursuant to Sub-Clause 10.1.3.2 that the conditions of Sub-Clause 10.1.1 shall be satisfied:
- 10.1.3.1 issue the Taking-Over Certificate to the Contractor, stating the date on which the Works were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
 - 10.1.3.2 reject the application, giving reasons and specifying the work required to be done, and/or conditions to be satisfied, by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then at any time after the issue of such notice of rejection issue an updated notice containing the revised date on which, in the Contractor's reasonable opinion, the conditions of Sub-Clause 10.1.1 have been or shall be satisfied and shall complete this work, and/or satisfy such conditions. The Employer shall respond to the updated notice in accordance with this Sub-Clause 10.1.3.
- 10.1.4 If the Employer fails either to issue the Taking-Over Certificate or to

reject the Contractor's application within the relevant period referred to in Sub-Clause 10.1.3, and if the conditions of Sub-Clause 10.1.1 are satisfied in respect of the Works:

10.1.4.1 the Taking-Over Certificate shall be deemed to have been issued on the last day of such relevant period; and

10.1.4.2 the date on which the Works were completed in accordance with Sub-Clause 10.1.1, except for any minor outstanding work and defects as referred to in Sub-Clause 10.1.3.1, shall be the earlier of (a) the last day of such relevant period or (b) such earlier date on or following the date on which the Contractor stated in his application pursuant to Sub-Clause 10.1.2 or in his updated notice pursuant to Sub-Clause 10.1.3.2 that the conditions of Sub-Clause 10.1.1 can be shown to be satisfied.

10.2 Taking Over of Parts of the Works

Parts of the Works shall not be taken over or used by the Employer, unless agreed by both Parties.

10.3 Interference with Tests on Completion

10.3.1 If the Contractor is prevented, for more than fourteen (14) days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Contractor shall carry out the Tests on Completion as soon as practicable.

10.3.2 If the Contractor suffers delay and/or incurs Cost as being prevented, for more than fourteen (14) days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 (*Contractor's Claims*) to:

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

10.3.2.2 payment of any such Cost, which shall be added to the Contract Price.

10.3.3 After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 (*Determination*) to agree or determine these matters.

11 DEFECTS LIABILITY

11.1 Completion of Outstanding Work and Remedying Defects

11.1.1 Subject to Sub-Clause 4B.3 (*Line Pipe Defects*), the Contractor warrants and guarantees that the Works, and the Contractor's Documents and all Plant, Materials and other items supplied under this Contract will be free from defects.

11.1.2 Subject to Sub-Clause 11.4 (*Failure to Remedy Defects*), 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 Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

11.1.2.1 complete any minor outstanding work and carry out any work required to rectify any defects identified pursuant to Sub-Clauses 9A.5.3.1, 9.1.15.1 and 10.1.3.1 which are outstanding on the date stated in a Taking-Over Certificate, as soon as reasonably practicable after such date but in any case not later than the date of expiry of the Defects Notification Period; and

11.1.2.2 execute during the Defects Notification Period all work required to remedy defects or damage (including any Plant, Materials, design or workmanship which is found to be defective or otherwise not in accordance with the Contract), as may be notified to the Contractor by the Employer on or before the expiry date of the Defects Notification Period.

11.1.3 If a defect (including any Line Pipe Defect) appears or damage occurs during the Defects Notification Period, the Employer shall notify the Contractor accordingly.

11.2 Cost of Outstanding Works and Remedying Defects

11.2.1 All work referred to in Sub-Clause 11.1.2.1 which is outstanding on the date stated in a Taking-Over Certificate shall be executed at the risk and cost of the Contractor and all work referred to in Sub-Clause 11.1.2.2 shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

11.2.1.1 the design of the Works;

11.2.1.2 the Works, including Plant, Materials or workmanship, not being in accordance with the Contract including the Works not meeting the Performance Levels;

11.2.1.3 improper operation or maintenance which was attributable to matters for which the Contractor is responsible (under Sub-Clauses 5.5 (*Training*) to 5.7 (*Operation and Maintenance Manuals*) or otherwise),

11.2.1.4 failure by the Contractor to comply with any other of his obligations under the Contract; or

11.2.1.5 any malicious acts, negligence or default of the Contractor, the Contractor's Personnel, any Subcontractor or any Supplier.

11.2.2 If and to the extent that such work referred to in Sub-Clause 11.1.2.2 is attributable to any cause other than as identified in Sub-Clauses 11.2.1.1 to 11.2.1.5 (inclusive), the Employer shall give notice to the Contractor accordingly, and Sub-Clause 13.3 (*Variation Procedure*) shall apply.

11.3 Extension of Defects Notification Period

- 11.3.1 The Employer shall be entitled subject to Sub-Clause 2.5 (*Employer's Claims*) to an extension of the Defects Notification Period for the Works if and to the extent that the Works 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 for which the Contractor is responsible under the Contract. However, a Defects Notification Period shall not be extended by more than two (2) years.
- 11.3.2 If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 (*Suspension of Work*) or Sub-Clause 16.1 (*Contractor's Entitlement to Suspend Work*), the Contractor's obligations under Sub-Clause 11.3.1 shall not apply to any defects or damage occurring more than two (2) years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

11.4 Failure to Remedy Defects

- 11.4.1 Subject to Sub-Clause 11.2.2 and Sub-Clause 11.7 (*Right of Access*), if the Contractor fails to remedy any defect or damage (other than any defect or damage which under Sub-Clause 11.12 (*Failure to Remedy Urgent Defects*) requires to be attended to urgently) as soon as reasonably practicable following notification by the Employer of the occurrence of such defect or damage, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Employer shall give to the Contractor reasonable notice of this date.
- 11.4.2 If the Contractor fails to remedy the defect or damage by the date notified under Sub-Clause 11.4.1 and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 (*Cost of Outstanding Works and Remedying Defects*), the Employer may (at his option) do one or more of the following:
- 11.4.2.1 fix a further amended date for the Contractor to remedy the defect or damage and if the Contractor fails to remedy any defect or damage by a date notified by the Employer pursuant to this Sub-Clause 11.4.2.1, the Employer may (at his option, in his sole discretion) proceed in accordance with Sub-Clauses 11.4.2.2, 11.4.2.3 or 11.4.2.4; or
 - 11.4.2.2 without prejudice to any other rights the Employer may have, under the Contract or otherwise, carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, the Employer, or others appointed by the Employer, may remedy the defect or damage using any Goods at the Contractor's cost, and the Contractor shall subject to Sub-Clause 2.5 (*Employer's Claims*) pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage; or
 - 11.4.2.3 agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 (*Determination*) to reflect the diminution in value of the completed Works caused by the

defect or damage; or

11.4.2.4 if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use.

11.4.3 Without prejudice to any other rights under the Contract or otherwise, in the event that the Employer elects to terminate the Contract in whole or in part pursuant to Sub-Clause 11.4.2.4, the Employer shall be entitled to recover from the Contractor all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor, plus any other costs, losses and damages reasonably and properly incurred as a consequence of such termination.

11.5 Removal of Defective Work

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

11.6 Further Tests

11.6.1 The Contractor shall notify the Employer if the work of remedying any defect or damage may affect the performance of the Works, in which case the Employer may require the repetition of any one or more of the tests described in the Contract, including Tests on Completion and/or Tests after Completion. The Employer shall notify the Contractor of such a requirement for any test(s) to be repeated, such notice to be given to the Contractor within twenty eight (28) days after the defect or damage is remedied (or within twenty eight (28) days after receipt of the Contractor's notice pursuant to this Sub-Clause 11.6.1, if later).

11.6.2 Any tests which are required to be repeated pursuant to Sub-Clause 11.6.1 shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 (*Cost of Outstanding Works and Remedying Defects*), for the cost of the remedial work.

11.7 Right of Access

11.7.1 Until the Performance Certificate has been issued, subject to Sub-Clause 11.7.2 the Contractor shall (with the consent of the Employer) have such access to the Works and to records of the operation and performance of the Works as may be reasonably necessary to allow him to comply with his obligations under Sub-Clause 7.5 (*Rejection*), Sub-Clause 7.6 (*Remedial Work*), this Clause 11 (*Defects Liability*) and Clause 12 (*Tests after Completion*).

11.7.2 If the Contractor requires access to the Works which are located on land which is not in the ownership or possession of the Employer, the Contractor, at his own expense, is required to take reasonable steps to

arrange such access with the affected land owner and/or occupier (where relevant). Such reasonable steps shall include the Contractor making a commercial payment to the land owner and/or occupier (where required). If the Contractor demonstrates that the land owner and/or occupier (where relevant) has failed to make reasonable access available in order to rectify a defect, the Contractor shall notify the Employer and the Employer (acting reasonably) shall determine whether the Contractor shall be relieved of the obligation to rectify such defect.

11.8 Contractor to Search

The Contractor shall, if required by the Employer, prior to the expiry of the Defects Notification Period, search for the cause of any defect, under the direction of the Employer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 (*Cost of Outstanding Works and Remedying Defects*), the Cost of the search shall be agreed or determined in accordance with Sub-Clause 3.5 (*Determination*) and shall be added to the Contract Price.

11.9 Performance Certificate

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

11.9.2 The Employer shall issue the Performance Certificate within twenty eight (28) days after the expiry of the Defects Notification Period, or as soon thereafter as the Contractor has supplied all the Contractor's Documents in accordance with Sub-Clause 5.6.4, and completed and tested all the Works, including remedying any defects.

11.9.3 If the Employer fails to issue the Performance Certificate within the period specified in Sub-Clause 11.9.2 and it is determined or agreed that the Contractor has supplied all the Contractor's Documents (including the documents described in Sub-Clause 5.6 (*As-Built Documents*)) and completed and tested all Works, including remedying any defects for which he is responsible under the Contract, the Performance Certificate shall be deemed to have been issued on the later of the last day of the twenty eight (28) day period identified in Sub-Clause 11.9.2 and the date when the Contractor has supplied all the Contractor's Documents (including the documents described in Sub-Clause 5.6 (*As-Built Documents*)) and completed and tested all the Works, including remedying such defects.

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

11.10 Unfulfilled Obligations

11.10.1 After the Performance Certificate has been issued and subject to Sub-Clause 17.6.5, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

- 11.10.2 The issue of the Performance Certificate shall not be taken as relieving the Contractor from any liability to the Employer arising out of or in any way connected with the performance of the Contractor's obligations under the Contract.

11.11 Clearance of Site

- 11.11.1 Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site and leave the Site in a clean and safe manner.
- 11.11.2 If all these items have not been removed within twenty eight (28) days after the Employer issues the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.
- 11.11.3 Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

11.12 Failure to Remedy Urgent Defects

Subject to Sub-Clause 11.2.2 and Sub-Clause 11.7 (*Right of Access*), if the Contractor is unable or unwilling to remedy at once any defect or damage which in the reasonable opinion of the Employer requires to be attended to urgently for reasons of safety whether because of an accident, unforeseeable event or otherwise, then the Employer may carry out the work himself or by others in a reasonable manner. If this remedial work was to be executed by the Contractor under Sub-Clause 11.2 (*Cost of Outstanding Works and Remedying Defects*) then the Contractor shall subject to Sub-Clause 2.5 (*Employer's Claims*) pay to the Employer all costs reasonably incurred by the Employer in remedying the defect or damage. The Employer may use any Goods to carry out any remedial work.

11.13 Contractor to Supply Spares during the Defects Notification Period

The Contractor shall be responsible to supply the spares required during the Defects Notification Period. The Contractor may utilize the spares of the Employer, provided that the Contractor replaces such spares at the latest within one (1) month after utilization thereof or, if earlier, the end of the Defects Notification Period.

11.14 Latent Defects

The Contractor shall be liable for any latent defects in the Works from the date of issue of the Bulgarian Operational Permit until the date which is ten years after the date of the Handover for Use Certificate.

12 TESTS AFTER COMPLETION

12.1 Procedure for Tests after Completion

- 12.1.1 The Contractor shall, in relation to any Tests after Completion required in order to achieve the grant of a Bulgarian Operational Permit or otherwise

instructed by the Employer under Sub-Clause 12.1.4:

12.1.1.1 provide all electricity, fuel and materials (other than commissioning gas which shall be provided by the Employer) and any other plant, equipment and suitably qualified and experienced staff, as are necessary to carry out the Tests after Completion efficiently; and

12.1.1.2 carry out such Tests after Completion in the presence of such Employer's Personnel and/or Contractor's Personnel as either Party may reasonably request.

12.1.2 The Employer shall give to the Contractor twenty one (21) days' notice of the date after which any Tests after Completion shall be carried out. Unless otherwise agreed, these Tests after Completion shall be carried out within fourteen (14) days after this date, on the day or days determined by the Employer.

12.1.3 The results of any Tests after Completion shall be compiled and evaluated by the Contractor, who shall prepare and submit to the Employer a detailed report. Appropriate account shall be taken of the effect of the Employer's prior use of the Works.

12.1.4 The Employer may instruct the Contractor to carry out additional Tests after Completion not specified by the Contract including any performance tests to demonstrate that the Works continue to conform with criteria specified in the Technical Specification and with the Performance Levels.

12.1.5 The Contractor shall be responsible for procuring the attendance at any required Tests after Completion of any authority's or authorities' representative(s) as required by any applicable Laws.

12.2 Additional or Delayed Tests

12.2.1 Except in the circumstances described by Sub-Clause 12.5 (*Costs of Additional Tests after Completion*), if the Contractor incurs Cost as a result of any additional Tests after Completion instructed by the Employer pursuant to Sub-Clause 12.1.4 or, subject to Sub-Clause 12.4 (Failure to Pass Tests after Completion) as a result of any unreasonable delay by the Employer to the Tests after Completion, the Contractor shall (i) give notice to the Employer and (ii) be entitled subject to Sub-Clause 20.1 (*Contractor's Claims*) to payment of any such Cost, which shall be added to the Contract Price.

12.3 Retesting

12.3.1 If, as a result of any Tests after Completion, any aspect of the Works, Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Contractor, at its cost, shall then promptly make good the defect and ensure that the rejected item complies with the Contract. To the extent that the same causes the Employer to incur costs, losses and/or expenses, the Contractor shall subject to Sub-Clause 2.5 (*Employer's Claims*) pay these costs, losses and/or expenses to the Employer or such costs, losses and expenses may

be deducted by the Employer from any monies due or which may become due to the Contractor under the Contract.

- 12.3.2 If the Works fail to pass the Tests after Completion, the Employer or the Contractor may require the failed Tests after Completion, and Tests after Completion on any related work, to be repeated under the same terms and conditions. The costs of carrying out such repeated tests (including any Tests after Completion on any related work) shall be met by the Contractor and to the extent that the same causes the Employer to incur costs, losses and/or expenses, the Contractor shall subject to Sub-Clause 2.5 (*Employer's Claims*) pay these costs, losses and/or expenses to the Employer or such costs, losses and/or expenses may be deducted by the Employer from any monies due or which may become due to the Contractor under the Contract.

12.4 Failure to Pass Tests after Completion

- 12.4.1 If the Works fail to pass the Tests after Completion repeated under Sub-Clause 12.3 (*Retesting*), the Employer shall be entitled to:
- 12.4.1.1 order further repetition of Tests after Completion under Sub-Clause 12.3 (*Retesting*); or
 - 12.4.1.2 employ and pay other persons to rectify the Works which have failed to pass the Tests after Completion, in which case, the Contractor shall subject to Sub-Clause 2.5 (*Employer's Claims*) pay to the Employer all costs arising from this failure or such costs may be deducted by the Employer from any monies due or which may become due to the Contractor under the Contract; or
 - 12.4.1.3 if the failure deprives the Employer of substantially the whole benefit of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use.
- 12.4.2 Without prejudice to any other rights under the Contract or otherwise, in the event that the Employer elects to terminate the Contract in whole or in part pursuant to Sub-Clause 12.4.1.3, the Employer shall be entitled to recover from the Contractor all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor, plus any other costs, losses and damages reasonably and properly incurred as a consequence of such termination.
- 12.4.3 If the Works, fail to pass a Test after Completion and the Contractor proposes to make adjustments or modifications to the Works, the Contractor may be instructed by (or on behalf of) the Employer that a right of access to the Works cannot be given until a time that is convenient to the Employer. The Contractor shall then remain liable to carry out the adjustments or modifications and to satisfy this Test after Completion, as soon as may be practicable following receipt of notice by (or on behalf of) the Employer of the time that is convenient to the Employer.

12.5 Costs of Additional Tests after Completion

12.5.1 If and to the extent that any additional Tests after Completion instructed by the Employer pursuant to Sub-Clause 12.1.4 are attributable to any of the matters listed in Sub-Clauses 11.2.1.1 to 11.2.1.5 (inclusive), the costs of such additional Tests after Completion shall be met by the Contractor and to the extent that the same causes the Employer to incur costs, losses and/or expenses, the Contractor shall subject to Sub-Clause 2.5 (*Employer's Claims*) pay these costs, losses and/or expenses to the Employer or such costs, losses and/or expenses may be deducted by the Employer from any monies due or which may become due to the Contractor under the Contract.

12.6 Handover for Use Certificate

12.6.1 The Employer shall issue a Handover for Use Certificate in respect of the Works when:

12.6.1.1 an Operational Permit has been granted in respect of the Bulgarian Section; and

12.6.1.2 the Contractor has complied with any other requirements which have been notified by the Employer to the Contractor pursuant to this Contract.

13 VARIATIONS AND ADJUSTMENTS

13.1 Right to Vary

13.1.1 Variations may be initiated by the Employer at any time, either by an instruction or by a request for the Contractor to submit a proposal, provided always that any Variation shall not contravene Art. 116 of the PPA. If a proposal for any Variation affects the technical design of the Works in respect of the Bulgarian Section and constitutes an essential change in the context of the SDA, then such Variation shall comply with the legal and administrative procedures prescribed in applicable Laws.

13.1.2 The Contractor shall execute and be bound by each instruction to execute a Variation (including any instruction which is not expressly identified as being such but which the Contractor considers would constitute a Variation if complied with), unless the Contractor within three (3) days after receipt of the instruction gives notice to the Employer stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) the Variation will reduce the safety or suitability of the Works, or (iii) the Variation shall, if implemented, prevent or prejudice the Contractor from fulfilling any of his obligations under the Contract (unless the terms of the Variation deal with such prevention or prejudice). Upon receiving this notice, the Employer shall cancel, confirm or vary the instruction.

13.1.3 No Variation instructed by the Employer shall in any way vitiate or invalidate the Contract.

13.1.4 Any Variation pursuant to this Clause 13 (*Variations and Adjustments*),

shall not substantially change the extent or nature of the Works in accordance with Art. 116 para 1 item 5 of the PPA.

13.2 Value Engineering Proposals

- 13.2.1 The Contractor may, at any time, submit to the Employer a Value Engineering Proposal.
- 13.2.2 Any Value Engineering Proposal submitted by the Contractor pursuant to Sub-Clause 13.2.1 shall be accompanied by a value engineering report which shall include:
 - 13.2.2.1 a whole life cost analysis in respect of each element of (i) the Works affected by the Value Engineering Proposal, and/or (ii) any additional works proposed to be carried out in order to effect the Value Engineering Proposal; and
 - 13.2.2.2 an assessment of the environmental impact (if any) of the Value Engineering Proposal to confirm that the effect of the proposal would be no worse than the residual impacts described in the EIA Permit; and
 - 13.2.2.3 option appraisals and reasoned arguments to demonstrate why any particular systems, plant, equipment, materials and the like should be selected in preference to other systems, plant, equipment, materials and the like for incorporation into the Works, taking into account the operational life of the Works; and
 - 13.2.2.4 the Contractor's analysis of the impact on costs of making and delivering the Value Engineering Proposal, including the consideration of risk and the lump sum reduction to the Contract Price in respect of such Value Engineering Proposal; and
 - 13.2.2.5 the Contractor's proposal for any necessary modifications to the time schedule according to Sub-Clause 8.3 (*Time Schedule*) and to the Time for Completion; and
 - 13.2.2.6 the Contractor's analysis of any impact on, and any required amendments to, the Contractor's Documents; and
 - 13.2.2.7 the Contractor's proposal for how the Value Engineering Proposal will be implemented including any additional requirements for Contractor's Equipment and any additional requirement for Subcontractors and/or Suppliers.
- 13.2.3 Any Value Engineering Proposal shall be prepared at the cost of the Contractor.
- 13.2.4 The Employer shall be free to accept or reject any Value Engineering Proposal as the Employer thinks fit.
- 13.2.5 If the Employer wishes to proceed with a Value Engineering Proposal submitted by the Contractor pursuant to Sub-Clause 13.2.1, the Employer

shall instruct a Variation pursuant to Sub-Clause 13.3.5.1, provided that:

13.2.5.1 any anticipated reduction to the Contract Price identified pursuant to Sub-Clause 13.2.2.4 as arising as a result of such Value Engineering Proposal shall be shared between the Employer and the Contractor on a 50:50 basis and the Contract Price shall be reduced by fifty per cent (50%) of the anticipated reduction immediately following the instruction of a Variation by the Employer pursuant to Sub-Clause 13.3.5.1; and

13.2.5.2 there shall be no subsequent increase to the Contract Price (including in circumstances where the Contract Price has been reduced pursuant to Sub-Clause 13.2.5.1) as a result of such Value Engineering Proposal.

13.3 Variation Procedure

13.3.1 The Employer may, prior to instructing a Variation, request a proposal. Such request shall set out the proposed Variation in sufficient detail to enable the Contractor to provide a proposal in accordance with Sub-Clause 13.3.2 and shall specify whether any competitive quotes are required.

13.3.2 Subject to Sub-Clause 13.1.2, the Contractor shall respond in writing within fourteen (14) days after receipt of any such request from the Employer (or such shorter or extended period as may be agreed by the Parties, both acting reasonably) pursuant to Sub-Clause 13.3.1, by submitting a proposal comprising:

13.3.2.1 a description of the proposed design and/or work to be performed and a time schedule for its execution; and

13.3.2.2 the Contractor's proposal for any necessary modifications to the time schedule according to Sub-Clause 8.3 (*Time Schedule*) and to the Time for Completion; and

13.3.2.3 the Contractor's proposal for a lump sum adjustment to the Contract Price, which shall show how such lump sum adjustment has been calculated by indicating separately the amounts attributable to the following components of the anticipated cost:

- (a) the cost or reduction in cost of executing the Variation, including all costs associated with design, securing Permissions, execution, testing, commissioning and completion; and
- (b) the cost or reduction in cost (if any) of any disruption to or prolongation of varied and unvaried work consequential to complying with the proposal; and
- (c) the cost or reduction in cost allowed for contingencies and risk; and

(d) the cost or reduction in cost allowed for all site overheads; and

(e) an allowance for Head Office Overheads and Profit; and

13.3.2.4 the Contractor's proposal for any necessary adjustments to Schedule 5 (*Payment*); and

13.3.2.5 the Contractor shall include with his proposal, copies of all relevant subcontract or supply quotes, and all such other information including quantities, rates and prices as is necessary to enable the Employer to properly evaluate such proposal.

13.3.3 In respect of each proposal submitted by the Contractor pursuant to Sub-Clause 13.3.2, the Contractor shall:

13.3.3.1 provide evidence to the Employer that the Contractor has used and shall continue to use all reasonable endeavours to minimise any increase in costs and maximise any reduction in costs; and

13.3.3.2 demonstrate that the relevant proposal shall be implemented in the most cost effective manner.

13.3.4 The Contractor shall not later than seven (7) days (or within such shorter or extended period as may be agreed by the Parties, both acting reasonably) after being requested by the Employer, provide such further information as may be required by the Employer to enable him to complete his evaluation of the proposal submitted by the Contractor pursuant to Sub-Clause 13.3.2.

13.3.5 No later than twenty one (21) days from the receipt of any such proposal submitted by the Contractor pursuant to Sub-Clause 13.3.2 or not later than fourteen (14) days after the receipt of such further information referred to in Sub-Clause 13.3.4 (whichever is the later) the Employer shall either:

13.3.5.1 notify the Contractor that he accepts the proposal and instruct the Variation, in which case the Employer shall modify the Time for Completion, and the Contract Price and Schedule 5 (*Payment*) shall be adjusted, in the terms proposed by the Contractor; or

13.3.5.2 in circumstances where the need for the Variation is urgent, notify the Contractor that the Employer does not accept the proposal but wishes to proceed to instruct the Variation, in which case such Variation (including its value) shall be ascertained in accordance with Sub-Clause 13.4 (*Valuation Rules*); or

13.3.5.3 notify the Contractor that he does not intend to proceed with the Variation.

13.3.6 In circumstances where the need for the Variation is urgent, the Employer

may instruct a Variation without a prior request for a proposal as referred to in Sub-Clause 13.3.1, and in such circumstances, the Contractor shall, subject to Sub-Clause 13.1.2, forthwith comply with such instruction and the value of the Variation shall be ascertained in accordance with Sub-Clause 13.4 (*Valuation Rules*).

- 13.3.7 The Contractor shall not execute a Variation in the absence of a valid instruction from the Employer. Each instruction to execute a Variation shall be given in writing but the provisions of Sub-Clause 3.4 (*Instructions*) in respect of oral instructions shall apply. The Contractor shall acknowledge receipt of any such instruction.

13.4 Valuation Rules

- 13.4.1 The valuation of any Variation instructed in accordance with this Clause 13 (*Variations and Adjustments*), but excluding any Variation instructed following acceptance by the Employer of the Contractor's proposal under Sub-Clause 13.3.5.1, shall be carried out as follows:

13.4.1.1 by reference to the Price Offer, where the Price Offer (or part thereof, including mechanisation costs, transport costs, or storage costs) can be applied appropriately in respect of the valuation of the Variation; and

13.4.1.2 to the extent that the Price Offer cannot be applied appropriately in respect of the valuation of the Variation, on the basis of the proper, reasonable and demonstrable varied costs actually incurred by the Contractor and the varied costs for the purpose of this Sub-Clause 13.4.1.2 shall include any varied site overheads and Head Office Overheads and Profit shall be added to these varied costs; and

13.4.1.3 unless otherwise agreed in writing by the Employer, the Contractor shall furnish to the Employer such receipts or other vouchers as may be necessary to prove the amounts paid and before ordering materials shall submit to the Employer quotations for the same for his approval; and

13.4.1.4 in respect of all work executed on the basis of proper, reasonable and demonstrable varied costs (as "varied costs" are described in Sub-Clause 13.4.1.2) the Contractor shall during the continuance of such work deliver each day to the Employer an exact listing in duplicate of the names, occupation and time of all workmen employed on such work and a statement also in duplicate showing the description and quantity of all materials and plant used thereon or therefor. One copy of each list and statement will, if correct or when agreed, be signed by the Employer and returned to the Contractor. At the end of each month the Contractor shall deliver to the Employer a priced statement of the labour, material and plant used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Employer shall consider that for any reason the sending of such list or statement by the Contractor

was impracticable he shall nevertheless be entitled to authorise payment for such work (on being satisfied as to the time employed and the plant and materials used on such work) at such value therefor as he shall consider fair and reasonable.

- 13.4.2 Upon valuing a Variation in accordance with this Sub-Clause 13.4 (*Valuation Rules*), the Employer shall take account of any omitted or substituted work, having due regard to any rates or prices included in the Price Offer, and the Employer shall proceed in accordance with Sub-Clause 3.5 (*Determination*) to agree or determine adjustments to the Contract Price and any necessary modifications to Schedule 5 (*Payment*) and an extension of time for any delay, if completion is or will be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*).

13.5 Wastage

- 13.5.1 The anticipated total approximate length of the Pipeline which is the subject of the Works is specified in the Technical Specification ("**Contractual Length**").

- 13.5.2 In the event that the actual total length of the Pipeline comprised within the Works (as determined by reference to the "as built" records to be prepared and kept up-to-date by the Contractor pursuant to Sub-Clause 5.6 (*As-Built Documents*) ("**Actual Pipeline Length**") is greater or less than the Contractual Length (such variance, whether positive or negative, being the "**Pipeline Variance**"), and the amount of the Pipeline Variance is equal to more than two and a half per cent (2.5%) of the Contractual Length, then the Contract Price shall be adjusted in accordance with Sub-Clause 13.5.3.

- 13.5.3 The adjustment to be made to the Contract Price for the purposes of Sub-Clause 13.5.2 shall be an adjustment (which may be positive or negative) to that part of the Total Lump Sum allocated to the Pipeline (being the amount allocated to "Project Item 3" in the breakdown of the Total Lump Sum in the table in Schedule 5 (*Payment*)) ("**Pipeline Lump Sum Amount**"). The amount of the adjustment shall be calculated by:

13.5.3.1 calculating the amount by which the Percentage Pipeline Variance (being the amount of the Pipeline Variance expressed as a percentage of the Contractual Length) exceeds 2.5%;

13.5.3.2 applying the result of the calculation under Sub-Clause 13.5.3.1 as:

13.5.3.3 a percentage increase in the Pipeline Lump Sum Amount, if the Pipeline Variance is a positive amount; or

13.5.3.4 a percentage decrease in the Pipeline Lump Sum Amount if the Pipeline Variance is a negative amount.

- 13.5.4 Any change in the route of the Pipeline from that envisaged by and described in the Technical Specification shall not constitute or be treated as a Variation, but any change of length of the Pipeline due to any such change in route shall be taken into consideration in accordance with Sub-

Clause 13.5.1 above.

- 13.5.5 Any change to the battery limits for the Pipeline, as described in section 3.1.3 of the Technical Specification, or any requirement by the Employer for a new or additional branch-line of the Pipeline, or an removal of any requirement for any section of the Pipeline, from that described in the Technical Specification, shall be a Variation and subject to Sub-Clauses 13.1 (*Right to Vary*) to 13.4 (*Valuation Rules*)(inclusive) above, and any change in length of the Pipeline arising as a result of such matters be treated as an amendment to the Contractual Length and accordingly shall not result in (or be taken into account in any calculation of) any Pipeline Variance pursuant to Sub-Clause 13.5.2.
- 13.5.6 For the avoidance of doubt, any change in the quantities of any particular Type of Line Pipe as required by the Contractor in accordance with Clause 4B (*Delivery of Line Pipe*) shall not be treated as a Variation or result in a Pipeline Variance to be taken into account for the purposes of Sub-Clause 13.5.2.
- 13.5.7 The Contractor shall be permitted a waste allowance factor of 0.75% on the total quantity of Line Pipe (regardless of Type) delivered to the Contractor pursuant to Clause 4B (*Delivery of Line Pipe*). In the event that the waste allowance factor is exceeded, such that the amount of wasted Line Pipe exceeds 0.75% of the total quantity of Line Pipe to be delivered to the Contractor pursuant to Clause 4B (*Delivery of Line Pipe*), any costs associated with the re-procurement of replacement Line Pipe shall be borne by the Contractor (and the Employer may deduct any such amount from any moneys due, or to become due, to the Contractor or may recover the same from the Contractor as a debt immediately due and payable).

13.6 Clause not used

13.7 Clause not used

13.8 Adjustments for Changes in Law

- 13.8.1 The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from any Qualifying Change in Law, which directly affects the Contractor in the performance of his obligations under the Contract, subject to and in accordance with this Sub-Clause 13.8 (*Adjustments for Changes in Law*).
- 13.8.2 If a Qualifying Change in Law occurs or is to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of his opinion of:
- 13.8.2.1 any necessary change to the Works; and
 - 13.8.2.2 whether any changes are required to the terms of the Contract to deal with the Qualifying Change in Law; and
 - 13.8.2.3 whether relief from compliance with any obligations under the Contract is required as a result of the Qualifying Change in

Law; and

13.8.2.4 any extension of time required for any delay which the Contractor suffers or will suffer as a result of the Qualifying Change in Law; and

13.8.2.5 any adjustment to be made to the Contract Price to take account of any increase or decrease in cost resulting from a Qualifying Change in Law,

in each case giving in full detail the procedure for implementing the Qualifying Change in Law (to the extent that it is necessary to implement the Qualifying Change in Law). Responsibility for any costs of such implementation (and any resulting variation to payments due under the Contract or other payment method at the Employer's discretion) shall be dealt with in accordance with Sub-Clauses 13.8.3 and 13.8.4.

13.8.3 As soon as reasonably practicable after receipt of any notice from either Party under Sub-Clause 13.8.2, the Parties shall discuss and agree the issues referred to in Sub-Clause 13.8.2 and any ways in which the Contractor can mitigate the effect of the Qualifying Change in Law and the Contractor shall:

13.8.3.1 provide evidence to the Employer that the Contractor has used and shall continue to use all reasonable endeavours (including where appropriate and practicable the use of competitive quotes) to minimise any increase in costs and maximise any reduction in costs; and

13.8.3.2 demonstrate how the effects of the Qualifying Change in Law shall be mitigated; and

13.8.3.3 demonstrate that the relevant changes shall be implemented in the most cost effective manner, including showing, where reasonably practicable, that when any expenditure is incurred, any Changes in Law that are foreseeable at the time of consideration of the Qualifying Change in Law concerned and which relate to that Qualifying Change in Law have been taken into account by the Contractor.

13.8.4 As soon as reasonably practicable after the issues referred to in Sub-Clause 13.8.3 have been agreed between the Parties, the Employer shall request proposals pursuant to Sub-Clause 13.3.1 and the provisions of Sub-Clause 13.3 (*Variation Procedure*) shall apply, except that:

13.8.4.1 the Contractor shall be obliged to implement the change in all circumstances (except to the extent that such change is not necessary to implement the Qualifying Change in Law); and

13.8.4.2 the Employer shall issue a notice pursuant to either Sub-Clauses 13.3.5.1 or 13.3.5.2 or the Employer shall issue an instruction pursuant to Sub-Clause 13.3.6; and

13.8.4.3 in respect of General Changes in Law, the Contractor shall not

be entitled to any cost. All General Changes in Law shall be recorded in the change control register which the Contractor shall maintain.

13.9 Clause not used

14 CONTRACT PRICE AND PAYMENT

14.1 The Contract Price

14.1.1 Payment of the Contract Price and any other payments which are expressly permitted pursuant to the Contract shall be made by the Employer to the Contractor on the basis set out in this Clause 14 (*Contract Price and Payment*).

14.1.2 The Contractor shall pay all Taxes, duties and fees which are required to be paid in connection with the Contract and/or the Works and/or under Laws.

14.2 Timing of Payments

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

14.2.1.1 the advance payment within twenty one (21) days after the Employer receives the documents required under Sub-Clause 14.3.1 provided that the Commencement Date has occurred;

14.2.1.2 the amount which is due in respect of each Statement which is submitted in accordance with Sub-Clause 14.4.1, in accordance with Sub-Clause 14.4 (*Bi-Monthly Payments*); and

14.2.1.3 the amount which is due in respect of the Statement submitted in accordance with Sub-Clause 14.5.1 following issue of the Taking-Over Certificate, in accordance with Sub-Clause 14.5 (*Payment following issue of the Taking-Over Certificate*); and

14.2.1.4 the amount which is due in respect of the Statement submitted in accordance with Sub-Clause 14.6.1 following issue of the Handover for Use Certificate, in accordance with Sub-Clause 14.6 (*Payment following issue of the Handover for Use Certificate*); and

14.2.1.5 the amount which is due in respect of any Statement which is submitted during the Defects Notification Period, in accordance with Sub-Clause 14.7 (*Payment during the Defects Notification Period*); and

14.2.1.6 the final amount due, in accordance with Sub-Clause 14.8 (*Application for Final Payment*), Sub-Clause 14.9 (*Discharge*) and Sub-Clause 14.10 (*Final Payment*).

14.2.2 Payment of the amount due shall be made into the bank account

nominated by the Contractor.

- 14.2.3 Subject to Sub-Clause 2.5.5, the Employer may, by any payment, make any correction or modification that should properly be made to any amount previously considered due. Payment shall not be deemed to indicate the Employer's acceptance, approval, consent or satisfaction.

14.3 Advance Payment and Advance Payment Guarantee

- 14.3.1 The Employer shall make an advance payment of [*amount equal to 10% of the Total Lump Sum Price to be inserted*] (the "**Advance Payment Amount**") within twenty one (21) days after receiving (i) a Statement pursuant to Sub-Clause 14.3.2 and (ii) the Advance Payment Guarantee as described in Sub-Clause 14.3.3.

- 14.3.2 The Contractor shall submit a statement electronically to the Employer (with a copy to the Owner's Engineer) within seven (7) days of achievement of the Commencement Date, in a form approved by the Employer in advance, showing the Advance Payment Amount which is being claimed by the Contractor in that statement.

- 14.3.3 The Contractor shall, at its discretion, provide to the Employer an advance payment guarantee of any one of the following types:

14.3.3.1 a cash deposit;

14.3.3.2 bank guarantee; or

14.3.3.3 insurance securing performance by covering the liability of the Contractor,

in each case for the sum of the [*insert advance payment figure*], and whichever form is selected by the Contractor is the "**Advance Payment Guarantee**".

- 14.3.4 If the Advance Payment Guarantee is paid in the form of a cash deposit, the amount shall be transferred (either by the Contractor or by a third party on behalf of the Contractor) to the following bank account of the Employer: [*to insert bank details*].

- 14.3.5 If the Advance Payment Guarantee is provided in the form of a bank guarantee, it shall be provided by an Approved Bank and the Contractor shall provide to the Employer an original of the bank guarantee issued in favour of the Employer, the form of which shall be subject to the prior approval of the Employer and which shall meet the following requirements:

14.3.5.1 be an unconditional and irrevocable bank guarantee which obliges the issuing bank to pay upon first written demand by the Employer, stating a default of the Contractor or any other grounds for enforcing the Advance Payment Guarantee under this Contract, regardless of the objections of the Contractor or third persons; and

14.3.5.2 be on terms such that the Approved Bank will pay within five (5) days to the Employer the sum of the due payment or part thereof as stated by the Employer in a written request; and

14.3.5.3 be valid until the date which is three (3) days following the date on which such advance payment has been repaid in full by the Contractor through deductions applied to the interim payments pursuant to Sub-Clause 14.3.8, and, if required, the bank guarantee validity shall be extended or it shall be replaced with a new one in order to give effect to this requirement,

and any bank charges for issuing and maintaining the bank guarantee, as well as administering a demand by the Employer on the guarantee where there are grounds for that, shall be at the expense of the Contractor.

14.3.6 If the Advance Payment Guarantee is provided in the form of insurance, it shall be provided by an Approved Insurer and the Contractor shall provide to the Employer the original of the insurance policy issued in favour of the Employer (which policy shall be subject to the approval of the Employer), the Employer shall be referred to as a third party beneficiary within it, and it shall meet the following requirements:

14.3.6.1 secure the Advance Payment Amount;

14.3.6.2 be an unconditional and irrevocable obligation upon the insurer to pay upon first written demand by the Employer, stating a default of the Contractor or any other grounds for enforcing the Advance Payment Guarantee under this Contract, regardless of the objections of the Contractor or third persons;

14.3.6.3 be on terms such that the Approved Insurer will pay within five (5) days to the Employer the sum of the due payment or part thereof as stated by the Employer in a written request; and

14.3.6.4 be valid until the date which is three (3) days following the date on which such advance payment has been repaid in full by the Contractor through deductions applied to the payments to the Contractor pursuant to Sub-Clause 14.3.8, and, if required, the insurance validity shall be extended or it shall be replaced with a new one in order to give effect to this requirement,

and the costs of taking out the insurance contract and maintaining the validity of the insurance over the required period as well as the insurer's costs of administering an indemnity in favour of the Employer where there are grounds for that shall be at the expense of the Contractor.

14.3.7 The Contractor shall ensure that the Advance Payment Guarantee is at all times after payment by the Employer to the Contractor of the advance payment, valid and enforceable and fully recoverable in accordance with its terms until the date on which such advance payment has been repaid in full by the Contractor through deductions applied to the interim payments pursuant to Sub-Clause 14.3.8.

14.3.8 The advance payment shall be repaid by the Contractor through a

deduction applied as follows:

14.3.8.1 a deduction of ten per cent (10%) of the amount equal to:

- (a) the total of (i) the value of the works identified pursuant to Sub-Clause 14.4.3.1 and (ii) the value of any Variation (to be added or deducted) which is identified pursuant to Sub-Clause 14.4.3.2; less
- (b) the deduction for retention identified pursuant to Sub-Clause 14.4.3.2,

to be applied in respect of each Statement which is submitted in accordance with Sub-Clause 14.4.1, in accordance with Sub-Clause 14.4 (*Bi-Monthly Payments*); and

14.3.8.2 a deduction of ten per cent (10%) of the amount equal to the total of (i) the value of the works identified pursuant to Sub-Clause 14.5.1.1, (ii) the value of any Variation (to be added or deducted) which is identified pursuant to Sub-Clause 14.5.1.2, and (iii) the Taking-Over Retention Money, such deduction to be applied in respect of the Statement submitted in accordance with Sub-Clause 14.5.1 following issue of the Taking-Over Certificate, in accordance with Sub-Clause 14.5 (*Payment following issue of the Taking-Over Certificate*); and

14.3.8.3 a deduction of ten per cent (10%) of the amount equal to the total of (i) the value of the works identified pursuant to Sub-Clause 14.5.1.1, (ii) the value of any Variation (to be added or deducted) which is identified pursuant to Sub-Clause 14.5.1.2, and (iii) the Handover for Use Retention Money, such deduction to be applied in respect of the Statement submitted in accordance with Sub-Clause 14.6.1 following issue of the Handover for Use Certificate, in accordance with Sub-Clause 14.6 (*Payment following issue of the Handover for Use Certificate*); and

14.3.8.4 a deduction of ten per cent (10) of the final amount due, in accordance with Sub-Clause 14.8 (*Application for Final Payment*), Sub-Clause 14.9 (*Discharge*) and Sub-Clause 14.10 (*Final Payment*),

until such time as the Advance Payment Amount has been repaid.

14.3.9 Subject to Sub-Clause 14.3.13, the Employer shall release the Advance Payment Guarantee within three (3) days following the date on which such advance payment has been repaid in full by the Contractor through deductions applied to the interim payments pursuant to Sub-Clause 14.3.8, provided (in the case of a cash deposit) that there are no grounds for enforcing it which have arisen prior to the expiry of such period or (where the Advance Payment Guarantee takes the form of a bank guarantee or insurance policy) a claim has not been notified under the Advance Payment Guarantee prior to the expiry of such period.

- 14.3.10 The release of the Advance Payment Guarantee shall be effected as follows:
- 14.3.10.1 if provided in the form of a cash deposit, by transferring the amount into a bank account specified by the Contractor; or
 - 14.3.10.2 if provided in the form of a bank guarantee, by returning its original to the Contractor's Representative or another authorised person; or
 - 14.3.10.3 if provided in the form of an insurance policy, by returning the original of the insurance policy/insurance certificate to the Contractor's Representative or another authorised person and sending a written notice to that effect to the insurer.
- 14.3.11 The Employer may enforce the Advance Payment Guarantee in the following circumstances:
- 14.3.11.1 upon any termination of this Contract pursuant to Clauses 15 (*Termination by Employer*), 16 (*Suspension and Termination by Contractor*) or 19 (*Force Majeure*); and/or
 - 14.3.11.2 where the Contractor has been subject to a formal insolvency or analogous event, as described in Sub-Clause 15.2.1.9,
- in each case to the extent that the outstanding amount of the Advance Payment Amount exceeds the aggregate amount of the deductions which have been applied to the interim payments pursuant to Sub-Clause 14.3.8 at that time.
- 14.3.12 Where the Advance Payment Guarantee takes the form of a cash deposit, in each case in which the Employer wishes to make a retention from such deposit, the Employer shall notify the Contractor of such retention and its grounds. Retention of any amount from the cash deposit, or any valid claim by the Employer on a bank guarantee or insurance policy (where the Advance Payment Guarantee takes such form) shall not be construed as a waiver of the Employer's rights to claim greater amounts as damages under this Contract.
- 14.3.13 The Parties may agree that the value of the Advance Payment Guarantee may be progressively reduced by the value of the Advance Payment Amount which has been repaid by the Contractor through deductions applied to the interim payments pursuant to Sub-Clause 14.3.8, and/or by the value of any demands made thereunder.

14.4 Bi-Monthly Payments

- 14.4.1 Prior to the issue of a Taking-Over Certificate, the Contractor shall submit a Statement electronically to the Employer (with a copy to the Owner's Engineer) within seven (7) days after the end of each second month, in a form approved by the Employer in advance, showing in detail the amounts which are being claimed by the Contractor in that Statement, together with supporting documents which shall include the relevant report on progress for the preceding two (2) months in accordance with Sub-Clause 4.21

(*Progress Reports*). The first of such Statements shall be submitted within seven (7) days after the end of the second month following the Commencement Date.

- 14.4.2 The Contractor shall only be permitted to submit one valid Statement per two (2) months' period.
- 14.4.3 Each Statement shall include the following items, as applicable, which shall be expressed in Euros, in the sequence listed:
 - 14.4.3.1 the value (calculated in accordance with the Payment Rules) of the works executed which the Contractor considers are complete in accordance with this Contract (including as determined in accordance with Payment Rules) and the Contractor's Documents produced up to the end of the relevant two (2) months' period; and
 - 14.4.3.2 the value of any Variation (to be added or deducted) which is not included in the Contract Price or is to be removed from the Contract Price; and
 - 14.4.3.3 an amount to be deducted for retention equal to twenty per cent (20%) of the total of (i) the value of the works which are identified pursuant to Sub-Clause 14.4.3.1 and (ii) the value of any Variation (to be added or deducted) which is identified pursuant to Sub-Clause 14.4.3.2, of which:
 - (a) fifteen per cent (15%) shall accrue as Taking-Over Retention Money; and
 - (b) five per cent (5%) shall accrue as Handover for Use Retention Money; and
 - 14.4.3.4 an amount to be deducted for retention equal to five per cent (5%) of (a) the total of (i) the value of the works which are identified pursuant to Sub-Clause 14.4.3.1 and (ii) the value of any Variation (to be added or deducted) which is identified pursuant to Sub-Clause 14.4.3.2, less (b) the amount to be deducted for retention identified at Sub-Clause 14.4.3.3; and
 - 14.4.3.5 any amounts to be deducted for the advance payment repayments in accordance with Sub-Clause 14.3.8; and
 - 14.4.3.6 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
 - 14.4.3.7 the deduction of all amounts included in previous Statements; and
 - 14.4.3.8 any amounts of interest to be added or deducted in accordance with Sub-Clause 14.11 (*Delayed Payment*).
- 14.4.4 The Employer shall, subject to any clarifications as are in the Employer's

opinion (acting properly and reasonably) necessary, certify by issue of an Interim Certificate to the Contractor that part of the sum claimed in each Statement submitted pursuant to Sub-Clause 14.4.1 which is approved by the Employer and give reasons why any part of the sum claimed has not been certified and the value of the sums involved no later than twenty eight (28) days after the date on which the Statement was received by the Employer. Such reasons may include:

14.4.4.1 if any thing supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or

14.4.4.2 if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Employer, the value of this work or obligation may be withheld until the work or obligation has been performed; and/or

14.4.4.3 if the Employer considers that any work identified in the relevant Statement is not complete in accordance with the Contract (including as determined in accordance with the Payment Rules), or the value has not been accurately calculated in accordance with the Payment Rules.

14.4.5 The Contractor shall submit a valid VAT invoice to the Employer within five (5) days from the date of the Interim Certificate issued pursuant to Sub-Clause 14.4.4. Payment shall become due to the Contractor on the date of receipt of the said valid invoice by the Employer and, subject to Sub-Clause 2.5.5, the final date for payment by the Employer of such valid VAT invoice shall be ten (10) days from the date of receipt of the valid invoice by the Employer.

14.4.6 Not later than five (5) days after the date of receipt by the Employer of a valid VAT invoice under Sub-Clause 14.4.5, the Employer shall give a notice to the Contractor which shall, in respect of the amount stated as due in the invoice and preceding Interim Certificate issued pursuant to Sub-Clause 14.4.4, specify the amount of payment proposed to be made and the basis on which that amount was calculated.

14.4.7 If requested by the Employer, the Contractor shall split his valid VAT invoices between the Bulgarian Section and the Greek Section in a proportion which will be agreed by the Parties to reflect the work done by the Contractor.

14.5 Payment following issue of the Taking-Over Certificate

14.5.1 Within eighty four (84) days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Employer electronically a Statement, in a form approved by the Employer in advance, showing in detail the amounts which are being claimed by the Contractor, together with supporting documents, showing:

14.5.1.1 the value (calculated in accordance with the Payment Rules) of

the works executed which the Contractor considers are complete in accordance with this Contract (including as determined in accordance with the Payment Rules) and the Contractor's Documents produced up to and including the issue of the Taking-Over Certificate for the Works less all amounts previously paid by the Employer and any deductions in accordance with Sub-Clause 2.5 (*Employer's Claims*) and Sub-Clause 14.4.3; and

14.5.1.2 the value of any Variation (to be added or deducted) which is not included in the Contract Price or is to be removed from the Contract Price; and

14.5.1.3 the Taking-Over Retention Money; and

14.5.1.4 an amount to be deducted for retention equal to five per cent (5%) of the total of (i) the value of the works which are identified pursuant to Sub-Clause 14.5.1.1; (ii) the value of any Variation (to be added or deducted) which is identified pursuant to Sub-Clause Clause 14.5.1.2; and (iii) the Taking-Over Retention Money; and

14.5.1.5 any amounts to be deducted for the advance payment repayments in accordance with Sub-Clause 14.3.8; and

14.5.1.6 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

14.5.1.7 any amounts of interest to be added or deducted in accordance with Sub-Clause 14.11 (*Delayed Payment*); and

14.5.1.8 any further sums which the Contractor considers to be due under the Contract; and

14.5.1.9 an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

14.5.2 The Employer shall, subject to any clarifications as are in the Employer's opinion (acting properly and reasonably) necessary, certify by issue of an Interim Certificate to the Contractor that part of the sum claimed in the Statement submitted by the Contractor pursuant to Sub-Clause 14.5.1 which is approved by the Employer and give reasons why any part of the sum claimed has not been certified and the value of the sums involved no later than twenty eight (28) days after the date on which the Statement at completion was received by the Employer. Such reasons may include those identified in Sub-Clauses 14.4.4.1 to 14.4.4.3.

14.5.3 The Contractor shall submit a valid VAT invoice to the Employer within five (5) days from the date of the Interim Certificate issued pursuant to Sub-Clause 14.5.2. Payment shall become due to the Contractor on the date of receipt of the said valid VAT invoice by the Employer and, subject

to Sub-Clause 2.5.5, the final date for payment by the Employer of such valid VAT invoice shall be ten (10) days from the date of receipt of the valid invoice by the Employer.

- 14.5.4 Not later than five (5) days after the date of receipt by the Employer of a valid VAT invoice under Sub-Clause 14.5.3, the Employer shall give a notice to the Contractor which shall, in respect of the amount stated as due in the invoice and preceding Interim Certificate issued pursuant to Sub-Clause 14.5.2, specify the amount of payment proposed to be made and the basis on which that amount was calculated.
- 14.5.5 If requested by the Employer, the Contractor shall split his valid VAT invoice between the Bulgarian Section and the Greek Section in a proportion which will be agreed by the Parties to reflect the work done by the Contractor.

14.6 Payment following issue of the Handover for Use Certificate

- 14.6.1 Within sixty (60) days after receiving the Handover for Use Certificate for the Works, the Contractor shall submit to the Employer electronically a Statement in a form approved by the Employer in advance, showing in detail the amounts which are being claimed by the Contractor, together with supporting documents, showing:
 - 14.6.1.1 the value (calculated in accordance with the Payment Rules) of the works executed which the Contractor considers are complete in accordance with this Contract (including as determined in accordance with the Payment Rules) and the Contractor's Documents produced up to (and including) the issue of the Handover for Use Certificate for the Works less all amounts previously paid by the Employer and any deductions in accordance with Sub-Clause 2.5 (*Employer's Claims*) and Sub-Clause 14.4.3; and
 - 14.6.1.2 the value of any Variation (to be added or deducted) which is not included in the Contract Price or is to be removed from the Contract Price; and
 - 14.6.1.3 the Handover for Use Retention Money; and
 - 14.6.1.4 an amount to be deducted for retention equal to five per cent (5%) of the total of (i) the value of the works which are identified pursuant to Sub-Clause 14.6.1.1, (ii) the value of any Variation (to be added or deducted) which is identified pursuant to Sub-Clause Clause 14.6.1.2 and (iii) the Handover for Use Retention Money; and
 - 14.6.1.5 any amounts to be deducted for the advance payment repayments in accordance with Sub-Clause 14.3.8; and
 - 14.6.1.6 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

- 14.6.1.7 any amounts of interest to be added or deducted in accordance with Sub-Clause 14.11 (*Delayed Payment*); and
- 14.6.1.8 any further sums which the Contractor considers to be due under the Contract; and
- 14.6.1.9 an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at handover for use.
- 14.6.2 The Employer shall, subject to any clarifications as are in the Employer's opinion (acting properly and reasonably) necessary, certify by issue of an Interim Certificate to the Contractor that part of the sum claimed in the Statement at completion submitted by the Contractor pursuant to Sub-Clause 14.6.1 which is approved by the Employer and give reasons why any part of the sum claimed has not been certified and the value of the sums involved no later than twenty eight (28) days after the date on which the Statement was received by the Employer. Such reasons may include those identified in Sub-Clauses 14.4.4.1 to 14.4.4.3.
- 14.6.3 The Contractor shall submit a valid VAT invoice to the Employer within five (5) days from the date of the Interim Certificate issued pursuant to Sub-Clause 14.6.2. Payment shall become due to the Contractor on the date of receipt of the said valid VAT invoice by the Employer and, subject to Sub-Clause 2.5.5, the final date for payment by the Employer of such valid VAT invoice shall be ten (10) days from the date of receipt of the valid invoice by the Employer.
- 14.6.4 Not later than five (5) days after the date of receipt by the Employer of a valid VAT invoice under Sub-Clause 14.6.3, the Employer shall give a notice to the Contractor which shall, in respect of the amount stated as due in the invoice and preceding Interim Certificate issued pursuant to Sub-Clause 14.6.2, specify the amount of payment proposed to be made and the basis on which that amount was calculated.
- 14.6.5 If requested by the Employer, the Contractor shall split his valid VAT invoices between the Bulgarian Section and the Greek Section in a proportion which will be agreed by the Parties to reflect the work done by the Contractor.

14.7 Payment during the Defects Notification Period

- 14.7.1 If any payment is due to the Contractor from the Employer during the Defects Notification Period (other than in accordance with Sub-Clause 14.5 (*Payment following issue of the Taking-Over Certificate*), Sub-Clause 14.6 (*Payment following issue of the Handover for Use*) and the final amount due in accordance with Sub-Clause 14.8 (*Application for Final Payment*), Sub-Clause 14.9 (*Discharge*) and Sub-Clause 14.10 (*Final Payment*)), the Contractor shall submit a Statement electronically to the Employer within three (3) days after the end of any month, in a form approved by the Employer in advance, showing in detail the amounts which are being claimed by the Contractor for that month, together with supporting documents which shall include the relevant report on progress

for that month in accordance with Sub-Clause 4.21 (*Progress Reports*).

- 14.7.2 The Contractor shall only be permitted to submit one valid Statement per month.
- 14.7.3 Each Statement shall include the following items, as applicable, which shall be expressed in Euros, in the sequence listed:
- 14.7.3.1 the value (calculated in accordance with the Payment Rules) of the works executed which the Contractor considers are complete in accordance with this Contract (including as determined in accordance with the Payment Rules) and the Contractor's Documents produced up to (and including) in accordance with the Contract less all amounts previously paid by the Employer and any deductions in accordance with Sub-Clause 2.5 (*Employer's Claims*), Sub-Clause 14.4.3, Sub-Clause 14.5.1 and Sub-Clause 14.6.1; and
 - 14.7.3.2 the value of any Variation (to be added or deducted) which is not included in the Contract Price or is to be removed from the Contract Price; and
 - 14.7.3.3 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
 - 14.7.3.4 any amounts of interest to be added or deducted in accordance with Sub-Clause 14.11 (*Delayed Payment*); and
 - 14.7.3.5 any further sums which the Contractor considers to be due under the Contract; and
 - 14.7.3.6 an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement.
- 14.7.4 The Employer shall, subject to any clarifications as are in the Employer's opinion (acting properly and reasonably) necessary, certify by issue of an Interim Certificate to the Contractor that part of the sum claimed in the Statement submitted by the Contractor pursuant to Sub-Clause 14.7.1 which is approved by the Employer and give reasons why any part of the sum claimed has not been certified and the value of the sums involved no later than twenty eight (28) days after the date on which the Statement was received by the Employer. Such reasons may include those identified in Sub-Clauses 14.4.4.1 to 14.4.4.3.
- 14.7.5 The Contractor shall submit a valid VAT invoice to the Employer within five (5) days from the date of the Interim Certificate issued pursuant to Sub-Clause 14.7.4. Payment shall become due to the Contractor on the date of receipt of the said valid VAT invoice by the Employer and, subject to Sub-Clause 2.5.5, the final date for payment by the Employer of such valid VAT invoice shall be ten (10) days from the date of receipt of the valid VAT invoice by the Employer.

- 14.7.6 Not later than five (5) days after the date of receipt by the Employer of a valid VAT invoice under Sub-Clause 14.7.5, the Employer shall give a notice to the Contractor which shall, in respect of the amount stated as due in the invoice and preceding Interim Certificate issued pursuant to Sub-Clause 14.7.4, specify the amount of payment proposed to be made and the basis on which that amount was calculated.
- 14.7.7 If requested by the Employer, the Contractor shall split his valid VAT invoices between the Bulgarian Section and the Greek Section in a proportion which will be agreed by the Parties to reflect the work done by the Contractor.

14.8 Application for Final Payment

- 14.8.1 Within fifty six (56) days after receiving the Performance Certificate, the Contractor shall submit, to the Employer, electronically, a draft Final Statement with supporting documents showing in detail in a form approved by the Employer:
- 14.8.1.1 the value (calculated in accordance with the Payment Rules) of the works executed which the Contractor considers are complete in accordance with this Contract (including as determined in accordance with the Payment Rules) and the Contractor's Documents produced up to (and including) in accordance with the Contract less all amounts previously paid by the Employer and any deductions in accordance with Sub-Clause 2.5 (*Employer's Claims*), Sub-Clause 14.4.3, Sub-Clause 14.5.1, Sub-Clause 14.6.1 and Sub--Clause 14.7.3; and
 - 14.8.1.2 the Retention Money; and
 - 14.8.1.3 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
 - 14.8.1.4 any amounts of interest to be added or deducted in accordance with Sub-Clause 14.11 (*Delayed Payment*); and
 - 14.8.1.5 any further sums which the Contractor considers to be due to him under the Contract or otherwise.
- 14.8.2 The Employer shall, subject to any clarifications as are in the Employer's opinion (acting properly and reasonably) necessary, certify by issue of an Interim Certificate to the Contractor that part of the sum claimed in the Final Statement submitted by the Contractor pursuant to Sub-Clause 14.8.1 which is approved by the Employer and give reasons why any part of the sum claimed has not been certified and the value of the sums involved no later than twenty eight (28) days after the date on which the Final Statement was received by the Employer. Such reasons may include those identified in Sub-Clauses 14.4.4.1 to 14.4.4.3.

14.9 Discharge

When submitting the Final Statement, the Contractor shall submit a written discharge

which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract.

14.10 Final Payment

- 14.10.1 The Contractor shall submit a valid invoice to the Employer within five (5) days from the date of the Interim Certificate issued pursuant to Sub-Clause 14.8.2, relating to the Final Statement. Payment shall become due to the Contractor on the date of receipt of the said valid invoice by the Employer and, subject to Sub-Clause 2.5.5, the final date for payment by the Employer of such valid invoice shall be ten (10) days from the date of receipt of the valid invoice by the Employer.
- 14.10.2 Not later than five (5) days after the date of receipt by the Employer of a valid VAT invoice under Sub-Clause 14.10.1, the Employer shall give a notice to the Contractor which shall, in respect of the amount stated as due in the invoice and preceding Interim Certificate issued pursuant to Sub-Clause 14.8.2, specify the amount of payment proposed to be made and the basis on which that amount was calculated.
- 14.10.3 If requested by the Employer, the Contractor shall split his valid VAT invoices between the Bulgarian Section and the Greek Section in a proportion which will be agreed by the Parties to reflect the work done by the Contractor.

14.11 Delayed Payment

- 14.11.1 If the Contractor does not receive payment in accordance with Sub-Clause 14.2 (*Timing of Payments*), the Employer shall pay to the Contractor interest upon any payment not paid by the relevant final date for payment at a rate per annum equivalent to [*rate to be inserted*] (being the rate equal to two per cent (2%) above the rate of Euribor on the Effective Date) which is current on the date upon which such payment first becomes overdue. Subject to Sub-Clause 14.11.2, in circumstances where the Employer has failed to issue an Interim Certificate pursuant to Sub-Clause 14.4.4, 14.5.2, 14.6.2 14.7.4 or 14.8.2, the final date for payment for the purposes of this Sub-Clause 14.11.1 shall be deemed to be the date falling forty five (45) days after the relevant Statement or Final Statement (as appropriate) is received by the Employer and interest shall be applied to the amount claimed by the Contractor in the relevant Statement or Final Statement (as appropriate) unless and until any other amount is agreed or determined to be due to the Contractor pursuant to the Dispute Resolution Procedure or payment is made by the Employer in accordance with the Contract following issue by the Employer of the relevant Interim Certificate.
- 14.11.2 In circumstances where the Employer has failed to issue an Interim Certificate pursuant to Sub-Clause 14.4.4, 14.5.2, 14.6.2, 14.7.4 or 14.8.2 and interest has been applied to an amount in accordance with Sub-Clause 14.11.1 and it is subsequently agreed or determined pursuant to the Dispute Resolution Procedure or in the relevant Interim Certificate that the amount to which interest should have been applied is greater or less than the amount to which interest was applied under Sub-Clause 14.11.1, the

difference between the interest that has been paid under Sub-Clause 14.11.1 and the interest that should have been paid shall become due under the Contract and shall be recovered (as appropriate) by way of an addition or reduction in accordance with Sub-Clauses 14.4 (*Bi-Monthly Payments*), 14.5 (*Payment following issue of the Taking-Over Certificate*), 14.6 (*Payment following issue of the Handover for Use Certificate*), 14.7 (*Payment during the Defects Notification Period*); or 14.8 (*Application for Final Payment*).

- 14.11.3 If the Employer does not receive full payment of any amount due from the Contractor on the date such payment falling due, the Employer shall be entitled to receive interest upon any amount unpaid during the period of delay at a rate per annum equivalent to [rate to be inserted] (being the rate equal to two per cent (2%) above the rate of Euribor on the Effective Date).
- 14.11.4 The Employer shall be entitled to this payment without formal notice, and without prejudice to any other right or remedy.

14.12 Cessation of Employer's Liability

- 14.12.1 The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

- 14.12.1.1 in the Final Statement; and

- 14.12.1.2 in the Statement described in Sub-Clause 14.5 (*Payment following issue of the Taking-Over Certificate*) or the Statement described in Sub-Clause 14.6 (*Payment following issue of the Handover for Use Certificate*), or in the Statement described in Sub-Clause 14.7 (*Payment during the Defects Notification Period*).

- 14.12.2 Sub-Clause 14.12.1 shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

14.13 Currency of Payment

The Contract Price shall be paid in Euros.

14.14 Taxes and Duties

- 14.14.1 The Contractor shall comply with all applicable Laws, rules and regulations regarding Taxes, and the payment of Taxes of all kinds in effect as at the Base Date and those becoming effective hereafter, in respect of the carrying out and completion of the Works and in respect of the performance by the Contractor of its obligations under this Contract.
- 14.14.2 The Contractor shall be responsible and liable to pay all Taxes required under this Contract, or levied as a result of or in respect of the entry into and performance by the Contractor of its obligations under this Contract,

and the Contract Price is inclusive of any and all Taxes levied on the Contractor or the Employer or otherwise in relation to the Works and/or the entry into and performance by the Contractor of its obligations under this Contract, both within and outside of the Republic of Bulgaria and/or the Republic of Greece (as appropriate). The Contractor shall pay all stamp duty which is required to be paid in connection with the Contract and/or the Works and/or under Laws.

14.14.3 Without prejudice to Sub-Clauses **Error! Reference source not found.** and 14.14.2, the Contract Price is exclusive of any value added Tax and/or stamp tax duty imposed by, and payable to, the government of Bulgaria and/or the government of Greece (as appropriate) in relation to the Works. Upon the Employer's request, the Contractor shall assist the Employer in preparing and submitting any required documentation to apply for all relevant value added Tax exemptions and refunds and to support the Employer in its meetings with the relevant authorities in connection therewith.

14.14.4 The Contractor shall be responsible for customs clearance in the Republic of Bulgaria and the Republic of Greece, and any other country through which Goods are transported, of all Goods, materials and equipment provided by the Contractor in and/or for the performance of its obligations under this Contract and payment of all customs duties, import duties and Taxes (including VAT on importation) which may be assessed thereon (other than those which the Employer is required by any legal requirement to make directly itself). In the event that the Employer is required by any legal requirement to arrange and facilitate payment of any customs duties, import duties or taxes in relation to the importation of any equipment, materials or items into the Republic of Bulgaria and the Republic of Greece (as appropriate), the Employer shall make such payments but may appoint the Contractor as its agent. At the Employer's request, the Contractor shall assist the Employer in preparing and submitting the necessary documentation to apply for all relevant customs duty exemptions and refunds and to support the Employer in its meetings with the necessary authorities in connection therewith. The Contractor shall indemnify and hold harmless the Employer against any and all customs duties, import duties and/or Taxes assessed on the Employer as the importer of record. The Employer may set-off such amounts against any amounts due to the Contractor under this Contract.

15 TERMINATION BY EMPLOYER

15.1 Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Employer may by notice require the Contractor to make good the failure and to remedy it within the time specified in such notice by the Employer, and the Employer shall act reasonably in terms of specifying such time.

15.2 Termination by Employer

15.2.1 The Employer shall be entitled to terminate the Contractor's employment under the Contract if any of the following occurs:

- 15.2.1.1 the Contractor fails to comply with a notice under Sub-Clause 15.1 (*Notice to Correct*) in respect of any material obligation under the Contract and such failure has or is reasonably likely to have a materially adverse effect on the execution and/or completion of the Works;
- 15.2.1.2 the occurrence of any event or circumstance which becomes known to the Contractor after the Effective Date which is materially inconsistent with any of the warranties, representations or undertakings given under Sub-Clause 4.25 (*Contractor Warranties*) resulting in any such warranty, representation or undertaking being materially incorrect at the Effective Date and which has or is likely to have a material adverse effect on the execution and/or completion of the Works; or
- 15.2.1.3 the Contractor abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract; or
- 15.2.1.4 the Contractor without reasonable excuse fails to proceed with the Works in accordance with Clause 8 (*Commencement, SEQUENCE OF ACTIVITIES, Delays and Suspension*); or
- 15.2.1.5 a Persistent Breach occurs; or
- 15.2.1.6 the Contractor subcontracts, or attempts to subcontract, any element of the Works in breach of Sub-Clause 4.4 (*Subcontractors and Suppliers*) and fails to remedy any such breach within twenty eight (28) days after the Contractor receives a notice from the Employer with respect thereto; or
- 15.2.1.7 the Contractor assigns the Contract without the required consent from the Employer pursuant to Sub-Clause 1.7 (*Assignment*); or
- 15.2.1.8 there is a change in composition or legal status of the Contractor without the prior consent of the Employer pursuant to Sub-Clause 1.14.3 which is materially prejudicial to the execution and/or completion of the Works; or
- 15.2.1.9 the Contractor becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or
- 15.2.1.10 the Contractor is in breach of Sub-Clause 1.15 (*Anti-Corruption*); or
- 15.2.1.11 the Contractor is in breach of Sub-Clause 1.23 (*Conflict of Interest*); or
- 15.2.1.12 the Contractor fails to take out and maintain the Contractor's

Insurances pursuant to, and in accordance with, Clause 18 (*Insurance*); or

15.2.1.13 the Performance Guarantee or Advance Payment Guarantee is not fully maintained, effective or increased in accordance with the terms of this Contract; or

15.2.1.14 at any time when the Performance Guarantee or Advance Payment Guarantee is required by this Contract to be in effect, the issuer thereof no longer qualifies as an Approved Bank due to a downgrading of its credit rating and within five (5) days thereafter the Contractor has not provided a replacement Performance Guarantee and/or Advance Payment Guarantee (as the case may be) to the Employer in a form which satisfies the requirements of Sub-Clause 4.2 (*Performance Guarantee*) and/or Sub-Clause 14.3 (*Advance Payment and Advance Payment Guarantee*) (respectively); or

15.2.1.15 at any time when the Performance Guarantee or Advance Payment Guarantee is required by this Contract to be in effect, the issuer thereof no longer qualifies as an Approved Insurer due to a downgrading of its credit rating and within five (5) days thereafter the Contractor has not provided a replacement Performance Guarantee and/or Advance Payment Guarantee (as the case may be) to the Employer in a form which satisfies the requirements of Sub-Clause 4.2 (*Performance Guarantee*) and/or Sub-Clause 14.3 (*Advance Payment and Advance Payment Guarantee*) (respectively); or

15.2.1.16 the Contractor fails to make payments to Subcontractors in accordance with the provisions of the relevant subcontract, and does not diligently remedy any such failure within twenty eight (28) days after the Contractor receives a notice from the Employer with respect thereto; or

15.2.1.17 the Contractor has met or exceeded the liability cap for Delay Liquidated Damages in Sub-Clause 8.7.1; or

15.2.1.18 the Contractor fails to complete the whole of the Works by the Longstop Date; or

15.2.1.19 the Contractor fails to pay to the Employer any amount due to the Employer under this Contract and such failure continues for twenty eight (28) days after written notice thereof has been given to the Contractor by the Employer' or

15.2.1.20 one of the statutory grounds for mandatory exclusion of the Contractor from the Public Procurement (pursuant to Article 54, paragraph 1, item 1 of the PPA) applied in respect of the Contractor such that they should have been excluded from the Public Procurement.

15.2.2 In any of the events or circumstances listed in Sub-Clause 15.2.1, the Employer may, upon giving not less than twenty eight (28) days' notice (or

such longer period of notice as the Employer may determine at his absolute discretion) to the Contractor, terminate the Contractor's employment under the Contract and expel the Contractor from the Site unless during the twenty eight (28) days' (or longer) period of notice, the Contractor makes good the failure and remedies it provided always, in the case of Sub-Clauses 15.2.1.3, 15.2.1.5, 15.2.1.7, 15.2.1.9, 15.2.1.10, 15.2.1.13, 15.2.1.17, 15.2.1.18 or 15.2.1.20, the Employer may by notice terminate the Contract immediately.

- 15.2.3 The events and circumstances set out in Sub-Clause 15.2.1 shall be the only events and circumstances in respect of which the Employer may terminate the Contract or the Contractor's employment under the Contract in respect of default by the Contractor, but the Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.
- 15.2.4 Upon termination of his employment, the Contractor shall leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Employer. The Contractor shall comply immediately with any reasonable instructions included in the notice issued by the Employer pursuant to Sub-Clause 15.2.2, and the Contractor shall use reasonable endeavours to comply as soon as reasonably practicable with any reasonable instructions for the assignment of any subcontract.
- 15.2.5 After termination under Sub-Clause 15.2.2, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.
- 15.2.6 After the Employer and any entities have, pursuant to Sub-Clause 15.2.5, finished using any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor, the Employer shall give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.
- 15.2.7 Provided that there is no restriction pursuant to any Laws, the Contractor shall immediately notify the Employer of the occurrence of any of the following in respect of the Contractor:
 - 15.2.7.1 receipt of a statutory demand or charge for payment (or any demand having similar effect to the foregoing in any jurisdiction); or
 - 15.2.7.2 receipt of any correspondence or document instigating or threatening instigation of any form of insolvency or analogous event, as described in Sub-Clause 15.2.1.9; or
 - 15.2.7.3 the commencement of any court proceedings against the

Contractor; or

15.2.7.4 the granting of any court order against the Contractor; or

15.2.7.5 a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution, diligence, sequestration or other such process is levied or enforced on or sued against the whole or any parts of his assets and such attachment or process is not discharged within twenty one (21) days,

but only if such occurrence listed above has or is likely to have a materially adverse effect on the Contractor's ability or resources to perform his obligations under the Contract.

15.2.8 The Contractor shall provide all such information as the Employer shall request in relation to any of the events identified in Sub-Clause 15.2.7 provided that there is no restriction pursuant to any Laws in respect of the Contractor providing such information.

15.2.9 Persistent Breach

15.2.9.1 If a breach by the Contractor of any of its obligations under this Contract has occurred more than twice then the Employer may serve a notice ("**Persistent Breach Notice**") on the Contractor:

- (a) specifying that it is a Persistent Breach Notice;
- (b) giving reasonable details of the breach; and
- (c) stating that such breach is a breach which, if it recurs or continues, may result in a termination of this Contract.

15.2.9.2 If, following service of such a Persistent Breach Notice, the breach specified has continued or occurred once again after the date falling thirty (30) days after the date of service of the Persistent Breach Notice and before the date falling one hundred and eighty (180) days after the date of service of such notice, then the Employer may serve another notice ("**Final Persistent Breach Notice**") on the Contractor:

- (a) specifying that it is a Final Persistent Breach Notice;
- (b) stating that the breach specified has been the subject of a prior Persistent Breach Notice within the period of one hundred and eighty (180) days prior to the date of service of the Final Persistent Breach Notice; and
- (c) stating that if such failure is not remedied within seven (7) days or is remedied and occurs once or more within the ninety (90) day period after the date of service of the Final Persistent Breach Notice, this Contract may be terminated with immediate effect.

15.3 Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause 15.2 (*Termination by Employer*) has taken effect, the Employer shall proceed in accordance with Sub-Clause 3.5 (*Determination*) to agree or determine the value (calculated in accordance with the Payment Rules) unpaid at the date of the taking effect of the notice of termination of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor at the date of the taking effect of the notice of termination for work completed in accordance with the Contract (as determined in accordance with and for the purposes of the Payment Rules) and unpaid, and any other sums properly payable to the Contractor in respect of any claims by the Contractor pursuant to the Contract in respect of which notice has been given by the Contractor under Sub-Clause 20.1.1 (*Contractor's Claims*) provided always that the direct cause of any such claims has arisen prior to the date of the taking effect of the notice of termination.

15.4 Payment after Termination

15.4.1 After a notice of termination under Sub-Clause 15.2 (*Termination by Employer*) has taken effect, the Employer shall:

15.4.1.1 proceed in accordance with Sub-Clause 2.5 (*Employer's Claims*); and/or

15.4.1.2 withhold further payments to the Contractor until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established; and/or

15.4.1.3 recover from the Contractor an amount equal to the Excess Costs to Complete less the amount of any sum due to the Contractor under Sub-Clause 15.3 (*Valuation at Date of Termination*). If the sum due to the Contractor as calculated under Sub-Clause 15.3 (*Valuation at Date of Termination*) is greater than the amount of the Excess Costs to Complete, the Employer shall pay the amount of any excess to the Contractor.

15.4.2 The "**Excess Costs to Complete**" referred to in Sub-Clause 15.4.1.3 shall be the amount by which the sum of:

15.4.2.1 the costs to the Employer of execution and all other costs and expenses reasonably incurred and/or the Employer considers will be incurred in completing the Works and fulfilling any other outstanding terms of this Contract (including any amounts payable to a replacement contractor, the cost to the Employer of procuring, appointing and mobilising such replacement contractor, and any additional costs, fees, expenses and administrative costs (including the Employer's internal costs) directly incurred or which the Employer considers will be directly incurred by the Employer in respect of such replacement); and

15.4.2.2 all other costs, losses, liabilities and damages incurred by the Employer as a result of or in connection with the termination of

this Contract or the circumstances giving rise to the termination of this Contract; and

15.4.2.3 the sum of all amounts paid by the Employer to the Contractor in respect of works completed (as determined in accordance with the Payment Rules), plus the amount calculated as due to the Contractor under Sub-Clause 15.3 (*Valuation at Date of Termination*),

exceeds the Contract Price.

15.4.3 The Employer's liability to the Contractor under or in connection with the Contract or otherwise in the event of termination of the Contractor's employment under Sub-Clause 15.2 (*Termination by Employer*) shall be limited to payment of the amount (if any) provided for in this Sub-Clause 15.4 (*Payment after Termination*).

15.5 Employer's Entitlement to Termination for Convenience and under the PPA

15.5.1 The Employer shall be entitled to terminate the Contractor's employment under the Contract at any time for the Employer's convenience by giving notice of such termination to the Contractor. The termination shall take effect twenty eight (28) days after the date on which the Contractor receives this notice.

15.5.2 Without prejudice to the Employer's rights pursuant to Sub-Clause 15.5.1, where:

15.5.2.1 a substantial change of the procurement is needed, which does not allow this Contract to be amended under Article 116 paragraph 1 of the PPA; or

15.5.2.2 the Contract should not have been awarded to the Contractor because of an infringement found by EU Court of Justice in a procedure under Article 258 of the Treaty on the Functioning of the European Union,

the Employer may terminate this Contract with immediate effect by written notice to the Contractor.

15.5.3 After termination under Sub-Clause 15.5.1 or 15.5.2, the Contractor shall proceed in accordance with Sub-Clause 16.3 (*Cessation of Work and Removal of Contractor's Equipment*) and shall be paid in accordance with Sub-Clause 19.6 (*Optional Termination, Payment and Release*).

15.5.4 Without prejudice to any claims by the Contractor pursuant to the Contract in respect of which notice has been given by the Contractor under Sub-Clause 20.1.1 (*Contractor's Claims*) provided always that the direct cause of any such claims has arisen prior to the date of the taking effect of the notice of termination, the Employer's liability to the Contractor under or in connection with the Contract or otherwise in the event of termination of the Contractor's employment under this Sub-Clause 15.5 (*Employer's Entitlement to Termination*) shall be limited to payment of the amount (if any) determined in accordance with Sub-Clause 19.6 (*Optional*

Termination, Payment and Release).

16 SUSPENSION AND TERMINATION BY CONTRACTOR

16.1 Contractor's Entitlement to Suspend Work

- 16.1.1 If the Employer fails to comply with Sub-Clause 14.2 (*Timing of Payments*), the Contractor may, after giving not less than ninety (90) days' notice identifying the failure to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the outstanding payment as described in the notice.
- 16.1.2 The Contractor's action pursuant to Sub-Clause 16.1.1 shall not prejudice his entitlements to payment of interest under Sub-Clause 14.11 (*Delayed Payment*) and to termination under Sub-Clause 16.2 (*Termination by Contractor*).
- 16.1.3 If the Contractor subsequently receives the outstanding payment (as described in the notice issued by the Contractor pursuant to Sub-Clause 16.1.1) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable and, in any event, within seven (7) days after receipt of the outstanding payment.
- 16.1.4 If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with Sub-Clause 16.1.1, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 (*Contractor's Claims*) to:
 - 16.1.4.1 an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*); and
 - 16.1.4.2 payment of any such Cost, which shall be added to the Contract Price.

16.2 Termination by Contractor

- 16.2.1 The Contractor shall be entitled to terminate the Contract if:
 - 16.2.1.1 the Contractor does not receive the amount due within one hundred and twenty (120) days of receipt of notice of non-payment from the Contractor, after the expiry of the time stated in Sub-Clause 14.2 (*Timing of Payments*) within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 (*Employer's Claims*), or thirty (30) days of the commencement of suspension of the Works pursuant to Sub-Clause 16.1 (*Contractor's Entitlement to Suspend Work*); or
 - 16.2.1.2 a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 (*Prolonged Suspension*); or
 - 16.2.1.3 the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under

a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or

16.2.1.4 the Employer breaches any of his material obligations under the Contract (excluding those obligations described in Sub-Clauses 16.2.1.1 and 16.2.1.2) and such breach frustrates or renders it impossible for the Contractor to carry out his material obligations under the Contract.

16.2.2 In any of the events or circumstances described in Sub-Clauses 16.2.1.1 to 16.2.1.3, the Contractor may, upon giving twenty eight (28) days' notice to the Employer, terminate his employment under the Contract. In the event or circumstance of breach described in Sub-Clause 16.2.1.4, the Contractor shall serve a notice on the Employer within twenty eight (28) days after becoming aware of such event or circumstance (the "**Termination Date**"). The Contractor may terminate his employment under the Contract on the day falling ninety (90) days after the Termination Date, unless the Employer rectifies the effects of the breach described in Sub-Clause 16.2.1.4 within ninety (90) days after the Termination Date.

16.2.3 The Contractor shall not be entitled to terminate his employment under the Contract or otherwise terminate or treat the Contract as having been repudiated by the Employer except as expressly provided in Sub-Clause 16.2.1 and in Sub-Clause 19.6 (*Optional Termination, Payment and Release*).

16.3 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 (*Employer's Entitlement to Termination*), Sub-Clause 16.2 (*Termination by Contractor*) or Sub-Clause 19.6 (*Optional Termination, Payment and Release*) has taken effect, the Contractor shall promptly:

16.3.1 cease all further work, except for such work as may have been instructed by the Employer for the protection of life or property or for the safety of the Works;

16.3.2 hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and any other information in relation to the Works reasonably requested by the Employer;

16.3.3 remove all other Goods from the Site, except as necessary for safety, and leave the Site; and

16.3.4 unless otherwise notified in writing by the Employer, clear away and remove all Contractor's Equipment, surplus material, wreckage, rubbish and/or Temporary Works and leave the Site and the Works in a clean and safe condition.

16.4 Payment on Termination

16.4.1 After a notice of termination under Sub-Clause 16.2 (*Termination by*

Contractor) has taken effect, the Employer shall promptly pay the Contractor in accordance with Sub-Clause 19.6 (*Optional Termination, Payment and Release*).

16.4.2 The Employer's liability to the Contractor under or in connection with the Contract or otherwise in the event of termination of the Contractor's employment under Sub-Clause 16.2 (*Termination by Contractor*) shall, without prejudice to any claims by the Contractor pursuant to the Contract in respect of which notice has been given by the Contractor under Sub-Clause 20.1.1 (*Contractor's Claims*) provided always that the direct cause of any such claims has arisen prior to the date of the taking effect of the notice of termination, be limited to payment of the amount (if any) determined in accordance with Sub-Clause 19.6 (*Optional Termination, Payment and Release*).

17 RISK AND RESPONSIBILITY

17.1 Indemnities

17.1.1 The Contractor shall indemnify (on demand) and hold harmless the Employer, the Employer's Personnel, and their respective agents, from and against:

17.1.1.1 all claims, actions, damages, demands, costs, losses, liabilities and expenses (including legal fees and expenses) arising out of or in respect of:

- (a) any breach by the Contractor of any provision of this Contract;
- (b) any failure by the Contractor to comply with any applicable Laws; and
- (c) the employment, or termination of the employment, of any of the Contractor's Personnel, or anything done, or omitted to be done, by the Contractor in relation to the Contractor's Personnel; and

17.1.1.2 any and all liability in respect of:

- (a) death or personal injury;
- (b) loss of or damage to property (other than the Works but including any Line Pipe prior to incorporation of such Line Pipe into the Works);
- (c) breach of statutory duty; and
- (d) third party actions, claims, demands, costs, charges and expenses brought against the Employer (including legal expenses on an indemnity basis); and

17.1.1.3 any unnecessary or improper interference with the convenience

of the public or access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or others provided that the Contractor acting in accordance with the Contract shall not constitute unnecessary or improper interference for the purposes of this Sub-Clause 17.1.1.3; and

17.1.1.4 the transport of Goods,

which may arise out of, or in consequence of:

- (i) the performance or non-performance by the Contractor of its obligations under this Contract; or
- (ii) the presence on any Site of the Contractor, any Sub-Contractor or any of their respective personnel or agents; or
- (iii) any defective design, materials, equipment or workmanship in respect of the Works.

17.1.2 Subject to Sub-Clause 17.6.6, the Employer shall indemnify (on demand) and hold harmless the Contractor from and against all claims, actions, damages, demands, costs, losses, liabilities and expenses (including legal fees and expenses) arising out of or in respect of:

17.1.2.1 any failure by the Employer to comply with any applicable Laws; and

17.1.2.2 the employment, or termination of the employment, of any of the Employer's Personnel, or anything done, or omitted to be done, by the Employer in relation to the Employer's Personnel.

17.2 Contractor's Care of the Works

17.2.1 The Contractor shall take full responsibility for the care of the Works (including any Goods incorporated in the Section) from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 (*Taking Over of the Works*)) for the Works, when responsibility for the care of the Works shall pass to the Employer. Subject to Sub-Clauses 17.2.3 and 17.2.4, the Contractor shall take and shall retain full responsibility for the care of the Goods not incorporated into the Works from the Commencement Date.

17.2.2 After responsibility for the care of the Works has passed to the Employer pursuant to Sub-Clause 17.2.1, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

17.2.3 Prior to the point of delivery of Line Pipe at a Delivery Point, the Line Pipe Supplier shall bear all risk of loss and full responsibility for the costs of replacement, repair or reconstruction resulting from any damage to or destruction of such Line Pipe, unless such loss or damage is a result of the Contractor, its employees or agents (in which case the Line Pipe Supplier

shall continue to bear responsibility for replacement, repair or reconstruction but the Employer shall be entitled to recover the costs thereof from the Contractor).

- 17.2.4 Upon and from the point of delivery of Line Pipe at a Delivery Point, subject to Sub-Clause 4B.2 (*Line Pipe Defects*), the Contractor shall bear all risk of loss and full responsibility for repair, replacement or reconstruction with respect to any loss, damage or destruction to such Line Pipe which occurs after such point of delivery, unless such loss or damage is as a result of an act or omission of the Line Pipe Supplier or its subcontractors or their employees or agents, or as a result of any Line Pipe Defect.
- 17.2.5 If any loss or damage happens to the Works, Line Pipe, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 (*Employer's Risks*), the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Line Pipe, Goods and Contractor's Documents conform with the Contract.
- 17.2.6 The Contractor shall be liable for any loss or damage to the Works, Line Pipe, Goods or Contractor's Documents caused by any actions performed by the Contractor, Contractor's Personnel, any Subcontractor and/or any Supplier after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor or any of the Contractor's Personnel, any Subcontractor and/or any Supplier was liable.

17.3 Employer's Risks

The risks referred to in Sub-Clause 17.4 (*Consequences of Employer's Risks*) below are:

- 17.3.1 war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- 17.3.2 rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country (or either of them);
- 17.3.3 riot, commotion or disorder within the Country (or either of them) by persons other than the Contractor's Personnel and other employees of the Contractor, Subcontractors and Suppliers;
- 17.3.4 munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country (or either of them), except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and
- 17.3.5 pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

17.4 Consequences of Employer's Risks

- 17.4.1 If and to the extent that any of the risks listed in Sub-Clause 17.3 (*Employer's Risks*) results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Employer and shall rectify this loss or damage to the extent required by the Employer.
- 17.4.2 If the Contractor suffers delay and/or incurs Cost from rectifying any loss or damage to the Works, Goods or Contractor's Documents caused by any of the risks listed in Sub-Clause 17.3 (*Employer's Risks*), the Contractor shall give a further notice to the Employer and shall be entitled subject to Sub-Clause 20.1 (*Contractor's Claims*) to:
- 17.4.2.1 an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*); and
- 17.4.2.2 payment of any such Cost, which shall be added to the Contract Price.

17.5 Intellectual and Industrial Property Rights

- 17.5.1 In this Sub-Clause 17.5 (*Intellectual and Industrial Property Rights*), "**infringement**" means an infringement (or alleged infringement) of any Intellectual Property Right relating to the Works; and "**claim**" means a claim (or proceedings pursuing a claim) alleging an infringement.
- 17.5.2 The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:
- 17.5.2.1 an unavoidable result of the Contractor's compliance with the Technical Specification; or
- 17.5.2.2 a result of any Works being used by the Employer:
- (a) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract; or
- (b) in conjunction with any thing not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.
- 17.5.3 The Contractor shall indemnify and keep indemnified and hold the Employer harmless against and from any claim which arises out of or in relation to (i) the Contractor's design, manufacture, construction or execution of the Works, (ii) the proper use of the Works by the Employer or any third party or (iii) the Employer's proper use (or the proper use by any third party authorised by the Employer) of any Goods or Contractor's Documents.
- 17.5.4 Whenever a Party does not give notice to the other Party of any claim within twenty eight (28) days of receiving the claim, the first Party shall

be deemed to have waived any right to indemnity under this Sub-Clause 17.5 (*Intellectual and Industrial Property Rights*).

17.6 Limitation of Liability

- 17.6.1 Subject to Sub-Clause 17.6.2 and Sub-Clause 17.6.4, neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract.
- 17.6.2 Without prejudice to Sub-Clause 17.6.4, the exclusion set out in Sub-Clause 17.6.1 shall not apply to:
- 17.6.2.1 Delay Liquidated Damages; or
 - 17.6.2.2 damages in lieu of Delay Liquidated Damages pursuant to Sub-Clause 8.7.3; or
 - 17.6.2.3 any liability of the Contractor pursuant to Sub-Clause 15.4 (*Payment after Termination*); or
 - 17.6.2.4 any liabilities for which the Contractor has provided an indemnity to the Employer under this Contract, under Sub-Clause 17.1 (*Indemnities*) or otherwise.
- 17.6.3 Subject to Sub-Clause 17.6.4, but notwithstanding anything else to the contrary herein, the total liability of the Contractor to the Employer, under or in connection with the Contract, other than under Sub-Clause 4.18 (*Protection of the Environment*), Sub-Clause 4.19 (*Electricity, Water and Gas*), Sub-Clause 8.7 (*Delay Damages*), Sub-Clause 17.1 (*Indemnities*) and Sub-Clause 17.5 (*Intellectual and Industrial Property Rights*), including liability in tort (including negligence), for breach of statutory duty, under indemnity or on termination, shall not in aggregate exceed an amount equal to one hundred per cent (100%) of the Contract Price.
- 17.6.4 The Parties agree that nothing in this Sub-Clause 17.6 (*Limitation of Liability*) shall exclude or limit any liability for or in respect of:
- 17.6.4.1 fraud, fraudulent misrepresentation, deliberate manifest and reckless default or reckless misconduct by the defaulting Party;
 - 17.6.4.2 death or personal injury (howsoever caused);
 - 17.6.4.3 breach of statutory duty or law;
 - 17.6.4.4 any breach by either Party of Sub-Clause 1.15 (*Anti-Corruption*) or Sub-Clause 1.9 (*Confidentiality*);
 - 17.6.4.5 loss of or damage to property of any third party to the extent attributable to any act or omission of the Contractor or any Sub-Contractor, or their respective personnel or agents;
 - 17.6.4.6 in the case of liability of the Contractor:

- (a) any payments received by the Employer pursuant to the Performance Guarantee or the Advance Payment Guarantee;
- (b) any payments received by the Contractor or the Employer from insurance companies under insurance coverage carried by the Contractor pursuant to Clause 18 (*Insurance*). The Contractor shall diligently pursue any claims arising for which coverage may be claimed under such insurance coverages subject to and in accordance with Sub-Clause 18.4 (*Claims*);
- (c) any amounts not paid by insurance, due to the Contractor's failure to comply with Clause 18 (*Insurance*);
- (d) any amounts which would have been covered by the proceeds of insurance coverage carried or required to be carried by the Contractor pursuant to Clause 18 (*Insurance*) but for the application of any deductible under such insurances;
- (e) any liabilities incurred by the Contractor due to the failure of the Contractor to obtain and/or maintain the insurance coverages required pursuant to Clause 18 (*Insurance*);
- (f) any breach by the Contractor of Sub-Clauses 1.10 (Employer's Use of Contractor's Documents) or 1.11 (Contractor's Use of Employer's Documents) or any liability of the Contractor under its indemnity under Sub-Clause 17.5 (Intellectual and Industrial Property Rights); and
- (g) the cost of rectification of Defects pursuant to Clause 11 (*Defects Liability*).

17.6.5 Following expiry of a period of ten years (10) years after the date of the Handover for Use Certificate (or, if earlier, ten (10) years after termination of the Contract), neither Party shall have any liability whatsoever to the other Party whether under the Contract or under statute, the law of contract, tort or otherwise other than in relation to any matter in respect of which legal proceedings are commenced against the Party by the other Party prior to the expiry of such period.

17.6.6 Subject to Sub-Clause 17.6.4, but notwithstanding anything else to the contrary herein, the Employer's aggregate liability to the Contractor under or in connection with this Contract, including liability in tort (including negligence) shall not exceed an amount equal to one hundred per cent (100%) of the Contract Price.

17.7 Conduct of Claims

17.7.1 Subject to Sub-Clause 18.4 (*Claims*), if a Party is entitled to be

indemnified under this Clause 17 (*Risk and Responsibility*), the other Party shall promptly notify the indemnifying Party of the claim being made or action being brought against the other Party giving rise to such indemnification and the indemnifying Party may (at its own expense) conduct all negotiations for the settlement of the claim or action, and any litigation or arbitration which may arise from it (provided that the indemnifying Party shall not settle any such matter without the prior consent of the other Party). This other Party (and his personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless and until the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration within a reasonable time of being requested to do so by such other Party, and/or shall otherwise have failed to complied with the indemnifying Party's obligations hereunder. The other Party shall, at the request of the indemnifying Party, afford all reasonably available assistance for the purpose of contesting any such claim or action, and shall be repaid all expenses and costs (including overheads and financing costs) reasonably incurred in so doing. The indemnifying Party shall at the request of the other Party keep the other Party reasonably informed of the progress of negotiations and litigation referred to in this Sub-Clause 17.7 (*Conduct of Claims*).

- 17.7.2 Sub-Clause 17.7.1 shall not apply to any claims or proceedings raised by way of judicial review which shall be conducted and managed by the Employer.
- 17.7.3 The Contractor shall immediately alert the Employer where he considers that there is any potential for the Contractor and/or the Employer or any actions or decision taken by them in connection with or arising from the Works to be challenged through judicial review.
- 17.7.4 The Contractor shall, immediately upon request by the Employer, collate and provide all information and records relevant to any actual, prospective or threatened judicial review proceedings in which the Contractor and/or the Employer is or may become involved in connection with or arising from the Works which the Contractor may have in his possession. The Contractor shall provide the information and records in a format to be agreed with the Employer.
- 17.7.5 The Contractor shall provide any additional information that may be requested by the Employer or others identified by the Employer during the conduct of any judicial review proceedings.
- 17.7.6 The Contractor shall cooperate fully and promptly with the Employer in connection with any actual, prospective or threatened judicial review proceedings and the Employer may direct the Contractor in terms of any significant decisions that may impact on any proceedings.
- 17.7.7 If the Contractor suffers delay and/or incurs cost as a consequence of complying with his obligations under Sub-Clauses 17.7.3 to 17.7.6 and/or with any requests or directions made to him by the Employer thereunder, the Contractor shall give notice to the Employer and shall be entitled, subject to Sub-Clause 20.1 (*Contractor's Claims*) to:

17.7.7.1 an extension of time for any such delay, if completion is or will

be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*); and

17.7.7.2 payment of any such Cost, which shall be added to the Contract Price.

18 INSURANCE

18.1 General Requirements for Insurance

18.1.1 Employer's Insurances

Without limiting the Contractor's obligations under the Contract, the Employer shall, at its own expense, effect and maintain:

18.1.1.1 construction all risks insurance and third party liability insurance ("**CAR Insurance**"), in accordance with part 1 of the Insurance Specifications set out in Schedule 6 (*Insurance*), for the period(s) set out therein; and

18.1.1.2 such further insurances as the Employer is required to effect and maintain pursuant to all applicable Laws.

18.1.2 Contractor's Insurances

The Contractor shall:

18.1.2.1 at its own expense, effect and maintain:

(a) insurances of the type and against the risks and liabilities, specified in and in accordance with part 2 of the Insurance Specifications set out in Schedule 6 (*Insurance*) (and, if so required by the Employer pursuant to a Variation, insurance of the type and against the risks and liabilities specified in and in accordance with part 3 of the Insurance Specifications set out in Schedule 6 (*Insurance*)), from the Effective Date until the date of issue of the Performance Certificate and shall procure that those insurances are otherwise on the terms set out in this Clause 18 (*Insurance*); and

(b) such further insurances as the Contractor is required to effect and maintain pursuant to all applicable Laws including, but not limited to, mandatory professional liability risk insurance for damages caused to other participants in the construction process and third parties which the Contractor is required to provide pursuant to Article 171, para 1 of the SDA in its capacity of designer and constructor of the Works, against the risks and in the minimum amounts set out in the Bulgarian Ordinance on the Terms and the Order of Mandatory Insurance in Designing and Construction (promulgated in SG, Issue 17, Dated 02.03.2004), to the extent that

such professional liability risk is not covered by the insurances under Sub-Clause 18.1.2.1(a), and that would otherwise be taken out by a skilled, competent and qualified contractor experienced in designing, engineering, constructing, testing and commissioning work similar in nature, extent and acting in accordance with all prudent industry practices or to comply with its own risk appetite,

(together the ("**Contractor's Insurances**");

18.1.2.2 ensure that all facts and circumstances relevant to the policies for the Contractor's Insurances are duly disclosed to insurers, that there are no vitiating circumstances whereby the policies may be voided and that premiums are paid; and

18.1.2.3 provide the Employer with all assistance and information requested for the stipulation of the insurances which the Employer is required to effect and maintain pursuant to Clause 18.1.1.

18.1.3 Certificates of Insurance

Not later than thirty (30) days from the Effective Date and in any event prior to starting any activity at the Site, the Contractor shall provide the Employer with a certificate of insurance in respect of each of the policies the Contractor is required to effect and maintain hereunder, endorsed by the Contractor's insurers and in a form acceptable to the Employer. The Contractor shall also provide the Employer with updated certificates on the renewal anniversary of all the policies it is required to effect and maintain hereunder. Failure to provide such a certificate(s) of insurance may be interpreted by the Employer as evidence that the Contractor has failed to meet its obligations to provide the required insurance cover under the Contract.

18.1.4 Additional supporting information

Without prejudice to the Contractor's obligations set out elsewhere in this Contract, the Contractor shall provide to the Employer all supporting documentation and information (including copies of policies) as may be reasonably requested from time to time by the Employer in respect of the insurances which the Contractor is required to effect and maintain hereunder.

18.2 Deductibles

In the event of a claim under any insurance required to be effected and maintained under this Contract, the Parties will bear deductibles in accordance with the Insurance Specifications set out in Schedule 6 (*Insurance*). The Party responsible for the deductible shall not recover or seek to recover all or part of such deductible from the other Party or any of that other Party's affiliates. If and to the extent the Insurance Specifications do not specify which Party will be responsible for any deductible, such deductible will be for the account of the Contractor.

18.3 General Insurance Provisions

Without prejudice to the requirements of the Insurance Specifications, the following Sub-Clauses 18.3.1 to 18.3.5 inclusive set out the general insurance provisions applicable to the Parties.

18.3.1 Waiver of Rights of Subrogation

All policies required to be effected and maintained under Sub-Clause 18.1.2 (*Contractor's Insurances*) or any other insurance taken out by the Contractor in relation to this Project or the Works not otherwise listed in this Contract, shall contain an agreement from the insurers to waive their rights of subrogation against the Employer, its subsidiaries, parents or affiliated companies of any tier and their respective employees, agents, officers and/or directors and consultants (each an "**Employer Party**" and together the "**Employer Parties**") or any other party listed as insured under the insurances described in Sub-Clause 18.1.1 (*Employer's Insurances*) and their respective insurers.

18.3.2 Subcontractors' Insurances

The Contractor shall procure that its Subcontractors effect and maintain insurances which are consistent, in relation to the Works to be performed by the Subcontractors, with those required by the Contractor under this Contract, except to the extent that the liabilities and risks of the Subcontractors are covered by the insurances procured by the Parties.

18.3.3 No vitiation

The Contractor shall not:

18.3.3.1 bring any claim or action against the Employer or any Employer Party in respect of any losses, damages, liabilities, costs, expenses and charges in circumstances where and to the extent that the Contractor could recover such losses, damages, costs, expenses and charges under the insurance required to be maintained by it pursuant to this Clause 18 (*Insurance*) (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Contractor (or any shareholder, affiliate or Subcontractor of the Contractor, or any of their respective employees, agents, directors and officers (together the "**Contractor Parties**" and each a "**Contractor Party**"))), including but not limited to non-disclosure or under-insurance; and

18.3.3.2 bring any claim or action against the Employer or any Employer Party due to the application of policy exclusions or for losses in excess of policy limits or other form of retention under any insurance to be maintained by the Contractor pursuant to this Clause 18 (*Insurance*), except to the extent any claim arising is due to the gross negligence of the Employer or an Employer Party; and

18.3.3.3 take any action or fail to take any action or (insofar as it is

reasonably within his power) permit or allow others to take or fail to take any action (in either case including failure to disclose any fact or misrepresentation of any fact) as a result of which any of the insurances to be maintained by the Contractor pursuant to this Clause 18 (*Insurance*) may be rendered void, voidable, unenforceable, suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part.

18.3.4 Other General Provisions

18.3.4.1 Neither failure to comply nor full compliance with the provisions of this Clause 18 (*Insurance*) shall relieve the Contractor of his liabilities and obligations under this Contract.

18.3.4.2 All insurances shall be placed and maintained with insurers of sound financial standing with at least a A- S&P rating or an equivalent rating with any other reputable international rating agency agreed to by the Parties.

18.3.4.3 The insurances of each Party will serve as primary insurance and will not contribute to any insurance of any other Party.

18.3.4.4 Subject to the Insurance Specifications, the insurances of the Parties shall qualify as insureds all parties as therein listed.

18.3.4.5 Each Party shall comply with the terms and conditions contained in each of the insurance policies under which the Party is named as an insured.

18.3.4.6 Neither Party shall alter the terms and conditions of any insurance policy without the prior written approval of the other Party.

18.3.5 Disclosure

18.3.5.1 The Contractor shall ensure that full disclosure is made to the Employer and/or the Employer's insurance advisors and/or appointed broker on a timely basis of all information which:

- (a) the Employer requests for disclosure to the Employer's insurers, including all information which the Contractor is obliged to collect and provide pursuant to the Employer's insurances described in Sub-Clause 18.1.1;
- (b) the insurers specifically request; and/or
- (c) the Contractor acting in accordance with prudent industry practices considers to be material to the insurance to be effected and maintained by the Employer under this Clause 18 (*Insurance*).

18.3.5.2 The Contractor shall put in place appropriate internal reporting procedures to ensure that full and timely disclosure, as described

above, is made by its relevant personnel.

18.3.6 Cooperation

18.3.6.1 Each Party shall afford such reasonable assistance to the other Party as may be necessary for all procedures and undertakings necessary for the completion and transmission of the necessary documentation for disclosure to insurers (underwriting submissions).

18.3.6.2 The Contractor shall provide prompt and full assistance to the Employer in complying with the CAR Insurance insurers' ("**CAR Insurers**") surveys and compliance with any recommendations arising therefrom and shall provide full and prompt collaboration so that insurers will continue to provide coverage maintained by the Employer at reasonable premiums, terms and conditions.

18.3.6.3 The Contractor shall fully participate in and comply with safety and loss prevention and control programs implemented by, or at the request of, the Employer.

18.4 Claims

18.4.1 Notification by Each Party

Each Party shall without delay notify the other Party in writing of any actual or, upon acquiring knowledge thereof, potential claim under any insurance policy.

18.4.2 Cooperation by Each Party in the event of a Claim.

18.4.2.1 The Parties shall fully and promptly collaborate in the notification, preparation, negotiation and resolution of insurance claims.

18.4.2.2 Any claim in respect of any event covered by the CAR Insurance shall be made on the basis that such insurance is primary insurance (not on a shared loss basis with respect to any insurance the Contractor may have) and the Contractor shall, therefore, ensure that such claim is not prejudicial to any delay in start-up coverage which the Employer may (at its absolute discretion) procure for its own exclusive interest.

18.4.2.3 The Contractor shall, and shall procure that each Subcontractor shall, fully and promptly comply with the claims handling instructions and procedures set forth by insurers and/or their appointed adjusters.

18.4.2.4 The Contractor shall cooperate with the Employer with the preparation and submission of all required documentation in respect of any claim on the insurances the Employer is required to effect and maintain. For the Contractor's Insurances the Contractor shall, in co-ordination with the Employer as

applicable, carry out negotiations for the settlement of any claim at no cost or expense to, but acting in accordance with the instructions of, the Employer, as the case may dictate.

18.4.2.5 The Contractor shall, and shall procure that each Subcontractor shall, fully and promptly cooperate with the Employer and the CAR Insurers to prevent, minimize and/or mitigate any possible delay should the loss or claim cause or contribute to a delay or a potential delay in the Works.

18.5 Cancellation, Failure to Maintain or Material Change

18.5.1 If any cancellation or material variation in cover in relation to the Works is proposed to be made by the insurers to the terms of any insurance, the Party maintaining that insurance will notify the other Party in writing thereof as soon as is reasonably possible. Increases in deductibles, decreases in limits or sub-limits, or introduction of sub-limits or changes in the terms and conditions will be agreed by the Parties acting reasonably to ensure continuity of insurance at the best available terms and costs under the circumstances.

18.5.2 If one Party fails to effect or maintain any insurance which it is required to effect and maintain by this Contract, or fails to produce copies or satisfactory evidence of that insurance as required by the other Party, the other Party may, but is not obligated to, effect and maintain any such insurance in accordance with the requirements of this Contract, and the other Party may apply any payment due or which may become due to such other Party under this Contract in or towards satisfaction of the costs and expenses of any premium in respect of any such insurance or additional insurance or may recover the same as a debt immediately due and payable.

18.5.3 If and to the extent that any of the insurances required to be effected and maintained under this Clause 18 (*Insurance*) become unavailable, lapse or are cancelled, or the scope and/or amount of cover under any such insurance is materially altered, as a result of vitiation due to gross and/or repeated acts, omissions or negligence by the Contractor and/or any Contractor Party, the Contractor shall indemnify and hold harmless the Employer from and against any and all losses, liabilities, claims and expenses:

18.5.3.1 incurred by the Employer as a result of such unavailability, cancellation and/or reduction in scope and/or amount of cover, and/or increase in premium; and

18.5.3.2 incurred by the Employer, to the extent such losses, liabilities, claims and expenses would not have been incurred, or which would have been indemnified or reimbursed under such insurance, had such insurance been available and/or not cancelled and/or had the scope and/or amount of cover not been reduced.

19 FORCE MAJEURE

19.1 Definition of Force Majeure

19.1.1 In this Clause 19 (*Force Majeure*), "Force Majeure" means an exceptional event or circumstance:

19.1.1.1 which is beyond a Party's control; and

19.1.1.2 which such Party could not reasonably have provided against before entering into the Contract; and

19.1.1.3 which, having arisen, such Party could not reasonably have avoided or overcome; and

19.1.1.4 which is not substantially attributable to the other Party; and

19.1.1.5 which is limited to the following (subject to Sub-Clauses 19.1.1.1 to 19.1.1.4 (inclusive)):

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
- (c) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor, Subcontractors and Suppliers;
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and
- (e) earthquake, flooding (not caused by the Works), landslide (not caused by the Works), hurricane, typhoon or volcanic activity.

19.2 Notice of Force Majeure

19.2.1 If a Party is or will be rendered wholly or partially prevented from performing any of its obligations under the Contract by Force Majeure, then that Party (the "Affected Party") shall give notice to the other Party of the event or circumstances constituting the Force Majeure, including an estimation of its expected duration, and shall specify the obligations, the performance of which is or will be prevented and any action proposed to remove or mitigate the effect of the Force Majeure. Such notice shall be given within fourteen (14) days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure (and the Affected Party thereafter shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure).

- 19.2.2 The Affected Party shall, having given notice pursuant to Sub-Clause 19.2.1, be excused performance of such obligations (to the extent so affected by the Force Majeure Event) for so long as such Force Majeure prevents it from performing them, provided that the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure.
- 19.2.3 Notwithstanding any other provision of this Clause 19 (*Force Majeure*), Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract provided always that the Contractor shall not be entitled to be paid by the Employer for any Works which have been carried out by the Contractor and affected by Force Majeure and in relation to which as a consequence the Employer has derived no benefit from them.
- 19.2.4 In the event that the Parties are unable in good faith to agree that an event of Force Majeure has occurred, or the effect thereof, the Party claiming Force Majeure may submit the dispute for resolution pursuant to Clause 20 (*Claims, Disputes and Arbitration*), provided that the burden of proof as to whether a Force Majeure event has occurred shall be upon the Party claiming Force Majeure.
- 19.2.5 No liability of either Party which arose before the occurrence of the Force Majeure causing the suspension of performance shall be excused as a result of the occurrence.
- 19.2.6 The Affected Party shall continue to perform all of its obligations hereunder which are not impaired by the Force Majeure.

19.3 Duty to Minimise Delay

- 19.3.1 Each Party shall at all times use all reasonable endeavours to prevent, minimise, mitigate or cure any delay or any effect of delay in the performance of the Contract as a result of Force Majeure.
- 19.3.2 The Affected Party shall give notice to the other Party when it ceases to be affected by the Force Majeure. Such notice shall specify the date upon which the Force Majeure ceased to have effect and, following the giving of such notice, the Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure.

19.4 Consequences of Force Majeure

- 19.4.1 If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 (*Notice of Force Majeure*), and suffers delay by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 (*Contractor's Claims*) to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*). The Contractor shall not be entitled to any costs arising out of any Force Majeure.

19.5 Force Majeure Affecting Subcontractors and Suppliers

If any Subcontractor or Supplier is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause 19 (*Force Majeure*), such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause 19 (*Force Majeure*).

19.6 Optional Termination, Payment and Release

19.6.1 If the execution of substantially all the Works in progress is prevented for a continuous period of twelve (12) months by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 (*Notice of Force Majeure*), or for multiple periods which total more than twelve (12) months due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect seven (7) days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 (*Cessation of Work and Removal of Contractor's Equipment*).

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

19.6.2.1 the amounts payable in accordance with the Contract for any work carried out by the Contractor in accordance with the Contract (as determined in accordance with the Payment Rules);

19.6.2.2 the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal; and

19.6.2.3 any other Cost or liability which in the circumstances was reasonably, properly and directly incurred by the Contractor in the expectation of completing the Works, and any claim for other Cost or liability shall be subject to Sub-Clause 20.1 (*Contractor's Claims*).

19.6.3 Without prejudice to any claims by the Contractor pursuant to the Contract in respect of which notice has been given by the Contractor under Sub-Clause 20.1.1 provided always that the direct cause of any such claims has arisen prior to the date of the taking effect of a notice of termination given in accordance with this Contract, the Employer's liability to the Contractor under or in connection with the Contract or otherwise in the event of termination of the Contractor's employment under Sub-Clause 19.6.1, shall be limited to payment of the amount (if any) determined in accordance with Sub-Clause 19.6.2.

19.7 Release from Performance under the Law

Notwithstanding any other provision of this Clause 19 (*Force Majeure*), if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which is unlawful under the law of the Country 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 Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 (*Optional Termination, Payment and Release*) if the Contract had been terminated under Sub-Clause 19.6 (*Optional Termination, Payment and Release*).

20 CLAIMS, DISPUTES AND ARBITRATION

20.1 Contractor's Claims

20.1.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of this Contract, the Contractor shall give notice to the Employer, describing the event or circumstance giving rise to the claim. The notice shall state that it is being given under Sub-Clause 20.1.1 of the Contract and shall be given as soon as practicable, and not later than twenty eight (28) days after the Contractor became aware, or should have become aware, of the event or circumstance.

20.1.2 If the Contractor fails to give notice of a claim within such period of twenty eight (28) days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause 20.1 (*Contractor's Claims*) shall apply.

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

20.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Employer. Without admitting liability, the Employer may, after receiving any notice under this Sub-Clause 20.1 (*Contractor's Claims*), monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Employer to inspect all these records, and shall (if instructed) submit copies to the Employer.

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

continuing effect:

- 20.1.5.1 this fully detailed claim shall be considered as interim;
 - 20.1.5.2 the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Employer may reasonably require; and
 - 20.1.5.3 the Contractor shall send a final claim within twenty eight (28) days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Employer.
- 20.1.6 Within forty two (42) days after receiving a fully detailed claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer and approved by the Contractor, the Employer shall respond with approval, or with disapproval and detailed comments. The Employer may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.
- 20.1.7 Each interim payment shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate. The Contractor shall not be entitled to make a claim for payment to the extent that the event or circumstance giving rise to the claim was caused by (a) any breach by the Contractor of the Contract, or (b) any negligent act or negligent omission of the Contractor, the Contractor's Personnel, the Subcontractors and/or any Suppliers, and provided that, in so far as reasonably practicable, such claim has been agreed in advance with the Employer and the Contractor has used all reasonable endeavours to mitigate the effects of such event or circumstance giving rise to the claim.
- 20.1.8 Once the process set out in Sub-Clauses 20.1.1 to 20.1.6 (inclusive) has been completed, the Employer shall proceed in accordance with Sub-Clause 3.5 (*Determination*) to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 (*Extension of Time for Completion*), and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.
- 20.1.9 The requirements of this Sub-Clause 20.1 (*Contractor's Claims*) are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this Sub-Clause 20.1 (*Contractor's Claims*) or another Sub-Clause (including the Contractor's obligations in relation to progress reports under Sub-Clause 4.21 (*Progress Reports*) and records of Contractor's Personnel and Contractor's Equipment under Sub-Clause 6.10 (*Records of Contractor's Personnel and Equipment*)) 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 Sub-Clause 20.1.2.

20.2 Amicable Dispute Resolution

- 20.2.1 If any dispute, difference or claim arises out of or in connection with this Contract (including, without limitation, any question regarding its existence, validity or termination), whether contractual or non-contractual (a "**Dispute**") then senior representatives of the Parties with authority to settle the Dispute shall, within twenty eight (28) days of a written request from one Party to the other, meet in order to attempt to resolve the Dispute amicably.
- 20.2.2 If the Dispute is not resolved within fifty six (56) days of receipt of the written request, then either Party may refer the Dispute to adjudication in accordance with Sub-Clause 20.3 (*Adjudication*), even if the meeting referred to in Sub-Clause 20.2.1 has not taken place.

20.3 Adjudication

- 20.3.1 Unless settled amicably, any Dispute may be referred by either Party to adjudication in accordance with the Rules for Adjudication in Schedule 8 (*Procedural Rules*). The adjudicator shall be agreed between the Parties or failing agreement shall be appointed in accordance with the said Rules for Adjudication. The agreement between the Parties and the adjudicator shall incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in Schedule 7 (*General Conditions of Dispute Adjudication Agreement*), with such amendments as are agreed between them.
- 20.3.2 If the Dispute to be referred to adjudication under this Sub-Clause 20.3 (*Adjudication*) includes or raises issues which are substantially the same as or are connected with or touch upon issues included or raised in a related adjudication between the Employer and a third party, the Parties hereby agree that, upon notice of election by the Employer, the adjudicator agreed or appointed shall be the adjudicator already appointed to determine the related adjudication.
- 20.3.3 The Parties shall bear their own costs arising out of the adjudication and the adjudicator shall not be empowered to award costs to either Party. Without prejudice to the above, the adjudicator may decide which Party shall bear the adjudicator's fees and in what proportion.
- 20.3.4 If either Party is dissatisfied with the adjudicator's decision:
- 20.3.4.1 the dissatisfied Party may give a notice of dissatisfaction to the other Party, with a copy to the adjudicator;
- 20.3.4.2 this notice shall state that it is a "Notice of Dissatisfaction with the Adjudicator's Decision" and shall set out the matter in dispute and the reason(s) for dissatisfaction; and
- 20.3.4.3 this notice shall be given within twenty eight (28) days of receiving the adjudicator's decision.

- 20.3.5 If the adjudicator fails to give its decision within the period stated in the Rules for Adjudication, then either Party may, within twenty eight (28) days of this period expiring, give a notice to the other Party in accordance with Sub-Clauses 20.3.4.1 and 20.3.4.2.
- 20.3.6 Except as stated in Sub-Clause 20.6 (*Failure to Comply with Adjudicator's Decision*), neither Party shall be entitled to commence arbitration of a Dispute unless a notice in respect of that Dispute has been given in accordance with Sub-Clause 20.3.4 or 20.3.5. If such a notice has been given, and neither Party commences arbitration of the Dispute within one hundred and eighty two (182) days of giving or receiving the notice, such notice shall be deemed to have lapsed and no longer be valid.
- 20.3.7 Whether a Notice of Dissatisfaction with the Adjudicator's Decision has been issued or not by either Party, any adjudicator's decision shall become binding on both Parties upon its release.
- 20.3.8 If the adjudicator has given its decision as to a matter in dispute to both Parties, and no notice under Sub-Clause 20.3.4 has been given by either Party within twenty eight (28) days of receiving the adjudicator's decision, then the decision shall become final and binding on both Parties.
- 20.3.9 Adjudication may be commenced before or after the issuing of the Performance Certificate. The obligations of the Parties shall not be altered by reason of any adjudication being conducted during prior to the issuing of the Performance Certificate.

20.4 Amicable Settlement

Where a notice has been given under Sub-Clause 20.3.4 or 20.3.5, both Parties shall attempt to settle the Dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the twenty-eighth (28th) day after the day on which this notice was given, even if no attempt at amicable settlement has been made.

20.5 Arbitration

20.5.1 Unless settled amicably, subject to Sub-Clause 20.3 (*Adjudication*) and Sub-Clause 20.6 (*Failure to Comply with Adjudicator's Decision*), any Dispute in respect of which the adjudicator's decision (if any) has not become final and binding shall be referred to and finally resolved by international arbitration. Unless otherwise agreed by both Parties:

20.5.1.1 the Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("**Rules of Arbitration**");

20.5.1.2 the seat of the arbitration shall be Vienna;

20.5.1.3 the Dispute shall be settled by three (3) arbitrators appointed in accordance with the Rules of Arbitration; and

20.5.1.4 the arbitration shall be conducted in English.

- 20.5.2 The arbitrator(s) shall have full power to open up, review and revise any ruling or decision of the adjudicator.
- 20.5.3 In any award dealing with costs of the arbitration, the arbitrator(s) may take account of the extent (if any) to which a Party failed to cooperate with the other Party in appointing the adjudicator under Sub-Clause 20.3 (*Adjudication*).
- 20.5.4 Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the adjudicator to obtain its decision, or to the reasons for dissatisfaction given in the Party's notice under Sub-Clause 20.3.4 or 20.3.5. Any decision of the adjudicator shall be admissible in evidence in the arbitration.
- 20.5.5 Arbitration may be commenced before or after the issue of the Performance Certificate. The obligations of the Parties shall not be altered by reason of any arbitration being conducted prior to the issue of the Performance Certificate.
- 20.5.6 This Sub-Clause 20.5 (*Arbitration*) shall be governed by, and construed in accordance with, the law of England and Wales.

20.6 Failure to Comply with Adjudicator's Decision

- 20.6.1 In the event that a Party fails to comply with any decision of the adjudicator, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under Sub-Clause 20.5 (*Arbitration*) and Sub-Clause 20.2 (*Amicable Dispute Resolution*), Sub-Clause 20.3 (*Adjudication*) and Sub-Clause 20.4 (*Amicable Settlement*) shall not apply to this reference. The arbitral tribunal (constituted under Sub-Clause 20.5 (*Arbitration*)) shall have the power, by way of summary or other expedited procedure, to order, whether by an interim or provisional measure or an award (as may be appropriate under the applicable law or otherwise), the enforcement of that decision.
- 20.6.2 In the case of a binding but not final decision of the adjudicator, such interim or provisional measure or award shall be subject to the express reservation that the rights of the Parties as to the merits of the dispute are reserved until they are resolved by an award.
- 20.6.3 Any interim or provisional measure or award enforcing a decision of the adjudicator which has not been complied with, whether such decision is binding or final and binding, may also order or award damages or other relief.

IN WITNESS whereof, the parties hereto have caused this Contract to be executed as a deed on the day and year stated above.

AUTHORISED SIGNATORY OF THE EMPLOYER

Executed (but not delivered until the date)
written at the start of this Contract) as a deed)
by an authorised signatory of
ICGB AD

Signature:

Name (block capitals): MS TEODORA
GEORGIEVA

Title:

Place of signing:

In the presence of

Witness signature:

Witness name:
(block capitals)

Witness address:

Place of signing

Executed (but not delivered until the date)
written at the start of this Contract) as a deed)
by an authorised signatory of
ICGB AD

Signature: _____

Name (block capitals): MR KONSTANTINOS
KARAYANNAKOS

Title: _____

Place of signing: _____

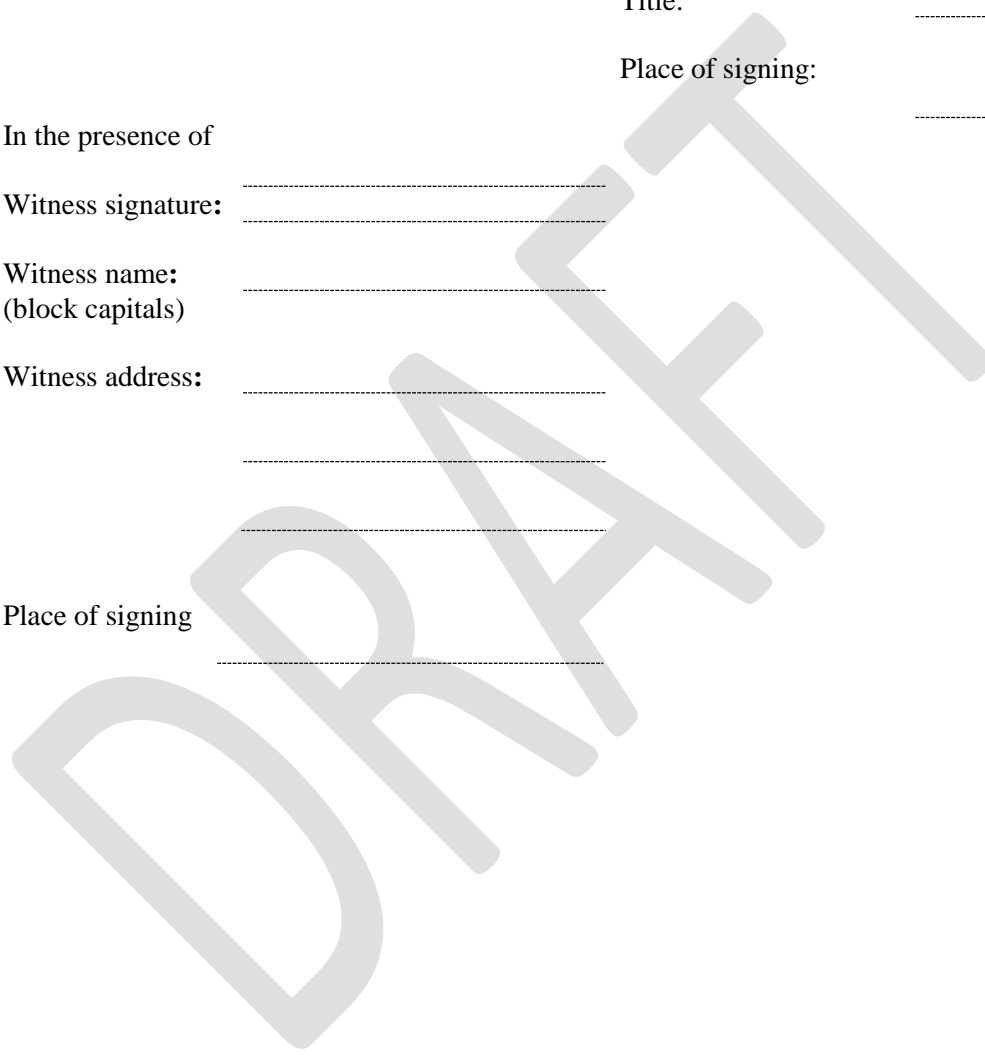
In the presence of

Witness signature: _____

Witness name:
(block capitals) _____

Witness address: _____

Place of signing _____



AUTHORISED SIGNATORY OF THE CONTRACTOR

Executed (but not delivered until the date)
written at the start of this Contract) as a deed)
by an authorised signatory of

◆ [NAME OF CONTRACTOR]

Signature:

Name (block capitals):

Title:

Place of signing:

In the presence of

Witness signature:

Witness name:
(block capitals)

Witness address:

.....

.....

Place of signing

SCHEDULE 1: TENDER

[Successful Bidder's Technical Offer to be included here.]

DRAFT

SCHEDULE 2: PERFORMANCE LEVELS

Hourly flow rate: not less than 343 000 normal m³ gas

Daily flow rate: not less than 8 220 000 normal m³ gas

Monthly (30 days) flow rate: not less than 247 000 000 normal m³ gas

DRAFT

SCHEDULE 3: PRICE OFFER

[Price offer to be inserted here.]

DRAFT

SCHEDULE 4: KEY PERSONNEL

[Drafting note: information from successful bidder to be inserted.]

DRAFT

SCHEDULE 5: PAYMENT

1. PAYMENT SCHEDULE

An overview of the payments to be made in respect of the Works in accordance with and subject to Clause 14 (*Contract Price and Payment*) is illustrated in the table below.

Payment schedule	Payments as % of Total Lump Sum Price (TLS)
After Commencement Date - advance payment	10% of TLS
Regular payments every 2 months based on the achieved progress according to the TLS Breakdown and the Payment Rules	80% of TLS
Upon issuance of Taking-Over Certificate	15% of TLS
Upon issuance of Handover for Use Certificate	5% of TLS
Issuance of Performance Certificate - payment of the Retention Money	5% of TLS

2. TLS BREAKDOWN

The following table sets out the "**TLS Breakdown**", allocating the Total Lump Sum Price against individual Project Items as described in the table.

[Table to be populated based on the Contractor's Price Offer, subject to the upper limits specified in the final column of the table below]

TLS Breakdown

Project Item	Description	Lump sum amount (Euro) (In Numbers & In Words)	Lump sum amount upper limit
1.	Mobilization	€ EURO	Up to 3% of TLS
2	Engineering	€ EURO	Up to 5% of TLS
2.1	Detailed design (DEG)	€	Up to 75% of the lump sum amount of Project Item 2
2.2	Final technical documentation (FTD)	€	-

Project Item	Description	Lump sum amount (Euro) (In Numbers & In Words)	Lump sum amount upper limit
3	Pipeline	€ EURO	-
3.1	Linear part - pipe line	€ EURO	Up to 45% of TLS
3.2	Block valve station BV1	€ EURO	-
3.3	Block valve station BV2	€ EURO	-
3.4	Block valve station BV3A	€ EURO	-
3.5	Block valve station BV4	€ EURO	-
3.6	Block valve station BV4A	€ EURO	-
3.7	Block valve station BV5	€ EURO€	-
3.8	Block valve station BV6	€ EURO	-
3.9	Block valve station BV7	€ EURO	-
3.10	HDPE conduits	€ EURO	-
3.11	Cathodic Protection	€ EURO	-

Project Item	Description	Lump sum amount (Euro) (In Numbers & In Words)	Lump sum amount upper limit
3.12	HDD Crossings	€ EURO	-
3.13	Mechanical Testing and Precommissioning Activities (testing of all systems prior to the gas in)	€ EURO	-
3.14	Activities related to crops compensation (Bulgaria), EIA activities or any other activities related to third parties	€ EURO	-
4	Komotini Gas Metering Station (GMS1) & Pigging Station (PS1)	€ EURO	-
4.1	Delivery of equipment and overall construction according to Project specifications	€ EURO	Up to 85% of the lump sum amount of Project Item 4
4.2	Mechanical Testing and Precommissioning Activities (testing of all systems prior to the gas in)	€ EURO	-
5	Kardjahli AGRS and BV3	€ EURO	-
5.1	Delivery of equipment and overall construction according to Project specifications	€ EURO	Up to 85% of the lump sum amount of Project Item 5
5.2	Mechanical Testing and Precommissioning Activities (testing of all systems prior to the gas in)	€ EURO	-
6	Dimitrovgrad AGRS	€ EURO	-
6.1	Delivery of equipment and overall construction according to Project specifications	€ EURO	Up to 85% of the lump sum amount of Project Item 6
6.2	Mechanical Testing and Precommissioning Activities (testing of all systems prior to the gas in)	€ EURO	-

Project Item	Description	Lump sum amount (Euro) (In Numbers & In Words)	Lump sum amount upper limit
7	Stara Zagora Gas Metering Station (GMS2) & Pigging Station (PS2)	€ EURO	-
7.1	Delivery of equipment and overall construction according to Project specifications	€ EURO	Up to 85% of the lump sum amount of Project Item 7
7.2	Mechanical Testing and Precommissioning Activities (testing of all systems prior to the gas in)	€ EURO	-
8	Operations & Maintenance Base - Dispatching Centre (Stamboliski)	€ EURO	-
9	Integrated Control & Telecommunication Systems	€ EURO	-
9.1	Delivery of equipment and overall construction according to Project specifications	€ EURO	Up to 85% of the lump sum amount of Project Item 9
9.2	Mechanical Testing and Precommissioning Activities (testing of all systems prior to the gas in)	€ EURO	-
10	Training	€ EURO	-

Total Lump Sum Price (TLS)	€ EURO
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[In the event that the sum of the lump sum amounts for all items in the TLS Breakdown differs from Total Lump Sum Price, the Employer shall consider as offered Contract Price the Total Lump Sum Price]

[The price for all other works related to the Project but not described in detail in the TLS Breakdown shall be included in the lump sum amounts for the Project Items in the TLS Breakdown.]

3. PAYMENT RULES

For the purposes of determining any entitlement of the Contractor to payment, the value of the works completed by the Contractor at any point shall be calculated in accordance with the following rules ("**Payment Rules**"):

- 3.1 The TLS shall be equal to the sum of the lump sum amounts for Project Items 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.
- 3.2 The lump sum amount for Project Item 2 shall be equal to the sum of the lump sum amounts for Project Items 2.1 and 2.2.
- 3.3 The lump sum amount for Project Item 3 shall be equal to the sum of the lump sum amounts for Project Items 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13 and 3.14.
- 3.4 The lump sum amount for Project Item 4 shall be equal to the sum of the lump sum amounts for Project Items 4.1 and 4.2.
- 3.5 The lump sum amount for Project Item 5 shall be equal to the sum of the lump sum amounts for Project Items 5.1 and 5.2.
- 3.6 The lump sum amounts for Project Item 6 shall be equal to the sum of the lump sum amounts for Project Items 6.1 and 6.2.
- 3.7 The lump sum amount for Project Item 7 shall be equal to the sum of the lump sum amounts for Project Items 7.1 and 7.2.
- 3.8 The lump sum amount for Project Item 9 shall be equal to the sum of the lump sum amounts for Project Items 9.1 and 9.2.
- 3.9 For Project Item 1, payments shall be as follows:
 - 3.9.1 ten per cent (10%) of the lump sum amount for the relevant item is payable upon the approval by Employer of the insurance policies for all Contractor's Insurances;
 - 3.9.2 thirty-five per cent (35%) of the lump sum amount for the relevant item is payable following handover by the Contractor to the Employer of the cars and all Employer's site facilities in full operation as required pursuant to the provisions of the Contract;
 - 3.9.3 thirty per cent (30%) of the lump sum amount for the relevant item is payable upon completion of the Contractor's offices and the open and sheltered storage areas, ready for Plant storage;
 - 3.9.4 fifteen per cent (15%) of the lump sum amount for the relevant item is payable upon review and validation by the Employer of Contractor's Documents (as applicable);
 - 3.9.5 10% of the lump sum amount for the relevant item is payable upon unloading of each fifty per cent (50%) of the total quantity of Line Pipe delivered by the Line Pipe Supplier to the Delivery Points.

- 3.10 For Project Item 2, payments shall be based on the actual bi-monthly progress. The procedure for measuring progress shall be in accordance with paragraph 4 below.
- 3.11 For Project Item, 3.1 the payments shall be based on the actual bimonthly progress of the linear part calculated only for portions of the linear part that are completed according to the following:

$$\frac{\text{Actual Linear Progress}}{\text{Nominal Length}} \times \text{Lump sum amount of Project Item 3.1}$$

The linear part shall be considered as completed after all works are finished in order for the pipe to be ready for hydro test:

- Pipe is welded;
- Pipe is in trench;
- Welding quality documents are available; and
- Pipe is back filled, ready for pressure test.

- 3.12 For Project Items 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9, payments shall be as follows:

3.12.1 Thirty five per cent (35%) of the lump sum amount for the relevant item is payable when the relevant equipment is ready to install (inspected, accepted and stored on site);

3.12.2 Forty per cent (40%) of the lump sum amount for the relevant item is payable when all works on site are finished in order for the linear section of the BV to be ready for hydro test; and

3.12.3 Twenty five (25%) of the lump sum amount for the relevant item is payable when all other works related to BV completion are finished.

- 3.13 For Project Item 3.10, payments shall be based on the actual bimonthly progress of the HDPE conduits installation calculated according to the following:

$$\frac{\text{Actual Linear Progress}}{\text{Nominal Length}} \times \text{Lump sum amount of Project Item 3.10}$$

- 3.14 For Project Item 3.11, payments shall be as follows:

3.14.1 Eighty per cent (80%) of the lump sum amount for the relevant Project Item is payable as per progress of the linear elements; and

3.14.2 Twenty per cent (20%) of the lump sum amount for the relevant Project Item is payable upon completion, commissioning and successful completion of all Tests on Completion.

- 3.15 For Project Item 3.12, payments shall be as follows:

3.15.1 Each HDD crossing shall be separate position;

- 3.15.2 Twenty per cent (20%) of the lump sum amount for the relevant Project Item is payable after full mobilisation;
 - 3.15.3 Eighty per cent (80%) of the lump sum amount for the relevant Project Item is payable after all works for each position are completed and the crossing is ready for hydro test; and
 - 3.15.4 the relevant weighting of each HDD in the payment will be proportional to its length.
- 3.16 For Project Item 3.13 payments shall be based on the actual bimonthly progress according to the following:
- 3.16.1 Eighty five (85%) of the lump sum amount of the relevant item is payable according to the following:

$$\frac{\text{Length of successfully Hydrotested Sections}}{\text{Nominal Length}} \times 85\% \times \text{Lump sum amount of Project Item 3.13}$$

- 3.16.2 Fifteen per cent (15%) of the lump sum amount for the relevant item is payable on successful drying of pipeline.
- 3.17 For Project Item 3.14, payments shall be based on the actual bi-monthly progress. The procedure for measuring progress shall be in accordance with paragraph 4 below.
- 3.18 For Project Items 4.1, 5.1, 6.1, 7.1, 8 and 9.1, payments shall be as follows:
- 3.18.1 Thirty five per cent (35%) of the lump sum amount for the relevant item is payable when all the relevant equipment is ready to install (inspected, accepted and stored on site);
 - 3.18.2 Fifteen per cent (15%) of the lump sum amount for the relevant item is payable when works on site reach fifty per cent (50%) progress;
 - 3.18.3 Twenty five per cent (25%) of the lump sum amount for the relevant item is payable when works on site reach seventy-five per cent (75%) progress;
 - 3.18.4 Twenty five per cent (25%) of the lump sum amount for the relevant item is payable when works on site reach one hundred per cent (100%) progress; and
 - 3.18.5 The procedure for measuring progress shall be in accordance with paragraph 4 below.
- 3.19 For Project Items 4.2, 5.2, 6.2, 7.2 and 9.2, one hundred per cent (100%) of the lump sum amount for the relevant item is payable after successful completion of all Mechanical Completion and Precommissioning Activities.
- 3.20 For Project Item 10, payments shall be based on actual bi-monthly progress. The procedure for measuring progress shall be in accordance with paragraph 4 below.

4. PROGRESS MEASUREMENT

The procedure for progress measurement shall be prepared by the Employer or its representatives based on all available documents which are comprised within the Technical Specification, including the bill of materials (out of which quantities will be used for measuring progress) of the Technical Design and the FEED (as such terms are defined in the Technical Specification) as well as the bill of materials of the detailed design developed by the Contractor. The progress measurement procedure will be submitted to the Contractor for acceptance. If the Parties fail to reach an agreement on the progress measurement procedure, payments will be made upon completion of all of the works for each relevant Project Item.

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SCHEDULE 6: INSURANCE

1. <u>PART 1 EMPLOYER'S INSURANCE</u>	
<p>CONSTRUCTION "ALL RISKS" (Sect. 1) Interest/Property Insured:</p>	<p>The Insurance is to cover the Works in respect of physical loss, physical damage and liability incurred by the Insureds within the insured values from the time the Employer, the Contractor, the Subcontractors, any of their respective contractors, manufacturers and/or suppliers and any other person with whom the Insureds have entered into written contracts directly in connection with the Works, take responsibility for the assets which are the subject of the Insurance.</p> <p>The Insurance is to cover the Works executed by or under the direction of the Contractor against physical loss or damage, including: materials, components, parts, machinery, fixtures, equipment and any other property destined to become part of the Permanent Works, including pre-existing property, temporary works and all items associated therewith whether or not intended to form part of the works.</p> <p>Unless the Employer issues a Variation requiring the Contractor to take out and maintain the insurance specified in part 3 of this Schedule 6, this Insurance is also to cover contractor's equipment (materials, supplies, plant, vessels, machinery, equipment, tools, buildings and structures including warehouses, offices, camps and workshops and the contents therein, to the full replacement value of such equipment) and site preparatory work.</p>
Exclusions:	<p>The Insurance will contain typical exclusions for current market practice at the time the Insurance is procured, for the type of activities part of the Works.</p>
Sum Insured:	<p>[To reflect Tender], an amount equivalent to the total reinstatement value of the Works, plus an escalation limit of ten per cent (10%) as per an Automatic Increase Clause.</p> <p>Sublimit for surrounding Property over EUR 500,000.</p>
Geographical Limits:	<p>Anywhere in the Country in connection with the Works.</p>
Deductibles:	<p>In respect of each occurrence:</p> <ul style="list-style-type: none"> • Natural Catastrophe (earthquake, flood) 2% of VARTOL (Value At Risk At Time Of Loss) with min. EUR 800,000 and max. EUR 3.000.000 • Testing and Commissioning EUR 200,000 • HDD/River Crossings 10% VARTOL with min. EUR 100.000 • All other losses EUR 100,000

Period of Cover:	From the commencement of any part of the Works until the date of issue of the Handover for Use Certificate plus a twenty four (24) month extended maintenance period..
Insureds:	<p>Policyholder: Employer.</p> <p>Insureds: Employer, shareholders of the Employer, respective parents, subsidiaries and affiliates (in each case of any tier) as existing or of future constitution, joint ventures, co-ventures and respective employees, directors, officers, consultants hired by Insureds, etc.</p> <p>Other Insureds (or Additional Insureds): The Contractor, Subcontractors, any of their respective contractors, manufacturers and/or suppliers and any other person with whom the assureds have entered into written contracts directly in connection with the Works. Coverage for manufacturers, suppliers, vendors, architects, consulting engineers, surveyors, etc., being limited to on site activities only.</p>
Loss Payee:	The Employer or other Insured in relation to its own interest. All claims must be routed via the Employer.
THIRD PARTY LIABILITY (Sect. 2) Interest:	All sums which any Insured becomes liable to pay to third parties in respect of bodily injury and/or damage to property in connection to the Works and/or negligent damage to surrounding and third party property.
Limit of Indemnity:	EUR 10,000,000 any one occurrence
Geographical Limits:	Worldwide in connection with the Works, excluding USA, Canada, Australia, EU sanctioned territories.
Deductible:	The first EUR 100,000, physical damage only, nil bodily injury or where third party liability section of construction all risks policy responds in excess of an Additional Insured's TPL policy.
Insured:	Same as Section 1.
1.3 Other common provisions:	<p>Deductibles:</p> <p>Physical loss or damage - All deductibles shall be for the account of the Contractor save where a claim arises as a result of an act or omission of/breach of Contract by the Employer, in which case the deductible(s) in respect of such claim shall be for the account of the Employer.</p> <p>Other retention:</p> <p>Contractor shall bear the full costs of restoration of damage, whenever Contractor is liable, including faulty design, material and workmanship should losses not be recoverable from the construction all risks insurance policy due to standard exclusions,</p>

	warranties, subjectivities or sublimits.
<u>PART 2: CONTRACTORS' INSURANCE:</u>	
The Contractor shall effect, maintain, and extend this obligation to Subcontractors, the following insurances:	
<p>2.1. EMPLOYER'S LIABILITY Employer's liability insurance covering personal injury or death of employees of the Insureds engaged in the performance of the Works to a limit of EUR 5,000,000 or as required by Law, whichever is greater and extended to any personnel travelling abroad.</p>	
<p>2.2 THIRD PARTY LIABILITY</p> <p>All sums which the Contractor becomes liable to pay by reason of law and/or express contractual liability for any event or series of, to third parties in respect of bodily injury and/or damage to property, covering the activities of the Contractor in connection to the Works for an amount of EUR 5.000.000 per each occurrence.</p> <p>This insurance should be extended by naming the Employer, the shareholders of the Employer, respective parents, subsidiaries and affiliates (in each case of any tier), and any person/entity nominated by the Employer on its behalf, and such other persons as the Employer may elect as Other Insureds (or Additional Insureds) in respect of claims that may be made against them arising out of the execution of the Works.</p> <p>Including excess auto liability, which is in excess of the third party compulsory limit in the Country.</p> <p>This insurance is primary to the Employer's Insurance under the third party liability section of the construction all risks policy. In the event that the Contractor may be entitled to claim the same event under both the Contractor's third party liability policy and the third party liability section of the construction all risks policy, the third party liability section of the construction all risks policy will intervene on exhaustion of coverage of the Contractor's third party liability.</p>	
<p>2.3 MOTOR INSURANCES Insurance in respect of third party liability insurance and passenger liability insurance for an amount required by Law or EUR 5.000.000, whichever is greater. To include compulsory insurances applicable to motorized vehicles if marine vessels and/or aircrafts are to be used by the Contractor.</p>	
<p>2.4 OTHER INSURANCES</p> <p>Any other legally required insurances except the auto liability which is compulsory requirement in Bulgaria and Greece.</p>	

PART 3: CONTRACTORS' INSURANCE:

If so required by the Employer pursuant to a Variation, the Contractor shall effect, maintain, and extend this obligation to Subcontractors, the following insurances:

3.1 CONTRACTORS EQUIPMENT/EPC CONTRACTOR SURVEY

Insurance against loss or damage from whatsoever cause arising in respect of Contractor supplied items, not for incorporation into the Works, including: materials, supplies, plant, vessels, machinery, equipment, tools, buildings and structures (including warehouses, offices, camps and workshops) and the contents therein, to the full replacement value of such equipment.

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SCHEDULE 7: GENERAL CONDITIONS OF DISPUTE ADJUDICATION AGREEMENT

1. Definitions

"Dispute Adjudication Agreement" is a tripartite agreement by and between:

- (i) the "Employer";
- (ii) the "Contractor"; and
- (iii) the "Adjudicator".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Adjudication Agreement, which incorporates this Schedule 7 (*General Conditions of Dispute Adjudication Agreement*). In the Dispute Adjudication Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2. General Provisions

- (a) The Dispute Adjudication Agreement shall take effect when the Employer, the Contractor and the Adjudicator have respectively each signed a dispute adjudication agreement.
- (b) This employment of the Adjudicator is a personal appointment. No assignment or subcontracting of the Dispute Adjudication Agreement is permitted without the prior written agreement of all the parties to it.

3. Warranties

- (a) The Adjudicator warrants and agrees that he/she is and shall be impartial and independent of the Employer and Contractor. The Adjudicator shall promptly disclose to each of them any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.
- (b) When appointing the Adjudicator, the Employer and the Contractor relied upon the Adjudicator's representations that he/she is:
 - (i) experienced in the work which the Contractor is to carry out under the Contract;
 - (ii) experienced in the interpretation of contract documentation; and
 - (iii) fluent in the language for communications defined in the Contract.

4. General Obligations of the Adjudicator

5. The Adjudicator shall:

- (a) have no interest financial or otherwise in the Employer or the Contractor, nor any financial interest in the Contract except for payment under the Dispute Adjudication Agreement;

- (b) not previously have been employed as a consultant or otherwise by the Employer or the Contractor, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Adjudication Agreement;
- (c) have disclosed in writing to the Employer and the Contractor before entering into the Dispute Adjudication Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer or the Contractor, and any previous involvement in the overall Project of which the Contract forms part;
- (d) not, for the duration of the Dispute Adjudication Agreement, be employed as a consultant or otherwise by the Employer or the Contractor, except as may be agreed in writing by the Employer and the Contractor;
- (e) comply with the Procedural Rules contained in Schedule 8 (*Procedural Rules*) of the Contract and with Sub-Clause 20.3 of the Contract;
- (f) not give advice to the Employer or the Contractor concerning the conduct of the Contract, other than in accordance with the Rules for Adjudication;
- (g) not enter into discussions or make any agreement with the Employer or the Contractor regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Adjudication Agreement;
- (h) ensure his/her availability for any site visit and hearings as are necessary; and
- (g) treat the details of the Contractor and all the his/her activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer and the Contractor.

5. General Obligations of the Employer and the Contractor

- (a) The Employer and the Contractor shall not request advice from or consultation with the Adjudicator regarding the Contract. The Employer and the Contractor shall be responsible for compliance with this provision.
- (b) The Employer and the Contractor undertake to each other and to the Adjudicator that the Adjudicator shall not, except as otherwise agreed in writing by the Employer, Contractor and the Adjudicator:
 - (i) be appointed as an arbitrator in any arbitration under the Contract;
 - (ii) be called as a witness to give evidence concerning any Dispute before arbitrator(s) appointed for any arbitration under the Contract; or
 - (iii) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Adjudicator's functions, unless the act or omission is shown to have been in bad faith.
- (c) The Employer and the Contractor hereby jointly and severally indemnify and hold the Adjudicator harmless against and from claims from which he/she is relieved from liability under the preceding paragraph.

6. Payment

- (a) The Adjudicator shall be paid as follows, in the currency named in the Dispute Adjudication Agreement:
 - (i) a daily fee which shall be considered as payment in full for:
 - (a) each working day spent reading submissions, attending hearings (if any), preparing decisions, or making site visits (if any); and
 - (b) each day or part of a day up to maximum of two (2) days travel time in each direction for the journey (if any) between the Adjudicator's home and site or another location of a meeting with the Employer and the Contractor;
 - (ii) all reasonable expenses incurred in connection with the Adjudicator's duties, including the cost of secretarial services, telephone calls, courier charges, faxes and telexes, travel expenses, hotel and subsistence costs; a receipt shall be required for each item in excess of five percent (5%) of the daily fee referred to in paragraph 6(a)(i); and
 - (iii) any Taxes properly levied in the Country on payments made to the Adjudicator (unless a national or permanent resident of the Country) under this paragraph 6.
- (b) The daily fee shall be as specified in the Dispute Adjudication Agreement.
- (c) Immediately after the Dispute Adjudication Agreement takes effect, the Adjudicator shall, before engaging in any activities under the Dispute Adjudication Agreement, submit to the Contractor, with a copy to the Employer, an invoice for (i) an advance of twenty-five percent (25%) of the estimated total amount of daily fees to which he/she will be entitled and (ii) an advance equal to the estimated total expenses that he/she shall incur in connection with his/her duties. Payment of such invoice shall be made by the Contractor upon his receipt of the invoice. The Adjudicator shall not be obliged to engage in activities under the Dispute Adjudication Agreement until he or she has been paid in full for the invoice submitted under this paragraph 6.
- (d) Thereafter the Adjudicator shall submit to the Contractor, with a copy to the Employer, invoices for the balance of his/her daily fees and expenses, less the amounts advanced. The Adjudicator shall not be obliged to render its decision until invoices for all of his or her daily fees and expenses for making a decision shall have been paid in full.
- (e) Unless paid earlier in accordance with the above, the Contractor shall pay each of the Adjudicator's invoices in full within twenty eight (28) calendar days after receiving each invoice and shall apply to the Employer under the Contract for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.
- (f) If the Contractor fails to pay to the Adjudicator the amount to which he/she is

entitled under the Dispute Adjudication Agreement, the Employer shall pay the amount due to the Adjudicator and any other amount which may be required to maintain the operation of the adjudication; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.11 of the Contract.

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

7. Default of the Adjudicator

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

8. Default of the Adjudicator

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

Form of Adjudication Agreement

- (1) [NAME AND DETAILS OF CONTRACT]
- (2) [NAME AND ADDRESS OF EMPLOYER]
- (3) [NAME AND DETAILS OF CONTRACTOR]
- (4) [NAME AND ADDRESS OF ADJUDICATOR]

BACKGROUND:

The Employer and the Contractor have entered into the Contract and desire jointly to appoint the Adjudicator to act as adjudicator to adjudicate a dispute which has arisen in relation to []¹

The Employer, Contractor and Adjudicator jointly agree as follows:

1. The conditions of this Dispute Adjudication Agreement comprise the "General Conditions of Dispute Adjudication Agreement", which is appended to the Contract and the following provisions. In these provisions, which include amendments and additions to the General Conditions of Dispute Adjudication Agreement, words and expressions shall have the same meanings as are assigned to them in the General Conditions of Dispute Adjudication Agreement.
2. [*Details of amendments to the General Conditions of Dispute Adjudication Agreement, if any*]
3. In accordance with paragraph 6 of the General Conditions of Dispute Adjudication Dispute Agreement the Adjudicator shall be paid a daily fee of [] per day.
4. In consideration of these fees and other payments to be made by the Employer and the Contractor in accordance with paragraph 6 of the General Conditions of Dispute Adjudication Agreement, the Adjudicator undertakes to act as adjudicator in accordance with this Dispute Adjudication Agreement.
5. The Employer and the Contractor jointly and severally undertake to pay the Adjudicator, in consideration of the carrying out of these services, in accordance with paragraph 6 of the General Conditions of Dispute Adjudication Agreement.
6. This Dispute Adjudication Agreement shall be governed by the law of England and Wales.

SIGNED by for and on behalf of the Employer:

.....
Signature of *Director/Authorised Signatory/Co Signature of Witness

¹ A brief description or name of dispute to be added.

Secretary

.....
Full name of above (print)

.....
Full name of above (print)

.....
Date of signing

.....
Address of witness

SIGNED for and on behalf of the Contractor:

.....
Signature of *Director/Authorised Signatory/Co
Secretary

.....
Signature of Witness

.....
Full name of above (print)

.....
Full name of above (print)

.....
Date of signing

.....
Address of witness

SIGNED for and on behalf of the Adjudicator:

.....
Signature of *Director/Authorised Signatory/Co
Secretary

.....
Signature of Witness

.....
Full name of above (print)

.....
Full name of above (print)

.....
Date of signing

.....
Address of witness

SCHEDULE 8: PROCEDURAL RULES

General

Any reference in the Contract to the Rules for Adjudication shall be deemed to be a reference to these Rules.

Definitions in the Contract shall apply in these Rules.

Notice of Intention to seek Adjudication

1. (1) Either Party to this Contract (the "referring Party") may give written notice (the "notice of adjudication") of his intention to refer any Dispute arising under the Contract to adjudication.
- (2) The notice of adjudication shall be given to the other Party to this Contract and shall be written in English.
- (3) The notice of adjudication shall set out briefly:
 - (a) the nature and a brief description of the Dispute and of the parties involved;
 - (b) details of where and when the Dispute has arisen;
 - (c) the nature of the redress which is sought; and
 - (d) the names and addresses of the Parties to this Contract (including, where appropriate, the addresses which the Parties have specified for the giving of notices).
2. (1) Following the giving of a notice of adjudication, the Parties shall seek to agree the identity of the adjudicator. If the identity of an adjudicator has not been agreed within fourteen (14) days following the notice of adjudication, then the referring Party may apply, with a copy of the application to the other Party, to any appointing authority named in this Contract or, if none, to the President of FIDIC or his nominee, to appoint an adjudicator, and such appointment shall be final and conclusive.
- (2) A person requested to act as adjudicator in accordance with the provisions of paragraph (1) shall indicate whether or not he is willing to act within two days of receiving the request.
- (3) In this paragraph, and in paragraphs 5 and 6 below, an "adjudicator nominating body" shall mean the body (not being a natural person and not being a Part) which is the appointing authority named in this Contract or, if none, the President of FIDIC or his nominee.
3. The request referred to in paragraphs 2, 5 and 6 shall be accompanied by a copy of the notice of adjudication.
4. Any person requested or selected to act as adjudicator in accordance with paragraphs 2, 5 or 6 shall be a natural person acting in his personal capacity. A person requested or selected to act as an adjudicator shall not be an employee of

any of the either of the Parties and shall declare any interest, financial or otherwise, in any matter relating to the Dispute.

5. (1) The adjudicator nominating body referred to in paragraphs 2(1) and 6(1), 5(3)(b) and 6(1)(c) must communicate the selection of an adjudicator to the referring Party within five (5) days of receiving a request to do so.
- (2) Where the nominating body or the adjudicator nominating body fails to comply with paragraph (1), the referring party may:
 - (a) agree with the other party to the dispute to request a specified person to act as adjudicator: or
 - (b) request any other adjudicator nominating body (a body which holds itself out publicly as a body which will select an adjudicator on an international FIDIC project when requested to do so by a referring party) to select a person to act as adjudicator.
- (3) The person requested to act as adjudicator in accordance with the provisions of paragraphs (1) or (2) shall indicate whether or not he is willing to act within two (2) days of receiving the request.
6. (1) Where an adjudicator indicates to the Parties that he is unable or unwilling to act, or where he fails to respond in accordance with paragraph 2(2), the referring Party may:
 - (a) request another person (if any) specified in this Contract to act as adjudicator: or
 - (b) request the nominating body (if any) referred to in this Contract to select a person to act as adjudicator: or
 - (c) request any other adjudicator nominating body to select a person to act as adjudicator.
- (2) The person requested to act in accordance with the provisions of paragraph 6(1) shall indicate whether or not he is willing to act within two (2) days of receiving the request.
7. (1) Where an adjudicator has been selected in accordance with paragraphs 2, 5 or 6, the referring Party shall, not later than twenty one (21) days from the date of the notice of adjudication, refer the Dispute in writing (the "referral notice") to the adjudicator.
- (2) A referral notice shall be accompanied by copies of, or relevant extracts from, this Contract and such other documents as the referring party intends to rely upon.
- (3) The referring Party shall, at the same time as he sends to the adjudicator the documents referred to in paragraphs 7(1) and (2), send copies of those documents to the other Party.
8. (1) The adjudicator may, with the consent of the Parties, adjudicate at the same time on more than one Dispute under this Contract.

- (2) The adjudicator may, with the consent of the Parties, adjudicate at the same time on related disputes under different contracts, whether or not either Party is a party to those disputes.
 - (3) All the parties in paragraphs 8(1) and (2) respectively may agree to extend the period within which the adjudicator may reach a decision in relation to all or any of these disputes.
 - (4) Where an adjudicator ceases to act because a Dispute is to be adjudicated on by another person in terms of this paragraph, that adjudicator's fees and expenses shall be determined in accordance with paragraph 27.
- 9.** (1) An adjudicator may resign at any time on giving notice in writing to the Parties.
- (2) An adjudicator must resign where the Dispute is the same or substantially the same as one which has previously been referred to adjudication, and a decision has been taken in that adjudication.
 - (3) Where an adjudicator ceases to act under paragraph 9(1):
 - (a) the referring Party may serve a fresh notice under paragraph 1 and shall request an adjudicator to act in accordance with paragraphs 2 to 7; and
 - (b) if requested by the new adjudicator and insofar as it is reasonably practicable, the Parties shall supply him with copies of all documents which they had made available to the previous adjudicator.
 - (4) Where an adjudicator resigns in the circumstances referred to in paragraph 9(2), or where a Dispute varies significantly from the Dispute referred to him in the referral notice and for that reason he is not competent to decide it, the adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses reasonably incurred by him. The Parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment shall be apportioned.
- 10.** Where either Party objects to the appointment of a particular person as adjudicator, that objection shall not invalidate the adjudicator's appointment nor any decision he may reach in accordance with paragraph 20.
- 11.** (1) The Parties may at any time agree to revoke the appointment of the adjudicator. The adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses incurred by him. The Parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment shall be apportioned.
- (2) Where the revocation of the appointment of the adjudicator is due to the default or misconduct of the adjudicator, the Parties shall not be liable to pay the adjudicator's fees and expenses.

Powers of the adjudicator

- 12.** The adjudicator shall:
- (a) act impartially in carrying out his duties and shall do so in accordance

with any relevant terms of this Contract and shall reach his decision in accordance with the applicable Laws in relation to this Contract;

- (b) avoid incurring unnecessary expense;
- (c) immediately disclose in writing to the parties anything of which he becomes aware which could affect his impartiality or independence; and
- (d) conduct the adjudication proceedings in English or such other language as may be agreed between the Parties and the adjudicator (including any hearings) and all communications between the adjudicator and the Parties shall be in that language. All such communications shall be copied to the other party.

13. The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the Dispute, and shall decide on the procedure to be followed in the adjudication. In particular he may-

- (a) request either Party to supply him with such documents as he may reasonably require including, if he so directs, any written statement from either Party supporting or supplementing the referral notice and any other documents given under paragraph 7(2);
- (b) decide upon the adjudicator's own jurisdiction, and as to the scope of any Dispute referred to him;
- (c) decide to conduct a hearing in which event he shall decide on the date, place and duration for the hearing. The adjudicator may request that written statements from the Parties be presented to him prior to, at or after the hearing;
- (d) subject to obtaining any necessary consent from a third party or parties, make such site visits and inspections as he considers appropriate, whether accompanied by the parties or not;
- (e) subject to obtaining any necessary consent from a third party or parties, carry out any tests or experiments;
- (f) obtain and consider such representations and submissions as he requires, and, provided he has notified the parties of his intention, appoint experts, assessors or legal advisers;
- (g) give directions as to the timetable for the adjudication, any deadlines, or limits as to the length of written documents or oral representations to be complied with;
- (h) issue other directions relating to the conduct of the adjudication; and
- (i) refuse admission to hearings to any persons other than the Employer, the Contractor and their respective representatives, and to proceed in the absence of any party who the adjudicator is satisfied received notice of the hearing.

14. The Parties shall comply with any request or direction of the adjudicator in

relation to the adjudication.

- 15.** If, without showing sufficient cause, a Party fails to comply with any request, direction or timetable of the adjudicator made in accordance with his powers, fails to produce any document or written statement requested by the adjudicator, or in any other way fails to comply with a requirement under these provisions relating to the adjudication, the adjudicator may:
- (a) continue the adjudication in the absence of that Party or of the document or written statement requested;
 - (b) draw such inferences from that failure to comply as circumstances may, in the adjudicator's opinion, be justified; and
 - (c) make a decision on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed.

The adjudicator shall not give advice to the Parties or their representatives concerning the design, execution and completion of the Works other than in accordance with these Rules.

- 16. (1)** Subject to any agreement between the Parties to the contrary, and to the terms of paragraph 16(2) below, either Party to the Dispute may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as he considers appropriate.
- (2) Where the adjudicator is considering oral evidence or representations, a Party may not be represented by more than one person, unless the adjudicator gives directions to the contrary.
- 17.** The adjudicator shall consider any relevant information submitted to him by either of the Parties and shall make available to them any information to be taken into account in reaching his decision.
- 18.** The adjudicator and either Party shall not disclose to any other person any information or document provided to him in connection with the adjudication which the party supplying it has indicated is to be treated as confidential, except to the extent that it is necessary for the purposes of, or in connection with, the adjudication.
- 19. (1)** The adjudicator shall reach his decision not later than-
- (a) sixty three (63) days after the date of the referral notice mentioned in paragraph 7(1); or
 - (b) seventy seven (77) days after the date of the referral notice if the referring Party so consents; or
 - (c) such period exceeding sixty three (63) days after the referral notice as the Parties may, after the giving of that notice, agree.
- (2) Where the adjudicator fails, for any reason, to reach his decision in accordance with paragraph 19(1):

- (a) Either Party may serve a fresh notice under paragraph 1 and shall request an adjudicator to act in accordance with paragraphs 2 to 7; and
 - (b) if requested by the new adjudicator and insofar as it is reasonably practicable, the Parties shall supply him with copies of all documents which they had made available to the previous adjudicator.
- (3) As soon as possible after he has reached a decision, the adjudicator shall deliver a copy of that decision to each of the Parties.

Adjudicator's decision

- 20.** The adjudicator shall decide the matters in Dispute. He may take into account any other matters which the Parties agree should be within the scope of the adjudication or which are matters under this Contract which he considers are necessarily connected with the dispute. In particular, he may:
- (a) open up, revise and review any decision taken or any certificate given by any person referred to in this Contract unless this Contract states that the decision or certificate is final and conclusive;
 - (b) decide that either Party is liable to make a payment under this Contract (in the currency of this Contract) and when that payment is due and the final date for payment; and/or
 - (c) having regard to any term of this Contract relating to the payment of interest, decide the circumstances in which, and the rates at which, and the periods for which simple or compound rates of interest shall be paid.
- 21.** In the absence of any directions by the adjudicator relating to the time for performance of his decision, the Parties shall be required to comply with any decision of the adjudicator immediately on delivery of the decision to the Parties in accordance with this paragraph.
- 22.** The adjudicator shall provide reasons for his decision. The adjudicator shall not be called as a witness by the Parties to give evidence concerning any Dispute in connection with, or arising out of, this Contract.

Effects of the decision

- 23.** (1) In his decision, the adjudicator may, if he thinks fit, order either Party to comply peremptorily with his decision or any part of it.
- (2) The decision of the adjudicator shall be binding on the Parties, and they shall comply with it until the Dispute is finally determined by international arbitration (in accordance with the terms of this Contract) or by agreement between the Parties.
- 24.** The adjudicator shall treat the details of this Contract and all activities and hearings of the adjudicator as confidential and shall not disclose the same without the prior written consent of the Parties. The adjudicator shall not, without the consent of the Parties, assign or delegate any of his work under these Rules or engage legal or technical assistance.

25. The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator shall be similarly protected from liability.
26. If the adjudicator shall knowingly breach any of the provisions of Rule 12(a) or act in bad faith, he shall not be entitled to any fees or expenses hereunder and shall reimburse each of the Parties for any fees and expenses properly paid to him if, as a consequence of such breach any proceedings or decisions of the adjudicator are rendered void or ineffective.

Payment

27. The adjudicator shall be paid the fees and expenses set out in the adjudicator's agreement.

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