

Appendix 14 – Draft Contract

DATED

(1) ICGB AD

- and -

(2) *[SUPPLIER]*

AGREEMENT FOR LINE PIPE SUPPLY

for the needs of

GAS INTERCONNECTOR GREECE – BULGARIA

ICGB AD is not following the standard template for supply contracts published by the Public Procurement Agency and approved by the Bulgarian Minister of Finance due to the international character of the Project; the transboundary effect of the pipeline and the complexity of the construction.

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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 ("**Contracting Entity**" which term includes its legal successors and permitted assignees) of the one part; and
- (2) [**NAME OF SUPPLIER**] (company number [***]) whose registered office is situated at [***] ("**Supplier**" which term includes its legal successors and permitted assignees) of the other part,

together the "**Parties**" and each a "**Party**".

BACKGROUND:

- A The Contracting Entity is procuring the design, construction, commissioning and operation of a natural gas pipeline directly connecting the national gas transmission systems of the Republic of Greece and the Republic of Bulgaria, having 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 Contracting Entity desires the supply of line pipe (DN800) in connection with the Project. Pursuant to a Decision No P-07/07.12.2017 of the Executive Directors of the Contracting Entity, on the grounds of article 134 in conjunction with article 18, paragraph 1 part 2 of the PPA the Contracting Entity opened a restricted procedure inviting tenders from appropriately qualified parties to supply the Goods (as hereinafter defined), with Announcement with outg. No P-07/08.12.2017.
- C Pursuant to this restricted procedure, the Contracting Entity has selected the Supplier and has awarded to the Supplier the procurement for the supply of the Goods (as hereinafter defined) in accordance with this Contract, which is entered into by the Parties and executed as a deed.
- D In consideration of the payments to be made by the Contracting Entity to the Supplier under this Contract, the Supplier hereby agrees with the Contracting Entity to supply the Goods (as hereinafter defined) and perform its associated obligations in conformity with the provisions of this Contract.
- E The Contracting Entity hereby agrees to pay the Supplier, in consideration for the supply of the Goods and the Supplier's performance of its associated obligations, the Contract Price (as hereinafter defined), at the times and in the manner prescribed by this Contract.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Contract the following words and expressions shall have the meanings ascribed to them below except where the context requires otherwise:

"**Advance Payment**" shall have the meaning given to it in clause 8.2.1;

"Advance Payment Deduction" means a deduction to be applied pursuant to, and calculated in accordance with, clause 8.2.2;

"Advance Payment Guarantee" shall have the meaning given to it in clause 9.1.1;

"Affected Party" shall have the meaning given in clause 14.3.1;

"Appendices" means the appendices to this Contract and **"Appendix"** shall be construed accordingly;

"Applicable Codes and Standards" shall have the meaning given in clause 5.8 (*Applicable Codes and Standards*);

"Applicable Laws" means all national, regional and local laws applicable to the Site, each Delivery Point, the Goods, the places where the Goods are manufactured 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;

"Applicable Permits" means all valid waivers, exemptions, variances, franchises, permission, permits, approvals, consents, authorisations, registrations, grants, acknowledgements, agreements, licenses or similar order of, or from, any governmental body, instrumentality, agency, authority, court or other body having jurisdiction over the matter in question, required to be obtained or maintained in connection with the Goods as may be in effect from time to time;

"Approved Bank" means a financial institution that is either (i) a bank licenced 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) licenced 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);

"Background Intellectual Property" means the Intellectual Property owned by or otherwise in the possession of the Supplier at the Effective Date;

"Bill of Quantities" means the bill of quantities attached at attachment 01 to the Technical Specification;

"CE Change Contract Price Adjustment" shall have the meaning given in clause 15.7.1;

"CE Termination Payment" shall have the meaning given in clause 19.6.2.1;

"Change" means any Contracting Entity Change or Mandatory Change;

"Change in Costs" means the aggregate of any increase in Costs, less the aggregate of any reduction in Costs;

"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 Effective Date:

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

"Change Order" means a written order to the Supplier issued and signed by the Contracting Entity after the execution and delivery of this Contract authorising a Change and, if appropriate, specifying the changes to the applicable Contract Parameters by reason of such Change determined in accordance with clause 15 (*Changes*);

"Change Order Notice" means a written notice to the Contracting Entity, issued by the Supplier in response to a Change Order Request, in accordance with clause 15.2.2;

"Change Order Request" means a written statement issued to the Supplier and signed by the Contracting Entity requesting a Contracting Entity Change;

"Commencement Date" shall have the meaning given in clause 3.2.6;

"Compensation Event" means:

- (a) a breach of this Contract by the Contracting Entity which causes the Supplier to incur additional Costs in supplying the Goods (provided that the Supplier's entitlement to claim any compensation in respect of storage costs arising as a result of any such breach by the Contracting Entity shall be limited to the circumstances described in paragraph (b) of this definition below);
- (b) any requirement for the Supplier to store Goods beyond the Original Storage Period as described in clause 5.5.2, in the circumstances described in clause 5.5.2.1, and to the extent expressed as a Compensation Event in clause 5.5.2;
- (c) loss or damage to Goods, prior to the point of delivery by the Supplier of such Goods to a Delivery Point in accordance with this Contract, arising as a result of the negligence or intentional misconduct of the Contracting Entity, its employees or agents as described in clause 17.1.1; and
- (d) subject to and as provided in clause 4.9 (*EPC Contractor Events*), an EPC Contractor Event;

"Condition Precedent" means:

- (a) written confirmation, in the form of a brokers' or insurers' certificate, that the insurance cover required by clause 18 (*Insurance*) is being maintained; and
- (b) provision of an Advance Payment Guarantee;

"Conditions" means the terms and conditions comprised in this Contract, consisting of clause 1 (*Definitions and Interpretation*) to clause 24 (*Miscellaneous*) inclusive, as amended from time to time in accordance with this Contract;

"Confidential Information" means this 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, programmes, reports, maps, models, agreements, ideas, methods, discoveries, inventions, patents, concepts, research, development, and business and financial information, and any information relating to the Goods;

"Conflict of Interest" means where the Supplier, his employees or hired persons outside his structure (including Subcontractors) who participate in the Project have an interest which may lead to benefit as meant by Article 2, Paragraph 3 of the Act on Prevention and Finding Conflict of Interests (a law enacted in the Republic of Bulgaria) which a fair minded and informed observer would conclude may influence their impartiality and independence in relation to the Project;

"Contracting Entity Change" means any modification or adjustment to any of the Contract Parameters which is initiated by the Contracting Entity;

"Contracting Entity Indemnities" means the Contracting Entity and its directors, officers, agents, employees, successors, assignees, subsidiaries and affiliates, the EPC Contractor and the Owner's Engineer;

"Contract" means the Conditions and the Appendices as may be amended from time to time in accordance with this Contract;

"Contract Parameters" means each of:

- (a) the scope, nature, Type or quantity of the Goods, and the scope and nature of the Supplier's obligations, as described in the Technical Specification and otherwise in this Contract;
- (b) the Delivery Periods and Delivery Requirements;
- (c) the Guaranteed Completion Dates; and
- (d) the Contract Price,

each as may be adjusted in accordance with clause 15 (*Changes*);

"Contract Price" means an amount equal to the Initial Goods Price, as may be superseded by a Revised Goods Price from time to time, plus or minus (as the case may be) any and all Contract Price Adjustments to be applied pursuant to clause 15 (*Changes*);

"Contract Price Adjustment" means each Contracting Entity Contract Price Adjustment and each Mandatory Change Contract Price Adjustment;

"Contracted Quantity of Goods" means the Initial Quantity of Goods, as may be superseded by a Revised Quantity of Goods from time to time;

"Contracting Entity Parties" and **"Contracting Entity Party"** shall each have the meaning given in clause 18.3.1.1;

"Control" means the beneficial ownership of more than fifty per cent (50%) of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression **"change in Control"** shall be construed accordingly;

"Cost" means all expenditure reasonably, properly and demonstrably incurred (or to be incurred) by the Supplier in accordance with and subject to the terms of this Contract in the supply of the Goods and performance of its obligations under this Contract, including costs of manufacturing, storage, transport and delivery, and including overhead and similar charges, but does not include any profit, any financing costs or charges or any pecuniary gain which might otherwise have accrued to the Supplier;

"Costs to Complete" shall have the meaning given in clause 19.7.4.2(a);

"CP Satisfaction Date" means the date on which the Condition Precedents have been satisfied or waived pursuant to clause 3.2.3 and the Contracting Entity has confirmed the same in writing pursuant to clause 3.2.3;

"Damages" means any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, fines, interest and causes of action, including, without limitation, legal fees, suffered or incurred by the Contracting Entity;

"Day" means a calendar day;

"Defect" means any defect or deficiency of any kind in the Goods including, without limitation, the failure of the Goods to comply with the requirements of this Contract and the Applicable Codes and Standards set out in this Contract or otherwise applicable to the Goods, and the term **"Defective"** shall be construed accordingly;

"Delay Liquidated Damages" means any and all liquidated damages payable by the Supplier pursuant to clause 11.2.1;

"Delivery Date" shall have the meaning given in clause 10.1.1;

"Delivery Periods" means the periods during which Provisional Acceptance of the Goods is to be achieved, as set out:

- (a) as at the Effective Date, in the table in Appendix 4 (*Preliminary Delivery Schedule*); and thereafter
- (b) following issue by the Contracting Entity of the Delivery Schedule pursuant to clause 4.4.5.2, and subject to clause 4.4.9, the Delivery Schedule;

"Delivery Point" means any and each of the delivery points for the Goods, the details of which are provided by the Contracting Entity (or the EPC Contractor (with evidence that the Contracting Entity has approved such delivery points)) to the Supplier in writing pursuant to clause 4.4.1, which comply with the description for such delivery points specified in the Technical Specification;

"Delivery Requirements" means the proportions of Goods to be delivered in any particular Delivery Period or by any particular Guaranteed Completion Date, as specified:

- (a) as at the Effective Date, in Appendix 4 (*Preliminary Delivery Schedule*); and thereafter
- (b) following issue by the Contracting Entity of the Delivery Schedule pursuant to clause 4.4.5.2, and subject to clause 4.4.9, the Delivery Schedule;

"Delivery Schedule" means the schedule of dates that the Goods (as comprised in each Milestone) are to be manufactured, inspected, tested, shipped and delivered, issued by the Contracting Entity pursuant to clause 4.4.5.2, as may be amended or updated from time to time pursuant to clause 4.4.6;

"Effective Date" means the date of signature of this Contract;

"EPC Change" shall have the meaning given in clause 4.10.1;

"EPC Change Response" shall have the meaning given in clause 4.10.1;

"EPC Contract" means the contract between the Engineering, Procurement and Constructions (EPC) and the Contracting Entity in respect of the Project;

"EPC Contractor" means the engineering, procurement and construction contractor engaged by the Contracting Entity in respect of the Project, as notified by the Contracting Entity to the Supplier in writing;

"EPC Contractor Event" means:

- (a) any requirement for the Supplier to store Goods beyond the original storage period as described in clause 5.5.2, in the circumstances described in clause 5.5.2.2, and to the extent expressed as a Compensation Event in clause 5.5.2;
- (b) subject to compliance by the Supplier with its obligations pursuant to clause 10.1.1, any failure by the EPC Contractor to be available to accept delivery of Goods on the Delivery Date (which is not otherwise caused by any breach of failure by the Supplier to satisfy its obligations under this Contract or any Defect in the Goods), provided that Supplier's entitlement to claim any compensation in respect of storage costs arising as a result of such failure shall be limited to the circumstances described in paragraph (a) of this definition above;
- (c) any requirement for the Supplier to store Goods for the period and in the circumstances described in, and to the extent expressed as a Compensation Event in, clause 10.1.10;
- (d) any damage caused to any Goods by the EPC Contractor in exercising its rights as described in clause 4.6.1;
- (e) any damage caused to any Goods while in the possession and control of the EPC Contractor following delivery of the Goods by the Supplier to a Delivery Point in accordance with clause 10 (Delivery and Acceptance of Goods); and

- (f) any other act or omission of the EPC Contractor which has a material adverse effect on the Supplier's ability to perform any of its obligations or exercise any of its rights pursuant to this Contract, or directly causes the Supplier to incur additional costs or suffer losses, save to the extent predominantly caused or materially contributed to by the Supplier;

"EPC Works" means the works to be carried out by the EPC Contractor under the EPC Contract;

"EPC Works Completion" means the date that the EPC Works have been taken over by the Employer, and have passed all required tests after completion, in accordance with the terms of the EPC Contract;

"Excess Costs to Complete" shall have the meaning given in clause 19.7.4.2;

"Extended Warranty Period" shall have the meaning given in clause 13.3.3;

"Final Acceptance" shall have the meaning given in clause 10.3.1;

"Final Acceptance Certificate" shall have the meaning given in clause 10.3.3.1.

"Final Milestone" means the Milestone identified as the Final Milestone in the table in clause 8.3.3;

"Final Persistent Breach Notice" shall have the meaning given in clause 19.7.2.2;

"Force Majeure Termination Payment" shall have the meaning given in clause 19.6.1.1;

"Force Majeure Event" shall have the meaning given in clause 14.1.1;

"Foreground Intellectual Property" has the meaning given in clause 22.1;

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person currently engaged in activities of a similar scope and complexity to those that are subject of this Contract;

"Goods" means the goods to be provided by the Supplier pursuant to this Contract, as more particularly specified in the Technical Specification and the Price Offer;

"Goods Price" means an amount equal to the Initial Goods Price, as may be superseded by the Revised Goods Price from time to time;

"Goods Variation Notice" shall have the meaning given in clause 8.1.5;

"Guaranteed Completion Date" means, in relation to each Milestone, and the Goods comprised in that Milestone, the date by which Provisional Acceptance of the Goods comprised in that Milestone must be achieved, as specified:

- (a) as at the Effective Date, in Appendix 4 (Preliminary Delivery Schedule); and thereafter
- (b) following issue by the Contracting Entity of the Delivery Schedule pursuant to clause 4.4.5.2, and subject to clause 4.4.9, the Delivery Schedule,

and "**Guaranteed Completion Dates**" means all of such dates;

"**Initial Goods Price**" means the total price for all the Goods shown in the Price Offer (being the amount shown in the final row of the table in the Price Offer, titled "Total price");

"**Initial Guaranteed Completion Date**" means, for each Milestone, and the Goods comprised within that Milestone, the date specified as the Guaranteed Completion Date for that Milestone in Appendix 4 (*Preliminary Delivery Schedule*) as at the Effective Date;

"**Initial Quantity of Goods**" means the total quantity of all Goods, in metres, specified in the Price Offer, being the sum of all the amounts shown in the column of the table in the Price Offer headed "Total quantity (m)" for all Types of Goods;

"**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;

"**Inspection Parties**" and "**Inspection Party**" shall have meaning given in clause 5.4.3;

"**Latent Defect**" means any Defect in the Goods which is not apparent or reasonably discoverable from the inspections to be carried out by the Contracting Entity pursuant to clause 10.2 (*Provisional Acceptance*) for the purposes of certifying Provisional Acceptance, and which does not become apparent to the Contracting Entity during any Warranty Period or Extended Warranty Period in respect of such Goods, but which becomes apparent following the date of Final Acceptance;

"**Mandatory Change**" shall have the meaning given in clause 15.3.1.1;

"**Mandatory Change Contract Price Adjustment**" shall have the meaning given in clause 15.8.1;

"**Mandatory Change Events**" means those events set out in clause 15.3.2.1;

"**Mandatory Change Notice**" shall have the meaning given in clause 15.3.1.3;

"**Manufacturing Facility**" means the premises of the Supplier at which the Goods are manufactured and fabricated, as more specifically identified in the Technical Specification;

"**Milestone**" means each of the Milestones identified in clause 8.3.3;

"**Milestone Payment**" means each of the amounts determined in accordance with clause 8.3.2;

"**Milestone Type Amount**" means the amount calculated in accordance with clause 8.3.2.1;

"**Month**" shall mean a calendar month;

"**Notice of Final Acceptance**" shall have the meaning given in clause 10.3.2;

"Notice to Proceed" means a notice to proceed issued in accordance with clause 3.2.5;

"Original Storage Period" means, in respect of any Goods comprised within a Milestone, the period from the Commencement Date until the end of the second (2nd) month following the Initial Guaranteed Completion Date for that Milestone;

"Owner's Engineer" shall have the meaning given in clause 6.2 (*Owner's Engineer*);

"Performance Guarantee" shall have the meaning given in clause 9.2.1;

"Persistent Breach" means a breach for which a Final Persistent Breach Notice has been issued pursuant to clause 19.7.2.2, 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" shall have the meaning given in clause 19.7.2.1;

"Person" means any individual, corporation, partnership, association, joint stock company, trust, unincorporated organisation, joint venture, government or political subdivision or agency thereof;

"Pipe Length" means, in the case of Relevant Goods, a pipe length of either twelve (12) metres or eighteen (18) metres (as may be specified as required by the Contracting Entity in any Pipe Length Variation Notice pursuant to clause 8.1 (*Contracted Quantity*));

"Pipe Length Ratio Change" shall have the meaning given in clause 8.1.3;

"Pipe Length Variation Notice" shall have the meaning given in clause 8.1.3;

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

"Point of Departure" means the place (or places) at which Goods are shipped from (whether by ship, rail, truck or otherwise) to the relevant Delivery Point; [*To be aligned to Supplier's tender*]

"PPA" means the Public Procurement Act of the Republic of Bulgaria (promulgated SG, issue 13 of 16 February 2016, and as may be subsequently amended from time to time);

"Price Offer" means the price offer submitted by the Supplier to the Contracting Entity and contained in Appendix 2 (*Price Offer*);

"Procurement Documentation" means the documentation issued by the Contracting Entity inviting expressions of interest in respect of participation in the Public Procurement;

"Project" means the design, construction, commissioning and operation of a natural gas pipeline directly connecting the national gas transmission systems of the Republic of Greece and the Republic of Bulgaria, having 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" means the project execution plan prepared by the Owner's Engineer, approved by the Contracting Entity and disclosed to the Supplier (as the same may be revised and updated by the Owner's Engineer, with the approval of the Contracting Entity, and disclosed to the Supplier, from time to time), in relation to the Project;

"Provisional Acceptance" shall have the meaning given in clause 10.2.1.1;

"Provisional Acceptance Certificate" shall have the meaning given in clause 10.2.1.1;

"Provisional Acceptance Goods Price" shall have the meaning given in clause 19.6.1.1(c);

"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 Official" shall mean any of the following:

- (a) any official or employee of any government agency or government-owned or controlled enterprise;
- (b) any person performing a public function;
- (c) any official or employee of a public international organisation, including without limitation, donor or funding agencies or the Contracting Entity;
- (d) any candidate for political office; or
- (e) any political party or an official of a political party;

"Public Procurement" means the public procurement competition for the supply of the Goods in connection with the Project;

"Quality Plan" means the quality plan to be prepared and provided by the Supplier, specifying quality controls for the Goods, as described in and meeting the requirements set out in the Technical Specification;

"Release Notice" means a release notice issued by the Third Party Inspector in accordance with clause 5.4.8 and the Technical Specification;

"Relevant Goods" means those Goods specified in the Bill of Quantities as having a required individual pipe length of "12m;18m";

"Retention" means amounts retained from payments to which the Supplier is entitled under this Contract in accordance with clause 9.3 (*Retention*);

"Revised Goods Price" means the amount determined in accordance with clause 8.1.4.3 and/or clause 8.1.6.2, and/or clause 15.7.1.1(d) (as the case may be);

"Revised Quantity of Goods" means the amount determined in accordance with clause 8.1.4.2 and/or clause 8.1.6.1, and/or pursuant to clause 15.7.1.1(c) (as the case may be);

"Site" means all those parcels of land in the Republic of Bulgaria and the Republic of Greece owned or leased or to be owned or leased by the Contracting Entity, or over which the Contracting Entity has or will have an easement or right of way, and on which the Project will be located, as more particularly identified in the Technical Specification;

"Subcontractors" means each of those subcontractors providing equipment, materials, work or services to the Supplier who has consented to implement a specific part of the Public Procurement in connection with the supply of the Goods, as specifically identified in the

Supplier's Request for Participation, the Technical Offer and/or clause 7 (*Subcontracts*) of this Contract, or as may be replaced in accordance with clause 7 (*Subcontracts*);

"Supplier Default Termination Amount" shall have the meaning given in clause 19.7.4.1;

"Supplier Default Termination Overpayment" shall have the meaning given in clause 19.7.5.1;

"Supplier Default Termination Payment" shall have the meaning given in clause 19.7.5.2;

"Supplier Event of Default" shall have the meaning given in clause 19.7.1;

"Supplier Parties" and **"Supplier Party"** shall each have the meaning given in clause 18.3.1.2;

"Supplier's Representative" shall have the meaning given in clause 6.1 (*Supplier's Representative*);

"Supplier's Request for Participation" means the Supplier's submission to the Contracting Entity in order to participate in the Public Procurement at the preliminary selection stage;

"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 Offer" means the technical offer submitted by the Supplier to the Contracting Entity and contained in Appendix 3 (*Technical Offer*);

"Technical Specification" means Appendix 1 (*Technical Specification*);

"Termination Overpayment" shall have the meaning given in clause 19.6.4.1;

"Termination Payment" shall have the meaning given in clause 19.6.4.2;

"Termination Reconciliation" shall have the meaning given in clause 19.6.1.1;

"Test and Inspection Plan" means a test and inspection plan prepared by the Supplier, as described in clause 4.4.2.3, as approved by the Contracting Entity pursuant to clause 4.4 (*Delivery Schedule, Quality Plan and Test and Inspection Plan*);

"Third Party" means a Person other than the Contracting Entity or the Supplier and **"Third Parties"** shall be construed accordingly;

"Third Party Inspector" shall have the meaning given in clause 6.3 (*Third Party Inspector*);

"Type" means a type of Goods as listed in the column headed "Pipe type" in the table in the Price Offer;

"Type 3.1 Certificate" means a certificate to EN 10204, type 3.1, issued by the Supplier pursuant to clause 5.4.7 and in accordance with the Technical Specification and the standards referred to therein;

"Type 3.2 Certificate" means a certificate to EN 10204, type 3.2, issued by the Third Party Inspector in accordance with clause 5.4.8;

"Unit Price" means the price per metre for each Type of Goods, as set out in the column headed "Unit price" in the Price Offer;

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

"Warranty Period" shall have the meaning given in clause 13.3.1; and

"year" means a calendar year.

1.2 Interpretation

1.2.1 Headings

Headings in this Contract have been inserted for convenience only and shall not in any way affect the interpretation, meaning, or effect of anything contained in this Contract nor govern the rights and liabilities of the Parties.

1.2.2 Priority of Documents

1.2.2.1 All the documents comprising this Contract shall be read as a whole and their provisions construed accordingly. In the event of any conflict, discrepancy, ambiguity or inconsistency between such documents or their provisions, this Contract shall be construed in accordance with the following order of precedence:

- (a) the Conditions;
- (b) Appendix 1 (*Technical Specification*);
- (c) Appendix 4 (*Preliminary Delivery Schedule*);
- (d) Appendix 5 (*General Conditions of Dispute Adjudication Agreement*);
- (e) Appendix 6 (*Procedural Rules*);
- (f) Appendix 2 (*Price Offer*); and
- (g) Appendix 3 (*Technical Offer*).

- 1.2.2.2 In the event of any conflict, discrepancy, ambiguity or inconsistency within the provisions of the Technical Specification, then:
- (a) the Supplier shall immediately request a determination from the Contracting Entity as to the correct interpretation of the applicable documents or provisions;
 - (b) the Contracting Entity's determination shall be binding on the Supplier;
 - (c) unless determined otherwise by the Contracting Entity following the Supplier's request pursuant to clause 1.2.2.2(a), the interpretation that is most stringent on the Supplier shall apply; and
 - (d) the Supplier shall not be entitled to claim for any additional time or costs in respect thereof.

1.2.3 Interpretation

In the Contract, except where the context requires otherwise:

- 1.2.3.1 words indicating one gender include all genders;
- 1.2.3.2 words indicating the singular also include the plural and words indicating the plural also include the singular;
- 1.2.3.3 provisions including the word "**agree**", "**agreed**" or "**agreement**" require the agreement to be recorded in writing and signed by both Parties;
- 1.2.3.4 "**written**" or "**in writing**" means hand-written, type-written, printed or electronically made, and resulting in a permanent un-editable record;
- 1.2.3.5 "**shall**" means that the Party or person referred to has the obligation under this Contract to perform the duty referred to;
- 1.2.3.6 "**may**" means that the Party or person referred to has the choice of whether to act or not in the matter referred to;
- 1.2.3.7 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;
- 1.2.3.8 the words "**include**", "**including**", "**such as**" and "**for example**" are to be construed without limitation;
- 1.2.3.9 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;

- 1.2.3.10 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;
- 1.2.3.11 a reference to a clause or Appendix is, unless expressly stated to the contrary, a reference to a clause in this Contract or an Appendix to this Contract;
- 1.2.3.12 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;
- 1.2.3.13 any reference to any legislation, draft legislation, order, 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;
- 1.2.3.14 subject to the restrictions imposed by the Contract on subcontracting, an obligation to do something includes an obligation to procure it to be done;
- 1.2.3.15 an obligation not to do something includes an obligation not to wilfully allow it to be done; and
- 1.2.3.16 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.

2. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS OF THE SUPPLIER

2.1 The Supplier represents, warrants and undertakes to the Contracting Entity that:

- 2.1.1 all information included in the Price Offer and the Technical 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 Contracting Entity which:
 - 2.1.1.1 renders any such information untrue, inaccurate or misleading; or
 - 2.1.1.2 might, if disclosed, adversely affect the decision of anyone considering whether or not to contract with the Supplier; and

- 2.1.2 the Supplier is 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
- 2.1.3 the Supplier has the power and authority (and does not require the consent, authority or licence of any third party) to enter into and carry out 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
- 2.1.4 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
- 2.1.5 the Supplier 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 Contracting Entity; and
- 2.1.6 this Contract has been duly and validly executed and delivered by the Supplier 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
- 2.1.7 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
- 2.1.8 the Supplier owns or possesses all the patents, trademarks, service marks, tradenames, copyrights, licenses, franchises, permits and rights with respect to the foregoing, necessary to supply the Goods 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
- 2.1.9 the Supplier 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 supply the Goods or perform its obligations under this Contract; and no representation or warranty by it contained herein, or in any other document

furnished by the Supplier to the Contracting Entity 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

- 2.1.10 the Supplier 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 supply the Goods in accordance with the terms of this Contract or perform its obligations under this Contract; and
 - 2.1.11 as at the Effective Date, there has been no material adverse change to the financial condition of the Supplier since the audited accounts for the financial year 2016 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 manufacturing sector.
- 2.2 Each of the warranties, representations and undertakings given under this clause 2 (*Representations, Warranties and Undertakings of the Supplier*) 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.
- 2.3 The Supplier shall immediately disclose in writing to the Contracting Entity 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 clause 2 (*Representations, Warranties and Undertakings of the Supplier*) and which has or is likely to have a material adverse effect on the supply of the Goods or perform its obligations under this Contract.

3. CONDITIONS PRECEDENT AND COMMENCEMENT OF THE SUPPLY OF GOODS

3.1 Effect of Commencement Date

- 3.1.1 Except for the provisions of clause 1 (*Definitions and Interpretation*), clause 2 (*Representations, Warranties and Undertakings of the Supplier*), this clause 3, clause 7 (*Subcontracts*), clause 9 *Advance payment guarantee and Performance guarantee*, clause 18 (*Insurance*), clause 20 (*Assignment*), clause 21 (*Confidentiality*), clause 24.2 (*Entire Agreement*), clause 24.3 (*Amendments*), clause 24.4 (*Severability*), clause 24.7 (*Governing law*), clause 24.8 (*Notices*), clause 24.9 (*Language*), clause 24.11 (*Own Costs*), clause 24.13 (*Relationship of Parties*) and clause 24.15 (*Counterparts*), the obligations of the Parties under this Contract shall be conditional upon the occurrence of the Commencement Date.
- 3.1.2 The Supplier shall commence the performance of its obligations under this Contract as soon as is reasonably practicable after the Commencement Date.

3.2 CP Satisfaction Date

- 3.2.1 The Contracting Entity may by notice in writing to the Supplier waive any of the Condition Precedents which are required to be delivered by the Supplier.

- 3.2.2 The Supplier shall use its best endeavours to satisfy or procure the satisfaction of the Condition Precedents as soon as reasonably practicable on or after the Effective Date.
- 3.2.3 On the date that the Condition Precedents (except where this has been expressly waived by the Contracting Entity in writing) have, in the opinion of the Contracting Entity (acting reasonably), been satisfied, the Contracting Entity shall confirm the same in writing to the Supplier.
- 3.2.4 In the event that the CP Satisfaction Date has not occurred by the date falling six (6) months after the Effective Date the Contracting Entity may terminate the Contract by written notice with immediate effect, and if such termination occurs all provisions of the Contract other than clause 1 (*Definitions and Interpretation*), clause 21 (*Confidentiality*), clause 24.2 (*Entire Agreement*) and clause 24.7 (*Governing law*) shall cease to have effect and such termination shall be without prejudice to any accrued rights or obligations as at that date.
- 3.2.5 The Contracting Entity 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.
- 3.2.6 The "**Commencement Date**" for the purposes of this Contract shall be the date of service of the Notice to Proceed pursuant to clause 3.2.5 (or, if later, the CP Satisfaction Date).
- 3.2.7 If the Contracting Entity does not serve a Notice to Proceed as described in clause 3.2.5, the Contracting Entity shall either:
- 3.2.7.1 terminate this Contract, by notice, with immediate effect, in which case all provisions of the Contract other than clause 1 (*Definitions and Interpretation*), clause 21 (*Confidentiality*), clause 24.2 (*Entire Agreement*) and clause 24.7 (*Governing law*) shall cease to have effect and such termination shall be without prejudice to any accrued rights or obligations as at that date; or
 - 3.2.7.2 suspend the Contract under clause 19.4 (*Suspension by the Contracting Entity*); or
 - 3.2.7.3 issue a Change Order Request in accordance with clause 15.2 (*Contracting Entity Changes*).

3.3 **Duration of the Period relating to Deliveries of the Goods**

The duration of the period over which deliveries of the Goods shall be made is twelve (12) full months (disregarding the month during which the Commencement Date occurs).

4. **COLLABORATIVE WORKING AND INTERFACE**

4.1 **Collaborative Working between the Supplier and the Contracting Entity**

- 4.1.1 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 supply of the Goods in accordance with this Contract.

4.1.2 Subject to clause 4.1.3, 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:

4.1.2.1 use reasonable endeavours to avoid unnecessary complaints, disputes and claims against or with the Second Party;

4.1.2.2 comply with the provisions of clause 23 (*Dispute Resolution*) in relation to any such complaints, disputes and claims with or against the Second Party;

4.1.2.3 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;

4.1.2.4 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 clauses 4.1.2.1 to 4.1.2.3 (inclusive); and

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

4.1.3 Nothing in clause 4.1.2 shall:

4.1.3.1 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

4.1.3.2 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

4.1.3.3 limit, restrict or otherwise prejudice the exercise by the Contracting Entity of any express or implied right it may have under this Contract or at law.

4.2 **Collaborative Working between the Supplier and the EPC Contractor**

4.2.1 The Contracting Entity shall notify the Supplier of the appointment of the EPC Contractor as soon as reasonably practicable following the execution by the Contracting Entity and the EPC Contractor of the EPC Contract, and of the date on which the EPC Contract takes effect. Without prejudice to the Contracting Entity's other rights, and the Supplier's other obligations, under this Contract, the Supplier shall work collaboratively with the EPC Contractor at all times in order to:

4.2.1.1 maximise productivity during the EPC Works and avoid disruption for the Contracting Entity, the public and third parties;

- 4.2.1.2 ensure the effective discharge of the EPC Contractor's obligation to deliver the Project and ensure system integration throughout the Pipeline;
- 4.2.1.3 safeguard proper performance of all obligations under this Contract and the EPC Contract;
- 4.2.1.4 mutually support adherence to the Delivery Schedule and the Project Execution Plan and to share with the EPC Contractor on a systematic basis key information connected with such adherence;
- 4.2.1.5 minimise and give early warning to one another and to the Contracting Entity 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 Contracting Entity or the exercise of rights under this Contract and/or the EPC Contract (as appropriate) by the Supplier and/or the EPC Contractor, and to jointly inform the Contracting Entity regarding measures proposed to avoid or mitigate such impact;
- 4.2.1.6 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 Supplier's rights and obligations pursuant to this Contract and the EPC Contractor's rights and obligations pursuant to the EPC Contract respectively; and
- 4.2.1.7 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.

4.3 **Interface Meetings**

- 4.3.1 Senior representatives from the Parties and the EPC Contractor (and, if so required by the Contracting Entity, the Owner's Engineer and/or the Third Party Inspector) shall meet on a monthly basis (or as may be otherwise agreed by the Parties and the EPC Contractor) to review:
 - 4.3.1.1 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 Supplier's ability to perform its obligations under this Contract;
 - (d) the EPC Contractor's ability to perform its obligations under the EPC Contract;
 - (e) the timetable for the Project (as described in the Project Execution Plan); and/or

- (f) the economics of the Contracting Entity with respect to implementation of the Project (including the overall cost of the Project); and/or
- 4.3.1.2 any proposal from either Party or the EPC Contractor to:
 - (a) reduce the Project costs and avoid any additional costs; and/or
 - (b) optimise the future performance of the Pipeline (once operational).
- 4.3.2 Either Party or the EPC Contractor may propose measures to address the matters set out in clause 4.3.1.1 and a determination of what measures (if any) should be undertaken by the Supplier, the EPC Contractor and/or the Contracting Entity 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 15 (*Changes*), and (ii) in respect of matters relating to the EPC Contract, the EPC Contractor's and the Contracting Entity's existing rights, obligations and the existing contractual mechanisms under the EPC Contract.
- 4.3.3 Any proposal from either Party pursuant to clause 4.3.1.2 in respect of matters relating to this Contract shall be reviewed in accordance with clause 15 (*Changes*), and any proposal from the Contracting Entity or the EPC Contractor as described in clause 4.3.1.2 in respect of matters relating to the EPC Contract shall be reviewed in accordance with the contractual variation and adjustment mechanisms of the EPC Contract.
- 4.3.4 If so required by the Contracting Entity, the Supplier shall procure the attendance of any of the Subcontractors at the meetings described in clause 4.2 (*Collaborative Working between the Supplier and the Contracting Entity*).
- 4.3.5 The format and detailed requirements for such meetings shall be as may be specified by the Contracting Entity, acting reasonably, from time to time.
- 4.4 **Delivery Schedule, Quality Plan and Test and Inspection Plan**
 - 4.4.1 No later than two (2) months following the date on which the EPC Contract comes into effect (as notified by the Contracting Entity to the Supplier), the Contracting Entity, or the EPC Contractor (with the approval of the Contracting Entity), shall notify the Supplier in writing of each of the Delivery Points.
 - 4.4.2 No later than fourteen (14) Days from the Commencement Date, the Supplier shall propose to the Contracting Entity:
 - 4.4.2.1 a draft delivery schedule setting out the detailed schedule of dates that the Goods (as comprised in each Milestone) are to be manufactured, inspected, tested, shipped and delivered (including the Guaranteed Completion Dates), in accordance with:
 - (a) the Technical Specification and this Contract; and

- (b) the Delivery Periods, Guaranteed Completion Dates and Delivery Requirements, where applicable, as stipulated in Appendix 4 (*Preliminary Delivery Schedule*);
- 4.4.2.2 a draft Quality Plan as required in accordance with the Technical Specification, setting out the detailed quality control activities to be carried out by the Supplier as specified in the Technical Offer; and
- 4.4.2.3 a draft Test and Inspection Plan, setting out dates (in separate sections) for the tests and inspections to be conducted by the Supplier in accordance with Technical Offer and as required pursuant to the Technical Specification, identifying the expected potential impact on the manufacturing process of such test and inspections.
- 4.4.3 Following receipt by the Contracting Entity of the draft delivery schedule, Quality Plan and Test and Inspection Plan under clause 4.4.2, the Contracting Entity shall call a meeting with the Contracting Entity, the Owner's Engineer and (if so required by the Contracting Entity) the EPC Contractor and any other party nominated by the Contracting Entity, to discuss and seek to agree the schedules of dates and activities set out in the draft delivery schedule, the draft Quality Plan and draft Test and Inspection Plan.
- 4.4.4 Subject to clause 4.4.9, the Contracting Entity shall be entitled to require (acting reasonably) the Supplier to make amendments to or revisions of the draft delivery schedule, draft Quality Plan and/or draft Test and Inspection Plan, in which case the Supplier shall, within seven (7) Days of notice of such requirement, reissue such document or documents for the Contracting Entity's approval and this clause 4.4.4 shall be repeated until such documents have been approved by the Contracting Entity.
- 4.4.5 Once approved by the Contracting Entity under clause 4.4.4:
 - 4.4.5.1 the draft Quality Plan and draft Test and Inspection Plan, in the form approved, shall become the Quality Plan and the Test and Inspection Plan for the purposes of this Contract; and
 - 4.4.5.2 the Contracting Entity shall (within fifteen (15) Days of such approval) issue the Delivery Schedule for the purposes of this Contract.
- 4.4.6 Subject to clause 4.4.9, the Contracting Entity (or the Owner's Engineer, or in the case of the Delivery Schedule the EPC Contractor (with evidence of approval of the Contracting Entity)) shall be entitled to issue to the Supplier, 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).
- 4.4.7 The Contracting Entity shall consider (acting reasonably) any reasonable objections raised by the Supplier in respect of any amendment or update to the Delivery Schedule or Test and Inspection Plan issued by the Contracting Entity, the Owner's Engineer, or (in the case of the Delivery Schedule) the EPC Contractor (with evidence that the Contracting Entity has approved such delivery schedule), or any request by the Supplier for the Contracting Entity to issue any

amendment or update to the Delivery Schedule, but (subject to clause 4.4.9) shall not be bound by such objections or request.

4.4.8 Upon any update or amendment to the Delivery Schedule issued pursuant to clause 4.4.7, the Supplier shall update or amend the Test and Inspection Plan, as may be appropriate to reflect the updated or amended Delivery Schedule, in shall submit the same to the Contracting Entity for approval.

4.4.9 If any change to the Delivery Schedule required by the Contracting Entity pursuant to clause 4.4.4, or made by the Contracting Entity (or the Owner's Engineer or the EPC Contractor (with evidence of approval of the Contracting Entity)) pursuant to clause 4.4.6, changes:

4.4.9.1 any Guaranteed Completion Date; or

4.4.9.2 the Delivery Periods; or

4.4.9.3 the Delivery Requirements,

and, as a direct result of such change, the Supplier incurs or will incur additional Costs, the Supplier shall be entitled to treat such change as a Contracting Entity Change pursuant to clause 15 (*Change*), provided that:

4.4.9.4 the Supplier shall not be entitled to any Change in Costs or adjustment to the Contract Price in respect of any delay to or postponement of any of the Guaranteed Completion Dates, or any Delivery Period, unless and to the extent such delay or postponement extends beyond the Original Storage Period for the Goods to which that or those Guaranteed Completion Date(s) and/or Delivery Period(s) relate; and

4.4.9.5 this clause 4.4.9 shall not apply (and the Supplier shall not be entitled to treat the change as a Contracting Entity Change) if and to the extent the change to the Delivery Schedule is made as a result of:

(a) any delay caused by or contributed to any act or omission of the Supplier or its Subcontractors or any other failure by the Supplier to comply with its obligations under this Contract; or

(b) any Mandatory Change Event, in which case clause 15.3 (*Mandatory Changes*) shall apply.

4.4.10 Without prejudice to clause 5.5.2, clause 10 (*Delivery and Acceptance of Goods*) and clause 11 (*Guaranteed Completion Date*):

4.4.10.1 the Supplier shall notify the Contracting Entity and the EPC Contractor as soon as reasonably becoming aware of a likely delay to any Delivery Date from the date specified for delivery of the relevant Goods in the Delivery Schedule; and

4.4.10.2 the Contracting Entity shall notify the Supplier upon receipt of any notice from the EPC Contractor in accordance with the terms of the EPC Contract indicating a delay or likely delay to the date on which

the EPC Contractor will be available to accept delivery of the Goods as required pursuant to clause 10.1.4.3.

4.5 Storage

4.5.1 The provisions of clauses 5.5 (*Storage and Identification*), 10.1.9 and 10.1.10 shall apply in respect of the Supplier's obligations in respect of storage of Goods and the interface with the EPC Contractor in this respect.

4.6 Acceptance

4.6.1 The Supplier acknowledges the rights of the EPC Contractor to inspect the Goods pursuant to clause 10 (*Delivery and Acceptance of Goods*).

4.6.2 In the event that the EPC Contractor causes any damage to any Goods in exercising its rights described in clause 4.6.1 above, the Supplier shall notify the Contracting Entity and the EPC Contractor in writing as soon as practicable and the event of such damage shall be treated as an EPC Contractor Event pursuant to clause 15.3 (*Mandatory Changes*).

4.7 Defect Rectification

4.7.1 The Supplier shall work together with the EPC Contractor 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:

4.7.1.1 the Supplier shall respond promptly and in compliance with the timing commitments set out in this Contract to any notification by the EPC Contractor and/or the Contracting Entity that there is a requirement for Defect rectification of which the EPC Contractor becomes aware (and any such notification by the EPC Contractor, as approved by the Contracting Entity, issued in respect of Goods which have achieved Provisional Acceptance shall be treated as a notification by the Contracting Entity for the purposes of clause 13.3 (*Defective Workmanship and Materials*));

4.7.1.2 the Supplier shall promptly notify the EPC Contractor and the Contracting Entity of any requirement for Defect rectification of which the Supplier becomes aware; and

4.7.1.3 the Supplier shall co-operate with the EPC Contractor in relation to the planning and execution of any Defect rectification.

4.7.2 In the event of any Defects rectification to be carried out by the Supplier as a result of a failure or an emergency, the Supplier shall:

4.7.2.1 notify the Contracting Entity and the EPC Contractor as soon as possible of the nature of such Defects rectification and the likely disruption to or impact on the EPC Works or (following completion and commissioning) the operation of the Pipeline; and

4.7.2.2 take all steps which are reasonably practicable to minimise the adverse consequences of such Defects rectification.

4.7.3 Clause 13.3.5. shall apply if and to the extent a Defect relates to Goods which have already been incorporated into the EPC Works (or, following commissioning of the EPC Works, the operational Pipeline).

4.8 **Safety**

4.8.1 The Supplier shall take all required measures during the operations performed by it, including the manufacturing, testing, storage, loading and transportation of the Goods, to ensure the safety of all persons affected by such operations.

4.8.2 The Supplier shall liaise effectively with the EPC Contractor in co-ordination of health and safety issues at the Delivery Points and (if the Supplier is required to access the Site or any EPC Contractor storage yard for the purposes of clauses 4.7 (*Defect Rectification*) and/or 13.3 (*Defective Workmanship and Materials*) or otherwise) the Site.

4.9 **EPC Contractor Events**

4.9.1 In the event that any of the events or circumstances defined as EPC Contractor Events occur the Supplier shall be entitled to relief and/or compensation on the basis set out in clause 15 (*Changes*) as a Compensation Event.

4.9.2 The Supplier shall be under a continuing obligation to report promptly to the EPC Contractor and to the Contracting Entity any incident, matter or operational irregularity which may precede the occurrence or indicate the existence of an EPC Contractor Event.

4.10 **EPC Changes**

4.10.1 If required by the Contracting Entity, the Supplier shall respond with comments ("**EPC Change Response**") within seven (7) days of being notified by the Contracting Entity of any proposed variation under the EPC Contract (an "**EPC Change**"), identifying the impact (if any) of the EPC Change on the performance by the Supplier of its obligations under this Contract and any potential or actual EPC Contractor Event or Contracting Entity Change which the Supplier believes (acting reasonably) may be required as a result of the proposed EPC Change, and/or any modification proposed by the Supplier to the proposed EPC Change in order to avoid or mitigate that potential or actual EPC Contractor Event or a Contracting Entity Change.

4.10.2 In the event that the EPC Change Response from the Supplier identifies a potential or actual EPC Contractor Event or a Contracting Entity Change and/or proposes a modification to the proposed EPC Change in order to avoid or mitigate that potential or actual EPC Contractor Event or a Contracting Entity Change, the Supplier shall provide the Contracting Entity and the EPC Contractor with a written report within fourteen (14) days of provision of comments under clause 4.10.1, setting out how the EPC Change will affect this Contract.

4.10.3 The Contracting Entity shall review the EPC Change Response in accordance with clause 15 (*Changes*) and if the Contracting Entity is satisfied that modification to the proposed EPC Change is required to address any issue arising from the EPC Change Response, the Contracting Entity shall instruct such modification under the change provisions of the EPC Contract and any change

required to this Contract shall be deemed to be a Contracting Entity Change pursuant to clause 15 (*Changes*).

4.10.4 Failure by the Supplier to respond as stipulated in clauses 4.10.1 to 4.10.3 inclusive shall be a bar to any claim for relief or compensation under clause 15 (*Changes*) or otherwise.

5. SUPPLIER OBLIGATIONS

5.1 Supply of Goods

5.1.1 The Supplier shall manufacture and deliver the Goods:

5.1.1.1 in accordance with this Contract;

5.1.1.2 in a proper workmanlike and careful manner, in accordance with recognised good practice; and

5.1.1.3 with properly equipped facilities and non-hazardous materials, except as otherwise identified in this Contract,

and the Supplier shall provide all services related to the manufacture and delivery of such Goods including, without limitation, transportation and the provision of plant, consumables, facilities and all other things required for such manufacture and delivery.

5.1.2 All Goods which are to be provided by the Supplier pursuant to this Contract shall:

5.1.2.1 be new;

5.1.2.2 be fit for purpose in accordance with the requirements of the Technical Specification;

5.1.2.3 meet the quality requirements of this Contract;

5.1.2.4 meet the Technical Specification;

5.1.2.5 (without prejudice to clause 1.2.2.1) meet the Technical Offer;

5.1.2.6 be free from Defects; and

5.1.2.7 be properly warranted and guaranteed pursuant to clause 13 (*Warranties and Guarantees*).

5.1.3 The Supplier shall not use any prototypical materials, equipment or machinery in the manufacture of the Goods, and all Goods shall be of proven design.

5.1.4 The Supplier shall exercise Good Industry Practice in the performance of its obligations under this Contract, including but not limited to the manufacture of the Goods.

5.1.5 The Supplier shall be deemed to have checked the accuracy and sufficiency of all technical documentation, drawings, specifications, standards or other documents

and/or information contained in the Technical Specification and listed in the Technical Specification or otherwise provided to the Supplier by, or on behalf of the Contracting Entity, and made due and necessary allowance in the Contract Price for the performance of all of its obligations under this Contract in accordance with the terms contained herein (including the correction of any errors or omissions therein). The Contracting Entity shall have no responsibility for the accuracy, sufficiency or completeness of any such documentation or information.

5.2 Manufacturing Process

- 5.2.1 The Supplier shall carry out the manufacture of the Goods at the Manufacturing Facility.
- 5.2.2 The Supplier shall comply with the requirements of the Technical Specification in respect of the pre-production/manufacturing (including raw materials production), production/manufacturing and post-production/manufacturing of the Goods.

5.3 Supplier Permits

- 5.3.1 The Supplier shall obtain and maintain in effect at its own expense all the Applicable Permits pertaining to the Supplier's performance of its obligations under this Contract, including without limitation:
 - 5.3.1.1 all Applicable Permits necessary for the Supplier to do business in the jurisdictions where the Goods are to be manufactured and delivered; and
 - 5.3.1.2 all Applicable Permits required to be obtained and maintained with respect to the Goods.
- 5.3.2 The Supplier shall indemnify and hold harmless the Contracting Entity from and against all Damages arising out of the obtaining and maintaining of Applicable Permits or the failure to obtain or maintain the same.
- 5.3.3 If the Supplier at any time becomes aware that it is unable to obtain or maintain any Applicable Permit, the Supplier shall immediately give notice thereof to the Contracting Entity.
- 5.3.4 In the event that the Supplier is unable to obtain or maintain, or fails to obtain in a timely manner or maintain, any Applicable Permit, the Contracting Entity may, in its sole discretion, take such action as may be necessary to obtain or maintain such permits at the Supplier's cost. The reasonable cost to the Contracting Entity of so acting may, at the Contracting Entity's election, be set-off against any sums due to the Supplier under this Contract or shall be paid to the Contracting Entity by the Supplier within ten (10) Days of demand. The taking of such action by the Contracting Entity shall not relieve the Supplier of any of its obligations under this Contract.
- 5.3.5 The Supplier shall provide copies to the Contracting Entity of all notices given and received and all Applicable Permits obtained by him. Acknowledgement by the Contracting Entity of such copies shall not in any way affect the Supplier's obligations or relieve the Supplier from his obligations under this clause 5.3 (*Supplier Permits*) or clause 5.10 (*Compliance with Applicable Laws*).

5.4 Inspection and Testing

- 5.4.1 The Supplier shall perform all inspection, testing and quality assurance to ensure that the Goods comply with this Contract, Good Industry Practice and the quality assurance requirements set out in the Technical Specification, as such inspection, testing and quality assurance are more particularly described in the Technical Specification and in accordance with the Testing and Inspection Plan. In the event of any conflict between the requirements of the Technical Specification and the requirements specified in the Test and Inspection Plan, the requirements in the Technical Specification shall take precedence.
- 5.4.2 The Supplier shall identify any instances of non-conformance with the Technical Specification or any other requirement of this Contract and immediately upon such occurrence shall issue a non-conformance report in respect thereof to the Contracting Entity and the Owner's Engineer. Non-conformances may relate, amongst others, to the physical works, materials, documentation, equipment used, methods or procedures followed and/or personnel employed. The Supplier shall report to the Contracting Entity and the Owner's Engineer on the Supplier's resolution of any such non-conformance, and shall identify any re-occurring non-conformances which have common causes.
- 5.4.3 The Supplier shall arrange for the Contracting Entity, its insurers, any providers of finance, the Owner's Engineer, the Third Party Inspector and their agents (together the "**Inspection Parties**", and each an "**Inspection Party**") to have full and free access, on reasonable notice, to the Manufacturing Facility and to the premises of Subcontractors to permit such Persons to inspect work being performed. The Contracting Entity shall procure that the Inspection Parties shall comply with the health and safety requirements applicable in respect of the Manufacturing Facility and the premises of Subcontractors (as applicable) when undertaking inspections in accordance with this clause 5.4.3.
- 5.4.4 The Supplier shall provide the Contracting Entity and the Third Party Inspector with seven (7) Days' prior written notice of all tests and inspections which are to be conducted, in accordance with the Test and Inspection Plan, and the Supplier shall reconfirm the intention to conduct such tests and inspections three (3) Days prior to the performance thereof. The Inspection Parties shall be entitled to attend any or all such tests or inspections and the Contracting Entity shall give prior notification to the Supplier of the intention of such parties to attend any inspection where possible. All tests and inspections shall be carried out with the attendance of the Third Party Inspector. If any Inspection Party (other than the Third Party Inspector) does not attend at the time and place specified, the Supplier may proceed with the tests, unless otherwise instructed by the Contracting Entity. The Contractor shall not be relieved of any obligation, responsibility or liability by reason only of the fact that any Inspection Parties have not attended such tests or provided any comment on the results of them.
- 5.4.5 If any Goods which are the subject of any test or inspection required pursuant to the Technical Specification and/or as specified in the Test and Inspection Plan fail such test or inspection, the Supplier shall issue a non-conformance report in respect of such failure to the Contracting Entity and the Owner's Engineer, shall promptly quarantine the relevant Goods and shall make good the defect (including any and all defects identified in any non-conformance report issued by the Third Party Inspector in respect of such Goods as a result of such test or inspection) and the Goods in question shall be retested at a time and date agreed

with the Contracting Entity and the Third Party Inspector. If the retesting causes the Contracting Entity to incur additional costs, the Supplier shall pay these costs to the Contracting Entity or such costs may be deducted by the Contracting Entity from any monies due or which may become due to the Supplier under this Contract.

- 5.4.6 If any Inspection Party reasonably requires further or additional tests or inspections to be carried out, such tests or inspections shall be carried out by the Supplier at a time and place to be agreed with the relevant Inspection Party.
- 5.4.7 Following successful satisfaction of all tests and inspections required pursuant to the Technical Specification and the Test and Inspection Plan in respect of the Goods, the Supplier shall issue a Type 3.1 Certificate in respect of such Goods.
- 5.4.8 Within seven (7) Days following the issue by the Supplier of the Type 3.1 Certificate in accordance with clause 5.4.7, upon successful satisfaction of all tests and inspections required pursuant to the Technical Specification and the Test and Inspection Plan in respect of Goods, and upon review and approval by the Third Party Inspector of the Type 3.1 Certificate, the Third Party Inspector shall issue a Type 3.2 Certificate and a Release Notice in respect of such Goods.
- 5.4.9 The Supplier shall arrange for all reasonable facilities (including but not limited to office accommodation and test equipment) and assistance to be provided at the Manufacturing Facility or the site of the relevant inspection and/or test (if different to the Manufacturing Facility) to the Inspection Parties to enable inspection and/or testing in accordance with this clause 5.4 at no charge to the Inspection Parties.
- 5.4.10 At least thirty (30) Days prior to the Supplier's intended date of shipment of the Goods (whether by ship, rail, truck or otherwise) from the applicable Point of Departure to the relevant Delivery Point (such shipment to be in accordance with clause 10 (*Delivery and Acceptance of Goods*)), the Supplier shall notify in writing the Contracting Entity, the Owner's Engineer and the EPC Contractor of the shipment date and the location of the Point of Departure together with such other details as the Contracting Entity, Owner's Engineer and/or EPC Contractor may reasonably request. The Inspection Parties shall be entitled to inspect the Goods prior to shipment and to inspect and witness the packing and loading of the Goods for shipment in accordance with the requirements of clause 10.1 (*Delivery, Transit and Handover of Goods*). The Supplier shall (at its sole cost and expense) make the Goods available for inspection at the Point of Departure (including on the vessel for shipment) by the Inspection Parties. The Supplier shall assist the Inspection Parties with all necessary inspections required prior to the shipment. The Supplier shall only be responsible for the travel costs of the Inspection Parties in attending inspections if such inspections are repeat inspections or are required due to the Supplier being in breach of its obligations under this Contract.
- 5.4.11 The Inspection Parties shall have the right to have access to and inspect at any time the Goods wherever located and at any stage of completion. If any inspection pursuant to this clause 5.4 reveals any non-compliance with this Contract or any other Defects in any portion of the Goods, then upon written notice from the Contracting Entity, the Supplier shall promptly correct all such Defective or non-compliant Goods. If the Supplier fails to initiate correction of the Defective or non-compliant Goods within fourteen (14) Days of the

Contracting Entity's notification thereof or thereafter fails to diligently pursue correction of the Defective or non-compliant Goods, the Contracting Entity may correct such Defective Goods. The Contracting Entity's exercise of its rights under this clause 5.4.11 is without prejudice to any other right or remedy the Contracting Entity may have, and the Contracting Entity's correction of such Defective or non-compliant Goods will not relieve the Supplier of its obligations under this Contract. The cost to the Contracting Entity of so acting may, at the Contracting Entity's election, be set-off against any sums due to the Supplier under this Contract or shall be paid by the Supplier to the Contracting Entity.

5.4.12 No inspection witnessed or performed, or failed to be witnessed or performed, by an Inspection Party hereunder shall be a waiver of any of the Supplier's obligations or the Contracting Entity's rights under this Contract or be construed as an approval or acceptance of the Goods, or any part thereof.

5.5 **Storage and Identification**

5.5.1 All materials, supplies and equipment (including the Goods) in the course of manufacture (and/or as may otherwise be required to be stored in accordance with this Contract, including pursuant to clause 10.1.10) shall be:

5.5.1.1 stored in a secure warehouse or other appropriate secure location; and

5.5.1.2 properly tagged and identified and reported as defined by the Contracting Entity in the Technical Specification,

in each case in accordance with the requirements identified in the Technical Specification.

5.5.2 All storage costs (to the point of delivery to a Delivery Point pursuant to clause 10.1.9) shall be borne by the Supplier, save that in the event the Goods are required to be stored by the Supplier beyond the Original Storage Period for those Goods, as a direct result of:

5.5.2.1 any breach by the Contracting Entity of this Contract; or

5.5.2.2 any failure by the EPC Contractor to be available to accept delivery of Goods, preventing shipment of Goods pursuant to clause 10.1.4,

which is not otherwise caused by any breach or failure by the Supplier to satisfy its obligation under this Contract or any Defect in the Goods, the Supplier shall be entitled to claim its additional Costs reasonably and properly incurred as a direct result of such storage beyond the Original Storage Period as a Compensation Event (in the case of clause 5.5.2.2, such circumstance being an EPC Contractor Event).

5.6 **Royalties and Licence Fees**

The Supplier shall own or procure all required proprietary rights, licenses, agreements and permissions for the Goods, materials, methods, processes and systems incorporated into the Goods and shall pay all royalties and license fees associated therewith. The Goods shall not, and the Supplier shall not incorporate into the Goods any materials, methods, processes or systems which involve the use of any confidential information, Intellectual Property or proprietary rights which the Contracting Entity does not have the right to use or which may

result in claims or suits against the Contracting Entity or the Supplier arising out of claims of infringement of any Intellectual Property or other proprietary rights, or applications for any such rights or use of confidential information.

5.7 **Storage Manual**

Together with the delivery of the Goods, the Supplier shall deliver to the Contracting Entity two (2) hardcopy sets, one (1) original and one (1) reproducible electronic copy of instructions for the storage of the Goods. Such instructions shall be of high quality, legible, prepared in accordance with the requirements of the Technical Specification, Good Industry Practice and in the English language. If requested by the Contracting Entity, the Supplier shall (within two (2) months of such request) also produce versions in the Bulgarian and/or Greek languages.

5.8 **Applicable Codes and Standards**

All Goods shall comply with internationally recognised codes and standards as further detailed in the Technical Specification and any statutory codes and standards applicable to the Republic of Bulgaria and/or the Republic of Greece (as appropriate) ("**Applicable Codes and Standards**"). Where there is a conflict between the applicable internationally recognised codes and standards referred to in the Technical Specification and the statutory codes and standards applicable to the Republic of Bulgaria and/or the Republic of Greece (as appropriate), the statutory codes and standards applicable to the Republic of Bulgaria and/or the Republic of Greece (as appropriate) shall take precedence.

5.9 **Quality Assurance Requirements**

5.9.1 The Supplier shall at all times comply with the quality assurance requirements (which includes ISO 9001) set out in Appendix 1 (*Technical Specification*). The Contracting Entity shall be entitled to audit the Supplier's compliance with such quality assurance requirements. In the event that the Contracting Entity notifies the Supplier of, or the Supplier identifies, any non-conformance with such quality assurance requirements, the Supplier shall within twenty four (24) hours provide the Contracting Entity with its corrective action plan to ensure compliance with such quality assurance requirements and such corrective action plan shall be subject to approval by the Contracting Entity. The Supplier shall thereafter promptly take such corrective action to comply with such quality assurance requirements and provide the Contracting Entity with evidence that such non-conformance has been remedied within a reasonable time.

5.9.2 Compliance with the quality assurance requirements of Appendix 1 (*Technical Specification*) shall not relieve the Supplier of any of his duties, obligations or responsibilities under the Contract.

5.10 **Compliance with Applicable Laws**

5.10.1 The Supplier shall, in performing the Contract, comply with all Applicable Laws.

5.10.2 In manufacturing and supplying the Goods and remedying any Defects therein and performing its other obligations under this Contract, the Supplier and its Subcontractors shall observe all applicable laws, regulations, standards and other requirements related to the subject matter of this Contract and in particular all rules and requirements relating to manufacturing, environmental, social, immigration and labour law, applicable collective agreements and/or provisions

of the international environmental, social and labour law in accordance with Appendix 10 attached to Article 115 of the PPA. The applicability of English law as the governing law of this Contract shall not derogate from the mandatory requirements of Bulgarian and Greek law that are applicable to the manufacturing and supply of the Goods (and the remedying of any defects therein), including any requirements in respect of manufacturing, testing, storage, loading and/or transportation, and environmental, social, immigration and labour law.

5.10.3 Notwithstanding the foregoing, in the event that there is any change in Applicable Laws (excluding therefrom any change resulting directly or indirectly from the acts or omissions of the Supplier or any Subcontractor) enacted after the Effective Date, clause 15.3 (*Mandatory Changes*) shall apply.

5.11 **Anti-Bribery and Anti-Corruption and Undertakings**

5.11.1 In the performance of their obligations under this Contract, the Supplier and the Contracting Entity, their agents and employees shall comply with all applicable laws, rules, regulations and orders of any applicable jurisdiction, including without limitation those relating to 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.

5.11.2 The Supplier hereby represents, warrants and covenants that:

5.11.2.1 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

5.11.2.2 it shall neither receive nor offer, pay or promise to pay either directly or indirectly, anything of value to a Public Official in connection with any business opportunities which are the subject of this Contract. Furthermore, the Supplier shall immediately give notice to the Contracting Entity with full particulars in the event that the Supplier receives a request from any Public Official requesting illicit payments.

5.11.3 In conjunction with the requirements of this clause 5.11 (*Anti-Bribery and Anti-Corruption and Undertakings*), the Supplier shall, at the Contracting Entity'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 Supplier shall comply with the FIDIC Code of Ethics and the FIDIC Integrity Management System available at <http://www.fidic.org> as if the references to "consulting engineer" were references to the Supplier.

6. **PARTY REPRESENTATIVES**

6.1 **Supplier's Representative**

6.1.1 The Supplier shall appoint a suitably qualified and experienced [director/partner] who shall have authority to manage this Contract on behalf of the Supplier and shall ensure the proper performance of the supply of Goods ("**Supplier's Representative**"). The Supplier shall notify the Contracting Entity of the identity and contact details of the Supplier's Representative and the extent of the

powers and authority delegated to the Supplier's Representative. The Supplier may only replace the Supplier's Representative with an individual of equal or higher rank and qualifications and with the prior written consent of the Contracting Entity, such consent not to be unreasonably withheld or delayed. Such replacement shall take place as soon as reasonably possible.

- 6.1.2 If required by the Contracting Entity, the Supplier shall designate an individual to liaise with the Contracting Entity's Representative and/or Owner's Engineer in each of the Countries.
- 6.1.3 The Supplier's Representative shall be fluent in the language for communications defined in clause 24.9 (*Language*).

6.2 **Owner's Engineer**

- 6.2.1 The Contracting Entity shall notify the Supplier of the identity and contact details of the Contracting Entity's engineer (the "**Owner's Engineer**") appointed by the Contracting Entity to manage this Contract on behalf of the Contracting Entity in accordance with the terms of a services agreement entered into between the Owner's Engineer and the Contracting Entity (as may be amended from time to time). The Supplier 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 clause 6.2.2) as a representative of the Contracting Entity.
- 6.2.2 The Contracting Entity shall notify the Supplier in writing (from time to time) of the scope of the Owner's Engineer's authority to act on behalf of the Contracting Entity (and to bind the Contracting Entity) under this Contract (if any), including in respect of the giving of any instruction or other notice to the Supplier, or the receipt of any notice or other communication from the Supplier, under this Contract.
- 6.2.3 The Contracting Entity shall notify the Supplier in writing of any change of the Owner's Engineer or his contact details.

6.3 **Third Party Inspector**

- 6.3.1 The Contracting Entity, or the Owner's Engineer on behalf of the Contracting Entity, shall notify the Supplier of the identity and contact details of the third party inspector (the "**Third Party Inspector**") who shall be responsible for attending the testing and carrying out the inspection of the Goods, and issuing a Type 3.2 Certificate and Release Notice, all in accordance with clause 5 (*Supplier Obligations*) above.
- 6.3.2 The Contracting Entity, or the Owner's Engineer on behalf of the Contracting Entity, shall notify the Supplier in writing of any change of the Third Party Inspector or his contact details.

6.4 **Instructions and Approvals**

- 6.4.1 The Contracting Entity may issue to the Supplier instructions which may be necessary for the Supplier to perform his obligations under the Contract. Each instruction shall be given in writing and shall state the obligations to which it relates and the clause (or other term of the Contract) in which the obligations are

specified. If any such instruction constitutes a Change, clause 15 (*Changes*) shall apply.

- 6.4.2 The Supplier shall take instructions from the Contracting Entity, or from the Owner's Engineer (to the extent the authority to make such instructions has been notified by the Contracting Entity to the Supplier pursuant to clause 6.2.2). In the event of any conflict between any such instructions from the Contracting Entity and the Owner's Engineer in respect of the same matter, the instructions of the Contracting Entity shall prevail.
- 6.4.3 Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Owner's Engineer, Third Party Inspector, the EPC Contractor, any other Inspection Party or the Contracting Entity, shall not relieve the Supplier from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances.
- 6.4.4 Any failure to disapprove any matter in connection with this Contract shall not constitute approval, and shall therefore not prejudice the right of the Contracting Entity to reject the Goods.
- 6.4.5 If the Supplier questions any determination or instruction of a delegated person, the Supplier may refer the matter to the Contracting Entity, who shall promptly confirm, reverse or vary the determination or instruction.

7. SUBCONTRACTS

7.1 No subcontracting without consent

- 7.1.1 Subject to clauses 7.1.2 and 7.1.3, the Supplier shall not subcontract any part of its obligations under this Contract without the prior written consent of the Contracting Entity.
- 7.1.2 The Supplier shall enter into the subcontracts with the following Subcontractors (as identified in the Supplier's Request for Participation and/or the Technical Offer):
 - 7.1.2.1 *[A list of named pre-approved subcontractors and the role that they will perform will be set out here (as set out in the Supplier's Request for Participation and/or Technical Offer)].*

and the Supplier shall notify the Contracting Entity of any changes to the above Subcontractors and shall seek the Contracting Entity's consent to such changes in accordance with clause 7.1.1 provided that:

- 7.1.2.2 the grounds for excluding participants, as stated in the Procurement Documentation, are not applicable to the proposed Subcontractor;
- 7.1.2.3 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

- 7.1.2.4 the Supplier provides such documents as the Contracting Entity may request to demonstrate the satisfaction of the circumstances set out in clauses 7.1.2.2 and 7.1.2.3.
- 7.1.3 Within seven (7) Days of the Effective Date, the Supplier shall provide the Contracting Entity with contact details and representatives for each of the Subcontractors. In the event that:
 - 7.1.3.1 such contact details and representatives change, the Supplier shall provide the Contracting Entity with updated information within three (3) Days of such changes; and/or
 - 7.1.3.2 any further subcontracts are entered into, the Supplier shall provide the contact details and representatives of such Subcontractor to the Contracting Entity within three (3) Days of entering into such subcontract.

7.2 Subcontracts

- 7.2.1 The Contracting Entity shall:
 - 7.2.1.1 have the right to obtain from the Supplier copies of any subcontracts upon written request (prior to and following execution); and
 - 7.2.1.2 without prejudice to the foregoing, no later than three (3) Days prior to the Supplier entering into a subcontract, be provided with a draft copy of such subcontract by the Supplier; and
 - 7.2.1.3 without prejudice to the foregoing, within three (3) Days of the Supplier entering into a subcontract, be provided with a copy of such subcontract by the Supplier.
- 7.2.2 Review of or approval by the Contracting Entity of the Supplier's subcontracts, and approval of the Supplier's selection of Subcontractors, shall not create any contractual relation between the Contracting Entity and any such Subcontractors and shall not relieve the Supplier of its obligations hereunder or effect the Contracting Entity's rights and remedies.
- 7.2.3 The Supplier shall ensure that the terms of each subcontract shall permit assignment in accordance with clause 19.8.1.6 without further consent of the Subcontractor.
- 7.2.4 The Supplier further agrees and undertakes with respect to its Subcontractors that:
 - 7.2.4.1 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;
 - 7.2.4.2 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 Contracting Entity shall have the same rights with respect to any Subcontractors that the

Contracting Entity has with respect to the Supplier under this Contract; and

- 7.2.4.3 such Subcontractors shall be prohibited from sub-subcontracting any of the activities forming part of its subcontract with the Supplier to any Person.

7.3 **Payments to Subcontractors**

The Supplier shall be solely responsible for paying each Subcontractor. The Supplier indemnifies and holds the Contracting Entity harmless against any loss, cost or liability incurred by the Contracting Entity due to the Supplier's failure to pay amounts due and payable to Subcontractors.

7.4 **No Privity with Subcontractors**

The Contracting Entity shall not have or be deemed to have by virtue of this Contract any contractual obligation to or relationship with any Subcontractor. The Supplier shall include a clause to this effect in each subcontract with Subcontractors. No Subcontractor of the Supplier is intended to be or shall be deemed a third party beneficiary of this Contract.

7.5 **Contracting Entity's Rights**

The Supplier is entirely responsible for the acts and omissions of Subcontractors and coordination of all Subcontractors' works and the Supplier shall be liable for the works of the Subcontractors as if the works included in each Subcontractor's subcontract or purchase order had been performed by the Supplier itself. Without prejudice to the Supplier's responsibility and authority as aforesaid, the Contracting Entity may give written notification to the Supplier, if in the opinion of the Contracting Entity, any Subcontractor has failed, or is failing, to comply with its obligations specifying the nature of the failure. The Supplier shall investigate and correct the failure (at the cost of the Supplier) without delay and shall provide a full report to the Contracting Entity on the matter complained of in the Contracting Entity's notice and future precautionary measures to be taken. If the Contracting Entity is not satisfied with the corrective or precautionary measures undertaken or to be undertaken by the Supplier and/or any Subcontractor, the Contracting Entity shall be entitled to apply its own corrective or precautionary measures at the cost of the Supplier.

8. **PRICE AND PAYMENT**

8.1 **Contracted Quantity**

8.1.1 Subject to clause 8.1.7 below, the Goods shall be priced in accordance with the Price Offer and the Unit Prices which have been included in the Price Offer shall be fixed in respect of the supply of all Goods under this Contract within the Variable Volume Threshold.

8.1.2 The Supplier acknowledges and agrees that the Contracting Entity may:

8.1.2.1 specify, and thereafter change, the ratio required of each Pipe Length of Relevant Goods, in accordance with clause 8.1.3; and/or

8.1.2.2 increase or decrease the quantity the Contracting Entity requires to be supplied under this Contract of any Type of Goods identified in the Price Offer (including any change in the quantity of Relevant Goods

of a particular Pipe Length (other than as described in clause 8.1.2.1), and including resulting in an increase or decrease in the total quantity of Goods), in accordance with clause 8.1.5.

- 8.1.3 The Contracting Entity may specify, and thereafter change, the ratio required of each Pipe Length of each Type of Relevant Goods by written notice to the Supplier (a "**Pipe Length Variation Notice**") in accordance with clause 8.1.4 and subject to clause 8.1.8. A specification or change to the ratio required shall mean a specification or change to the respective quantities required of each Pipe Length of the relevant Type of Relevant Goods, without changing the overall quantity (number of Goods) required of that Type of Relevant Goods (such specification or change to the ratio being a "**Pipe Length Ratio Change**").
- 8.1.4 A Pipe Length Variation Notice issued by the Contracting Entity under clause 8.1.3 will set out:
- 8.1.4.1 the revised quantity (number of Goods) of each Pipe Length of the relevant Type of Relevant Goods required, provided that the total number of Goods of that Type is not changed;
 - 8.1.4.2 the total quantity (in metres) of all Goods following such adjustment (being the "**Revised Quantity of Goods**"); and
 - 8.1.4.3 the revised total price for the Goods, being the sum of the prices for each Type of Goods, calculated for each Type by multiplying the Unit Prices in the Price Offer for that Type by the total number of metres of that Type of the Goods included in the Revised Quantity of Goods (such total amount, for all Types of Goods within the Revised Quantity of Goods, being the "**Revised Goods Price**" in respect of the Goods).
- 8.1.5 The Contracting Entity may increase or decrease the quantity the Contracting Entity requires to be supplied under this Contract of any Type of Goods identified in the Price Offer (other than a Pipe Length Ratio Change), and including resulting in an increase or decrease in the total quantity of Goods), within the Variable Volume Threshold, by written notice (a "**Goods Variation Notice**") in accordance with clause 8.1.6 and subject to clauses 8.1.7 and 8.1.9.
- 8.1.6 A Goods Variation Notice issued by the Contracting Entity under clause 8.1.5 will set out:
- 8.1.6.1 the revised quantity (in metres) of each Type of Goods required (the total of all Goods following such adjustment being the "**Revised Quantity of Goods**"); and
 - 8.1.6.2 the revised total price for the Goods, being the sum of the prices for each Type of Goods, calculated for each Type by multiplying the Unit Prices in the Price Offer for that Type by the total number of metres of that Type of the Goods included in the Revised Quantity of Goods (such total amount, for all Types of Goods within the Revised Quantity of Goods, being the "**Revised Goods Price**" in respect of the Goods).

- 8.1.7 Any change proposed by the Contracting Entity to the quantity required of any Type of Goods, other than any Pipe Length Ratio Change, which, when taken into consideration with all previous changes to the quantity of any Type of Goods, is in excess of the Variable Volume Threshold shall be treated as a Contracting Entity Change subject to and in accordance with clause 15 (*Changes*). For the avoidance of doubt any Pipe Length Ratio Change shall not be taken into account in determining whether or not the Variable Volume Threshold may have been reached or exceeded.
- 8.1.8 If the Contracting Entity issues any Pipe Length Variation Notice in respect of any particular Type of Goods less than three (3) months prior to the last Guaranteed Completion Date to occur in respect of that Type of Goods, subject to clause 8.1.10 the Supplier shall be entitled to be reimbursed its additional Costs reasonably and properly incurred directly as a result of the Pipe Length Ratio Change which is the subject of that Pipe Length Variation Notice.
- 8.1.9 If the Contracting Entity issues any Goods Variation Notice, in respect of any particular Type of Goods, less than four (4) months prior to the last Guaranteed Completion Date to occur in respect of that Type of Goods:
- 8.1.9.1 if the Goods Variation Notice requires a reduction in the quantity of Goods required, subject to clause 8.1.10 the Supplier shall be entitled to be reimbursed its Costs reasonably and properly incurred directly in the expectation of supplying those Goods which are no longer required pursuant to the Goods Variation Notice; and
- 8.1.9.2 if the Goods Variation Notice requires an increase in the quantity of Goods required, the Unit Price for the additional Goods required pursuant to the Goods Variation Notice shall be deemed to be one hundred and ten per cent (110%) of the unit rates set out in the Price Offer for those Goods.
- 8.1.10 The Supplier's right to reimbursement of any Costs pursuant to clause 8.1.8 and/or 8.1.9.1 shall be subject to the Supplier providing to the Contracting Entity such documentation and evidence as the Contracting Entity may reasonably require to verify to its satisfaction the Supplier's claim for Costs, including evidence that the Supplier has used all reasonable endeavours to minimise any increase and maximise any reduction in Costs.
- 8.1.11 The Supplier has satisfied itself completely that its Price Offer is correct and sufficient to cover all of its obligations and liabilities under this Contract and all matters and things necessary for the supply of the Goods. The Supplier accordingly shall have no claim for extra payment on the grounds of a lack of knowledge, nor shall it be relieved or excused from any obligations and/or liabilities as a consequence thereof.

8.2 **Advance Payment**

- 8.2.1 The Contracting Entity shall, within thirty (30) Days of the latest to occur of:
- 8.2.1.1 the Commencement Date;
- 8.2.1.2 the date of delivery by the Supplier to the Contracting Entity of an Advance Payment Guarantee in compliance with clause 9.1.1; and

8.2.1.3 the date of delivery by the Supplier to the Contracting Entity of evidence, to the satisfaction of the Contracting Entity, acting reasonably, that the Supplier is registered for VAT purposes (if required) in the Republic of Bulgaria and the Republic of Greece,

pay to the Supplier an advance payment equivalent to 15% maximum of the Initial Goods Price (the "**Advance Payment**").

8.2.2 The Advance Payment shall be repaid by the Supplier through Advance Payment Deductions applied to the Milestone Payments. The Advance Payment Deduction to be applied to each Milestone Payment shall be an amount calculated as the lower of:

8.2.2.1 the value of Goods which have achieved Provisional Acceptance which are comprised within the relevant Milestone; and

8.2.2.2 the outstanding amount of the Advance Payment as at date (being the total Advance Payment less the sum of all Advance Payment Deductions applied in respect of previous Milestones).

8.3 Milestone Payments

8.3.1 In consideration for the full and complete supply of the Goods and all costs incurred in connection therewith, the Contracting Entity shall pay to the Supplier the Milestone Payments. Each Milestone Payment shall be paid by the Contracting Entity to the Supplier, upon achievement of the relevant Milestone, in accordance with the provisions of this clause 8.

8.3.2 The Milestone Payments referred to in clause 8.3.1 are as follows:

8.3.2.1 in respect of each Milestone except the Final Milestone, the Milestone Payment shall be the sum of all Milestone Type Amounts for all Types of Good comprised within the Milestone, where each Milestone Type Amount is calculated by multiplying the Unit Price for the relevant Type of Goods by the total number of metres of that Type of Good comprised within the Milestone; and

8.3.2.2 in respect of the Final Milestone, the Milestone Payment shall be the amount equal to:

(a) the Contract Price as at that date;

less

(b) the total of all previous Milestone Payments paid pursuant to this clause 8.3.

8.3.3 The Milestones referred to in clauses 8.3.1 and 8.3.2 are as follows:

Milestone No	Description of Milestone
Milestone 1	Provisional Acceptance being achieved in respect of Goods, measured in length, equal to twenty five per cent (25%) of the Contracted Quantity of Goods, measured in length.
Milestone 2	Provisional Acceptance being achieved in respect of Goods (not comprised within any previous Milestone), measured in length, equal to twenty per cent (20%) of the Contracted Quantity of Goods (as at that date), measured in length.
Milestone 3	Provisional Acceptance being achieved in respect of Goods (not comprised within any previous Milestone), measured in length, equal to twenty five per cent (25%) of the Contracted Quantity of Goods (as at that date), measured in length.
Milestone 4	Provisional Acceptance being achieved in respect of Goods (not comprised within any previous Milestone), measured in length, equal to twenty per cent (20%) of the Contracted Quantity of Goods (as at that date), measured in length.
Milestone 5 ("Final Milestone")	Provisional Acceptance of all remaining Goods comprised within the Contracted Quantity (as at that date), not previously included within Milestones 1 to 4 above.

8.4 **Supplier's Payment Application**

Within seven (7) Days from the achievement of a Milestone, the Supplier may provide the Contracting Entity with a payment application in a form acceptable to the Contracting Entity which shall, as a minimum, include:

- 8.4.1 the amount of the Milestone Payment that the Supplier asserts is payable to the Supplier in accordance with this Contract, separated out to identify the corresponding proportions of such Milestone Payment applicable to:
 - 8.4.1.1 the Goods delivered to each different Delivery Point; and
 - 8.4.1.2 the Goods delivered to each Country;
- 8.4.2 details of Goods supplied by the Supplier, which have achieved Provisional Acceptance and which are comprised within the relevant Milestone covered by the payment application;
- 8.4.3 any Advance Payment Deduction to be applied under clause 8.2.2;
- 8.4.4 any amount to be deducted for retention in accordance with clause 9.3 (*Retention*);
- 8.4.5 any other additions or deductions which may have become due under the Contract or otherwise, including those under clause 23 (*Dispute Resolution*);

- 8.4.6 all supporting documentation for the payment application, including:
- 8.4.6.1 the Type 3.1 Certificate issued by the Supplier pursuant to clause 5.4.7 in respect of the relevant Goods;
 - 8.4.6.2 the Type 3.2 Certificate and Release Notice issued by the Third Party Inspector pursuant to clause 5.4.8 in respect of the relevant Goods;
 - 8.4.6.3 the Provisional Acceptance Certificate in respect of the relevant Goods; and
 - 8.4.6.4 any other information requested by the Contracting Entity (including without limitation any information required by any managing authority of any applicable European Structural and Investment Fund),

provided that no such payment application shall be submitted in respect of Goods comprised within a Milestone earlier than the date specified for delivery of those Goods (and achievement of that Milestone) in the Delivery Schedule, without the consent of the Contracting Entity.

8.5 **Payment Statement**

- 8.5.1 Within ten (10) Days of receipt of the Supplier's payment application pursuant to clause 8.4 (*Supplier's Payment Application*), the Contracting Entity shall (or, if no such payment application is received from the Supplier pursuant to clause 8.4 (*Supplier's Payment Application*) the Contracting Entity may) give the Supplier a payment statement which states:
- 8.5.1.1 the value of Goods supplied by the Supplier which have achieved Provisional Acceptance and which are comprised within the relevant Milestones covered by the payment claim;
 - 8.5.1.2 any amount that the Contracting Entity is entitled pursuant to the Contract to retain or withhold;
 - 8.5.1.3 the amount (if any) which the Contracting Entity believes to be then payable by the Contracting Entity to the Supplier and which the Contracting Entity intends to pay to the Supplier; and
 - 8.5.1.4 if the amount in clause 8.5.1.3 is less than the amount in the Supplier's payment application, the reasons therefor.
- 8.5.2 Within seven (7) Days of the Supplier receiving the Contracting Entity's payment statement, the Supplier shall issue an invoice in the amount referenced in 8.5.1.3 above (if a positive amount). Any amounts which are not referenced in the invoice and which are disputed by the Parties shall be determined in accordance with clause 23 (Dispute Resolution) and, when finally determined, (if so determined as payable to the Supplier) shall be paid by the Contracting Entity in the next invoice following such final determination together with any interest payable thereupon in accordance with clause 24.6 (Interest).

8.6 Payment

- 8.6.1 Subject to clause 8.7 (*Conditions Precedent to Payment*), the Contracting Entity shall, within thirty (30) Days after the provision of an invoice to the Contracting Entity by the Supplier, pay the Supplier the amount shown in the invoice to be due to the Supplier.
- 8.6.2 A payment made pursuant to this clause:
- 8.6.2.1 will not prejudice the right of either Party to dispute whether the paid amount is the amount properly due and payable;
 - 8.6.2.2 will not be evidence of the value of the Goods supplied under this Contract;
 - 8.6.2.3 will not be evidence that the Goods supplied are satisfactory; and
 - 8.6.2.4 will not be an admission of liability on the part of the Contracting Entity.
- 8.6.3 If the amount shown in the Contracting Entity's payment statement pursuant to clause 8.5.1.3 is a negative amount that amount shall become due from the Supplier to the Contracting Entity and shall be paid by the Contracting Entity within ten (10) Days of the Contracting Entity's demand (or, if such amount is disputed by the Supplier, shall be determined in accordance with clause 23 (*Dispute Resolution*) and, when finally determined, (if so determined as payable by the Supplier) shall be paid to the Contracting Entity within ten (10) Days following such final determination together with any interest payable thereupon in accordance with clause 24.6 (*Interest*)).

8.7 Conditions Precedent to Payment

If, at the time that the Supplier submits a payment application under clause 8.4 (*Supplier's Payment Application*), the Supplier has not:

- 8.7.1 maintained the Performance Guarantee in accordance with this Contract;
- 8.7.2 maintained the Advance Payment Guarantee in accordance with the Contract;
- 8.7.3 effected and maintained the insurance required of the Supplier pursuant to clause 18 (*Insurance*);
- 8.7.4 certified to the Contracting Entity that it has paid all amounts due to Subcontractors for work performed by Subcontractors in relation to the Goods for which payment is claimed by the Supplier; and
- 8.7.5 provided the Contracting Entity with lien releases and waivers in the form required by the Contracting Entity,

then the Supplier will not be entitled to payment of, and the Contracting Entity shall not be liable to pay, any amount included in the payment application.

8.8 **Payment Or Use Does Not Constitute Acceptance**

No payment to the Supplier or any use of the Goods by the Contracting Entity shall constitute an acceptance of any of the Goods or shall relieve the Supplier of any of its obligations or liabilities with respect thereto.

8.9 **Taxes and Duties**

8.9.1 **Compliance with Laws**

8.9.1.1 The Supplier shall comply with all Applicable Laws, rules and regulations regarding Taxes, and the payment of Taxes of all kinds in effect as at the Effective Date and those becoming effective hereafter in respect of the supply of the Goods and in respect of the performance by the Supplier of its obligations under this Contract.

8.9.1.2 Where the Contracting Entity is in receipt of financing in respect of the Project from any financing institution, the Supplier shall, in addition to and without prejudice to its obligations under clause 8.9.1.1 and other obligations in 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 Supplier of its obligations under this Contract, in respect of:

- (a) the provision or filing of any documentation or records in respect of payments received or made under this Contract;
- (b) details or documentation to be provided in support of any invoice or application for payment under this Contract;
- (c) restrictions or requirements in respect of publicity; and/or
- (d) access to and disclosure of documentation.

8.9.2 **Liability for Taxes and Duties**

8.9.2.1 Subject to clause 8.9.2.2, the Supplier shall be responsible and liable to pay all Taxes required under the Contract, or levied as a result of or in respect of the entry into and performance by the Supplier of its obligations under this Contract, and the Contract Price is inclusive of any and all Taxes levied on the Supplier or the Contracting Entity or otherwise in relation to the Goods and/or the entry into and performance by the Supplier of its obligations under this Contract, both within and outside of the Republic of Bulgaria and/or the Republic of Greece (as appropriate).

8.9.2.2 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 Greece (as appropriate) in relation to the Goods. Upon the

Contracting Entity's request, the Supplier shall assist the Contracting Entity in preparing and submitting any required documentation to apply for all relevant value added Tax exemptions and refunds and to support the Contracting Entity in its meetings with the relevant authorities in connection therewith.

- 8.9.2.3 The Goods shall be delivered DDP, according to INCOTERMS 2010. The Supplier shall be responsible for customs clearance in the Republic of Bulgaria and/or the Republic of Greece, and/or any other country through which the Goods are transported, of all Goods, materials and equipment delivered in accordance with 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 Contracting Entity is required by any legal requirement to make directly itself). In the event that the Contracting Entity 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/or the Republic of Greece (as appropriate), the Contracting Entity shall make such payments but may appoint the Supplier as its agent. At the Contracting Entity's request, the Supplier shall assist the Contracting Entity in preparing and submitting the necessary documentation to apply for all relevant customs duty exemptions and refunds and to support the Contracting Entity in its meetings with the necessary authorities in connection therewith. The Supplier shall indemnify and hold harmless the Contracting Entity against any and all customs duties, import duties and/or Taxes assessed on the Contracting Entity as the importer of record. The Contracting Entity may set-off such amounts against any amounts due to the Supplier under this Contract.

9. ADVANCE PAYMENT GUARANTEE AND PERFORMANCE GUARANTEE

9.1 Advance Payment Guarantee

9.1.1 The Supplier shall, at its discretion, provide to the Contracting Entity an advance payment guarantee of any one of the following types:

9.1.1.1 a cash deposit;

9.1.1.2 bank guarantee; or

9.1.1.3 insurance securing performance by covering the liability of the Supplier,

in each case for [*€ amount equal to the Advance Payment*], and whichever form is selected by the Supplier is the "**Advance Payment Guarantee**".

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

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

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

9.1.3.2 that it will pay within five (5) Days to the Contracting Entity the sum of the due payment or part thereof as stated by the Contracting Entity in a written request; and

9.1.3.3 to be valid until three (3) Days following the date that Provisional Acceptance is achieved in respect of Goods to the value of the Advance Payment and such Advance Payment has been repaid in full by the Supplier through Advance Payment Deductions applied to the Milestone Payments pursuant to clause 8.2 (*Advance Payment*), 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 Contracting Entity on the guarantee where there are grounds for that, shall be at the expense of the Supplier.

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

9.1.4.1 to secure the Advance Payment;

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

9.1.4.3 that it will pay within five (5) Days to the Contracting Entity the sum of the due payment or part thereof as stated by the Contracting Entity in a written request; and

9.1.4.4 to be valid until three (3) Days following the date that Provisional Acceptance has been achieved in respect of Goods to the value of the Advance Payment and such Advance Payment has been repaid in full by the Supplier through Advance Payment Deductions applied to the Milestone Payments pursuant to clause 8.2 (*Advance Payment*), 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 Contracting Entity where there are grounds for that shall be at the expense of the Supplier.

9.1.5 The Supplier shall ensure that the Advance Payment Guarantee is at all times after payment by the Contracting Entity to the Supplier of the advance payment, valid and enforceable and fully recoverable in accordance with its terms until the date that Provisional Acceptance has been achieved in respect of Goods to the value of the Advance Payment and such Advance Payment has been repaid in full by the Supplier through Advance Payment Deductions applied to the Milestone Payments pursuant to clause 8.2 (*Advance Payment*).

9.1.6 Subject to clause 9.1.10, the Contracting Entity shall release the Advance Payment Guarantee within three (3) Days following the date on which Provisional Acceptance has been achieved in respect of Goods to the value of the Advance Payment and such Advance Payment has been repaid in full by the Supplier through Advance Payment Deductions applied to the Milestone Payments pursuant to clause 8.2 (*Advance Payment*), 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.

9.1.7 The release of the Advance Payment Guarantee shall be effected as follows:

9.1.7.1 if provided in the form of a cash deposit, by transferring the amount into a bank account specified by the Supplier;

9.1.7.2 if provided in the form of a bank guarantee, by returning its original to the Supplier's Representative or another authorised person; or

9.1.7.3 if provided in the form of an insurance policy, by returning the original of the insurance policy/insurance certificate to the Supplier's Representative or another authorised person and sending a written notice to that effect to the insurer.

9.1.8 The Contracting Entity may enforce the Advance Payment Guarantee in the following circumstances:

9.1.8.1 upon any termination of this Contract pursuant to this clause 19 (*Termination and Other Remedies*); or

9.1.8.2 where the Supplier has been subject to a formal insolvency or analogous event, as described in clause 19.7.1.2,

in each case to the extent that the outstanding amount of the Advance Payment exceeds the value of Goods which have achieved Provisional Acceptance at that time (and in respect of which an Advance Payment Deduction has or Advance Payment Deductions have been applied pursuant to clause 8.2 (*Advance Payment*)).

9.1.9 Where the Advance Payment Guarantee takes the form of a cash deposit, in each case in which the Contracting Entity wishes to make a retention from such

deposit, the Contracting Entity shall notify the Supplier of such retention and its grounds. Retention of any amount from the cash deposit, or any valid claim by the Contracting Entity on a bank guarantee or insurance policy (where the Advance Payment Guarantee takes such form) shall not be construed as a waiver of the Contracting Entity's rights to claim greater amounts as damages under this Contract.

- 9.1.10 The Parties may agree that the value of the Advance Payment Guarantee may be progressively reduced by the value of Goods which have achieved Provisional Acceptance and the value of the Advance Payment corresponding to such Goods has been repaid by the Supplier through Advance Payment Deductions applied to the Milestone Payments pursuant to clause 8.2 (*Advance Payment*), and/or by the value of any demands made thereunder.

9.2 Performance Guarantee

- 9.2.1 Upon the execution of the Contract, the Supplier shall, at its discretion, provide to the Contracting Entity a performance guarantee of any one of the following types:

9.2.1.1 a cash deposit;

9.2.1.2 bank guarantee; or

9.2.1.3 insurance securing performance by covering the liability of the Supplier,

in each case for five per cent (5%) of the Contract Price, and whichever form is selected by the Supplier is the "**Performance Guarantee**".

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

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

9.2.3.1 to be an unconditional and irrevocable bank guarantee which obliges the issuing bank to pay upon first written demand by the Contracting Entity, stating a default of the Supplier or any other grounds for enforcing the Performance Guarantee under this Contract, regardless of the objections of the Supplier or third persons;

9.2.3.2 that it will pay within five (5) Days to the Contracting Entity the sum of the due payment or part thereof as stated by the Contracting Entity in a written request; and

9.2.3.3 to be valid until thirty (30) Days following the Provisional Acceptance of the last of the Goods to be delivered 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 Contracting Entity on the guarantee where there are grounds for that, shall be at the expense of the Supplier.

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

9.2.4.1 to secure the Supplier's performance of the Contract by covering the Supplier's liability under the Contract;

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

9.2.4.3 that it will pay within five (5) Days to the Contracting Entity the sum of the due payment or part thereof as stated by the Contracting Entity in a written request; and

9.2.4.4 to be valid until thirty (30) Days following the Provisional Acceptance of the last of the Goods to be delivered 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 Contracting Entity where there are grounds for that shall be at the expense of the Supplier.

9.2.5 If the total of the lump sum payable to the Supplier under this Contract increases because of a Change, the Supplier shall take necessary action to bring the amount of the Performance Guarantee up to the amount of five per cent (5%) of the total revised Contract Price payable to the Supplier as a consequence of the Change, by the following measures (which shall be at the discretion of the Supplier):

9.2.5.1 depositing an additional amount into the bank account of the Contracting Entity, subject to the requirements of clause 9.2.2; and/or

9.2.5.2 providing a document amending the original bank guarantee or a new bank guarantee, subject to the requirements of clause 9.2.3; and/or

9.2.5.3 providing a document amending the original insurance or new insurance, subject to the requirements of clause 9.2.4.

9.2.6 The Contracting Entity shall release the Performance Guarantee after thirty (30) Days following the Provisional Acceptance of the last of the Goods to be delivered, 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.

- 9.2.7 The release of the Performance Guarantee shall be effected as follows:
- 9.2.7.1 if provided in the form of a cash deposit, by transferring the amount into a bank account specified by the Supplier;
 - 9.2.7.2 if provided in the form of a bank guarantee, by returning its original to the Supplier's Representative or another authorised person; or
 - 9.2.7.3 if provided in the form of an insurance policy, by returning the original of the insurance policy/insurance certificate to the Supplier's Representative or another authorised person and sending a written notice to that effect to the insurer.
- 9.2.8 The Contracting Entity may enforce the Performance Guarantee in the following circumstances:
- 9.2.8.1 where the Supplier is in breach of its obligations under this Contract; and/or
 - 9.2.8.2 where the Supplier has been subject to a formal insolvency or analogous event, as described in clause 19.7.1.2.
- 9.2.9 Where the Performance Guarantee takes the form of a cash deposit, in each case in which the Contracting Entity wishes to make a retention from such deposit, the Contracting Entity shall notify the Supplier of such retention and its grounds. Retention of any amount from the cash deposit, or any valid claim by the Contracting Entity on a bank guarantee or insurance policy (where the Performance Guarantee takes such form) shall not be construed as a waiver of the Contracting Entity's rights to claim greater amounts as damages under this Contract.
- 9.2.10 If the Contracting Entity enforces the Performance Guarantee in whole or in part and this Contract is still in effect, the Supplier shall within five (5) Days replenish the Performance Guarantee by paying the amount enforced by the Contracting Entity to the account of the Contracting Entity or provide a document amending the original bank guarantee or a new bank guarantee, or a document amending the original insurance or a new insurance so as to ensure that while this Contract is still in effect, the amount of the Performance Guarantee is in accordance with clause 9.2.1.

9.3 Retention

A retention equal to five per cent (5%) of the amounts due to the Supplier from time to time under the Contract shall be retained by the Contracting Entity from each Milestone Payment to the Supplier (without obligation to invest those monies or account for interest thereon or to place them in a designated account). The Contracting Entity shall return the Retention to the Supplier, less any amounts due from the Supplier to the Contracting Entity under or in connection with this Contract, within thirty (30) Days of Final Acceptance.

10. DELIVERY AND ACCEPTANCE OF GOODS

10.1 Delivery, Transit and Handover of Goods

- 10.1.1 The Supplier shall confirm to the Contracting Entity and the EPC Contractor in writing, on not less than fourteen (14) Days' notice, the date of delivery of the Goods to each applicable Delivery Point in accordance with the Delivery Schedule (the proposed "**Delivery Date**").
- 10.1.2 The Supplier shall pack and load the Goods in accordance with the requirements of the Technical Specification.
- 10.1.3 No later than one (1) month prior to the date for shipment of the Goods the Supplier shall provide to the Contracting Entity and to the Owner's Engineer detailed manuals (in draft, for the Contracting Entity's approval) for the handling and transport of the Goods, such manuals to be of high quality, legible, prepared in accordance with the requirements of the Technical Specification and Good Industry Practice and in the English language. The Contracting Entity and/or the Owner's Engineer shall be entitled to raise comments on and/or require amendments to the draft manuals and the Supplier shall take account of any such comments and shall amend the manuals as may be so required and resubmit them for the Contracting Entity's approval. This process shall be repeated by the Supplier until the manuals are approved by the Contracting Entity. If requested by the Contracting Entity, the Supplier shall (within two (2) months of such request) also produce versions of the manuals in the Bulgarian and/or Greek languages.
- 10.1.4 The Supplier shall not ship the Goods unless:
- 10.1.4.1 a Type 3.1 Certificate has been issued by the Supplier subject to and in accordance with clause 5.4.7;
 - 10.1.4.2 a Type 3.2 Certificate and a Release Notice has been issued by the Third Party Inspector subject to and in accordance with clause 5.4.8; and
 - 10.1.4.3 the EPC Contractor has provided notice to the Supplier that the EPC Contractor is available to accept delivery of the Goods on the Delivery Date.
- 10.1.5 Following the satisfaction of the requirements of clauses 10.1.1 to 10.1.4 (inclusive) above, the Supplier shall ship the Goods in accordance with the requirements identified in the Technical Specification.
- 10.1.6 Customs Clearance
- The Supplier shall be responsible for the importation into the Republic of Bulgaria and/or the Republic of Greece of any Goods (as applicable to the relevant Delivery Point) in accordance with the requirements of clause 8.9.2.3, together with any associated formalities and Taxes and customs duties in accordance with Applicable Law, on the basis of DDP according to INCOTERMS 2010.

10.1.7 Infrastructure

The Supplier shall fully investigate and shall be responsible for ensuring the suitability of the conditions of the roads, waterways and railroads in the vicinity of each Delivery Point and from ports to each Delivery Point, including the conditions affecting shipping and transportation, access, handling and storage of Goods.

10.1.8 Protection of Third Party Property and Utilities

10.1.8.1 The Supplier shall at all times during the Supplier's delivery of the Goods 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/oil/water pipelines, drainage ditches, culverts, infrastructure and any and all property of Third Parties from damage as a result of or in any way in connection with the delivery of the Goods.

10.1.8.2 Where delivery of the Goods requires the traverse of public or private lands, the Supplier shall: (a) limit the movement of its crews and equipment and of all Subcontractors as far as possible so as to avoid damage to any property; and (b) use its best efforts to avoid damaging such property.

10.1.8.3 Without prejudice to clause 16 (*Indemnification*), in the event that any such property is damaged or destroyed by an act or omission of the Supplier, any Subcontractor, their employees or agents, the Supplier shall at the Supplier's own expense promptly rebuild, restore or replace such damaged or destroyed property.

10.1.9 The Contracting Entity and the EPC Contractor shall be entitled to inspect the Goods upon arrival at the Delivery Point, prior to unloading. Upon delivery of Goods to a Delivery Point, the unloading and subsequent storage of the Goods shall be carried out by the EPC Contractor in the presence of a representative of the Supplier.

10.1.10 In the event that the EPC Contractor is unable or otherwise fails to accept or to provide storage for the Goods in compliance with the requirements of the EPC Contract, at any time following delivery by the Supplier of such Goods to the Delivery Point in accordance with the terms of this Contract, the Contracting Entity shall be entitled to require the Supplier to store such Goods until such time as the EPC Contractor is able to so comply. The Supplier shall make available storage facilities for this purpose (in compliance with clause 5.5.1). In the event the Supplier is required by the Contracting Entity to store Goods pursuant to this clause 10.1.10, in circumstances where:

10.1.10.1 such Goods satisfy in all respects the requirements of the Technical Specification and this Contract; and

10.1.10.2 the Supplier has complied with all the requirements of this Contract in respect of those Goods and the delivery thereof,

the Supplier shall be entitled to claim its reasonable and properly incurred direct additional costs of such storage, for the period during which the Goods are required to be stored pursuant to this clause 10.1.10, as a Compensation Event.

10.2 Provisional Acceptance

10.2.1 Following delivery by the Supplier of Goods to a Delivery Point in accordance with this Contract, the Owner's Engineer shall, and the EPC Contractor shall be entitled to, perform an inspection of the Goods delivered, and the Contracting Entity shall within ten (10) Days of completion in full of the relevant delivery either:

10.2.1.1 deliver to the Supplier a certificate (the "**Provisional Acceptance Certificate**") if the Goods meet the requirements identified in this Contract in respect of those Goods, in which case "**Provisional Acceptance**" shall have occurred in respect of such Goods on the date of such written notification from the Contracting Entity; or

10.2.1.2 if the Goods do not meet the requirements of this Contract, notify the Supplier in writing that Provisional Acceptance has not been achieved in respect of such Goods, stating the reasons therefor.

10.2.2 In the event that Provisional Acceptance has not been achieved, the Supplier shall promptly repair or replace the relevant Goods and take such other actions as are required to achieve Provisional Acceptance in respect of the relevant Goods and shall issue to the Contracting Entity written notice when it believes that Provisional Acceptance has been achieved. The procedure in clause 10.2.1 shall apply again following receipt by the Contracting Entity of such notice. The Supplier shall, if so required by the Contracting Entity, remove the Goods until such repair or replacement is completed in which case the Supplier shall be responsible for the removal, storage (in compliance with clause 5.5.1) and redelivery of such Goods (in accordance with the requirements of the Technical Specification) at its own cost.

10.3 Final Acceptance

10.3.1 Without prejudice to clause 13.3.7, "**Final Acceptance**" shall be achieved under this Contract if and only if:

10.3.1.1 Provisional Acceptance has occurred in respect of all Goods to be provided under this Contract;

10.3.1.2 all applicable payments of Delay Liquidated Damages under clause 11.2.1, have been made to the Contracting Entity in full; and

10.3.1.3 the Warranty Period and any Extended Warranty Period have ended.

10.3.2 Notice and Report of Final Acceptance

When the Supplier believes that the conditions set out in clause 10.3.1 have been achieved, it shall deliver to the Contracting Entity a written notice thereof ("**Notice of Final Acceptance**") in a form acceptable to the Contracting Entity. The Notice of Final Acceptance shall contain a report in a form acceptable to the Contracting Entity and with sufficient detail to enable the Contracting Entity to

determine the achievement by the Supplier of the conditions set out in clause 10.3.1.

10.3.3 Certification of Final Acceptance

The Contracting Entity shall, as soon as reasonably practicable and in any event not later than thirty (30) Days following receipt of the Notice of Final Acceptance, inspect the Goods and all work carried out, review the report submitted by the Supplier and either:

10.3.3.1 deliver to the Supplier written notification ("**Final Acceptance Certificate**") if the conditions set out in clause 10.3.1 have been satisfied and Final Acceptance has been achieved; or

10.3.3.2 if all of the conditions set out in clause 10.3.1 have not been achieved, notify the Supplier in writing that Final Acceptance has not been achieved, stating the reasons therefor.

10.3.4 In the event that the Contracting Entity determines that Final Acceptance has not been achieved, the Supplier shall promptly take such action or perform such additional work as will achieve Final Acceptance and shall issue to the Contracting Entity another Notice of Final Acceptance pursuant to clause 10.3.2 once such work has been carried out. Such procedure shall be repeated as necessary until Final Acceptance is achieved.

11. GUARANTEED COMPLETION DATE

11.1 Guaranteed Completion Date

11.1.1 The Supplier understands and agrees that time is of the essence in the supply of the Goods. Without prejudice to clause 15.3.3.1 or clause 15.6 (*Extensions of Time*), the Supplier guarantees that Provisional Acceptance shall be achieved in respect of all of the Goods comprised in each Milestone on or before the applicable Guaranteed Completion Date for that Milestone.

11.1.2 Without prejudice to clause 15.3.3.1 or clause 15.6 (*Extensions of Time*), if the Supplier fails to achieve any Milestone by the applicable Guaranteed Completion Date for that Milestone pursuant to clause 11.1.1, the Contracting Entity shall be entitled to give notice of the particulars of the failure to the Supplier stating that the Supplier has so failed to comply and that the Contracting Entity shall be entitled to payment by the Supplier of Delay Liquidated Damages for this default (provided that the provision of such notice shall not be a pre-condition to the entitlement of the Contracting Entity to payment of such delay damages pursuant to clause 11.2 (*Delay*) below).

11.2 Delay

11.2.1 Delay Liquidated Damages

The Supplier shall pay to the Contracting Entity, in respect of each Milestone which is not achieved by the Guaranteed Completion Date for that Milestone, delay damages in the amount of thirty thousand Euros (€30,000) per Day for each Day which shall elapse between the Guaranteed Completion Date for the relevant Milestone and the actual date of achievement of that Milestone, provided that the

total amount of delay damages due to the Contracting Entity from the Supplier under this clause 11.2.1 shall be subject to the limitation set out in clause 12.1.1.

11.2.2 Liquidated Damages

11.2.2.1 The Contracting Entity and the Supplier hereby acknowledge and agree that the sums stated as Delay Liquidated Damages in clause 11.2.1 represent a genuine and reasonable pre-estimate of the losses that the Contracting Entity will incur in the event of a failure by the Supplier to achieve a Milestone by the relevant Guaranteed Completion Date.

11.2.2.2 Notwithstanding the foregoing, if and to the extent that the Delay Liquidated Damages payable hereunder are not enforceable for any reason, the balance of this clause and this Contract shall remain in full force and effect and the Supplier shall be liable to the Contracting Entity for damages at law for the failure by the Supplier to achieve each Milestone by the relevant Guaranteed Completion Date, provided that any such liability shall not exceed the amount that would have been due if the liquidated damages provisions of this clause 11.2 (*Delay*) had remained effective.

11.2.2.3 Payment by the Supplier of Delay Liquidated Damages (or damages at law pursuant to clause 11.2.2.2), or any deduction of Delay Liquidated Damages (or damages at law) from moneys due, or to become due, to the Supplier, shall not:

- (a) affect the Contracting Entity'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
- (b) relieve the Supplier from its obligations to supply the Goods or from any other duties, obligations or responsibilities which the Supplier may have under this Contract.

11.2.2.4 The Supplier shall not be relieved of any liability on account of:

- (a) any failure by or delay in the Contracting Entity requiring payment of Delay Liquidated Damages pursuant to clause 11.2.2.1 (or any damages at law pursuant to clause 11.2.2.2) or deduction of Delay Liquidated Damages (or damages at law) from moneys due, or to become due, to the Supplier; or
- (b) the Contracting Entity requiring payment of or deducting amounts of a lower sum than the amounts fixed as Delay Liquidated Damages pursuant to this clause 11.2 (*Delay*).

11.2.3 Payment of Delay Liquidated Damages

The Supplier shall pay to the Contracting Entity the Delay Liquidated Damages due under this clause 11.2 (*Delay*) monthly in arrears on the tenth (10th) Day of

each month or, following service of a notice by the Contracting Entity to the Supplier, the Contracting Entity may set-off such amounts against any amounts due to the Supplier under this Contract.

12. LIABILITY AND DAMAGES

12.1 Limitation of Liability

12.1.1 In no event shall the sum of the Supplier's liability to the Contracting Entity under this Contract for all Delay Liquidated Damages (or any damages at law in lieu of such Delay Liquidated Damages pursuant to clause 11.2.2.2) exceed in the aggregate [*insert figure equivalent to ten per cent (10%) of the Initial Goods Price.*]

12.1.2 Subject always to the provisions of clause 12.3 (*Aggregate Liability of the Supplier*), this clause 12.1 (*Limitation of Liability*) shall not be construed to limit Damages in respect of any breach of the Supplier's obligation to supply the Goods to the relevant Delivery Point in accordance with the requirements of this Contract, or to limit the Supplier's other obligations or liabilities arising under or in connection with this Contract.

12.2 Consequential Damages

12.2.1 Subject to clause 12.2.2, neither Party shall be liable to the other Party for loss of use of any Goods, 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.

12.2.2 Without prejudice to clause 12.5 (*Exclusions from limitations on liability*), the exclusion set out in clause 12.2.1 shall not apply to:

12.2.2.1 Delay Liquidated Damages;

12.2.2.2 damages in lieu of Delay Liquidated Damages pursuant to clause 11.2.2.2; or

12.2.2.3 any liability of the Supplier pursuant to clause 19 (*Termination and Other Remedies*);

12.2.2.4 any liabilities for which the Supplier has provided an indemnity to the Contracting Entity under this Contract, under clause 16 (*Indemnification*) or otherwise.

12.3 Aggregate Liability of the Supplier

Subject to clause 12.5 (*Exclusions from limitations on liability*), but notwithstanding anything else to the contrary herein, the Supplier's aggregate liability to the Contracting Entity under or in connection with this Contract, including liability in tort (including negligence), shall not exceed [*insert figure equivalent to 100% of the Initial Goods Price*].

12.4 Aggregate Liability of the Contracting Entity

Subject to clause 12.5 (*Exclusions from limitations on liability*), but notwithstanding anything else to the contrary herein, the Contracting Entity's aggregate liability to the Supplier under or

in connection with this Contract, including liability in tort (including negligence) shall not exceed [*insert figure equivalent to 100% of the Initial Goods Price*].

12.5 Exclusions from limitations on liability

The Parties agree that nothing in this clause 12 (*Liability and Damages*) shall exclude or limit any liability for or in respect of:

- 12.5.1 fraud, fraudulent misrepresentation, deliberate manifest and reckless default or reckless misconduct by the defaulting Party, or breach of statutory duty or Law;
- 12.5.2 death or personal injury (howsoever caused);
- 12.5.3 breach of statutory duty or law;
- 12.5.4 any breach by either Party of clause 5.11 (*Anti-Bribery and Anti-Corruption and Undertakings*) or clause 21 (*Confidentiality*);
- 12.5.5 loss of or damage to property of any third party to the extent attributable to any act or omission of the Supplier or any Sub-Contractor, or their respective personnel or agents;
- 12.5.6 in the case of liability of the Supplier:
 - 12.5.6.1 any payments received by the Contracting Entity pursuant to the Performance Guarantee or the Advance Payment Guarantee;
 - 12.5.6.2 any payments received by the Supplier or the Contracting Entity from insurance companies under insurance coverage carried by the Supplier pursuant to clause 18 (*Insurance*). The Supplier shall diligently pursue any claims arising for which coverage may be claimed under such insurance coverages;
 - 12.5.6.3 any amounts not paid by insurance, due to the Supplier's failure to comply with clause 18 (*Insurance*);
 - 12.5.6.4 any amounts which would have been covered by the proceeds of insurance coverage carried or required to be carried by the Supplier pursuant to clause 18 (*Insurance*) but for the application of any deductible under such insurances;
 - 12.5.6.5 any liabilities incurred by the Supplier due to the failure of the Supplier to obtain and/or maintain the insurance coverages required pursuant to clause 18 (*Insurance*);
 - 12.5.6.6 any breach by the Supplier of clause 22 (*Intellectual Property*) or any liability of the Supplier under its indemnity under clause 16.2 (*Patent and Copyright Indemnification*); and
 - 12.5.6.7 the cost of rectification or replacement of the Goods by the Contracting Entity pursuant to clause 13 (*Warranties and Guarantees*).

13. WARRANTIES AND GUARANTEES

13.1 Fitness for Purpose

The Supplier warrants and undertakes that the Goods shall be manufactured and delivered by the Supplier as to be fit for its purpose (as further described in the Technical Specification) and otherwise in accordance with the requirements of this Contract including, without limitation, the requirements of all Applicable Laws.

13.2 Standard of Performance

Without limiting any other provision of this Contract, the Supplier warrants and undertakes that the Supplier (and the Subcontractors) shall supply the Goods in accordance with Good Industry Practice and all Applicable Laws.

13.3 Defective Workmanship and Materials

13.3.1 The Supplier warrants, undertakes and guarantees for a period commencing on the last date of Provisional Acceptance in accordance with the requirements of this Contract and ending on the date which is:

13.3.1.1 twenty four (24) months after the date EPC Works Completion is achieved; or

13.3.1.2 thirty six (36) months after the last date of Provisional Acceptance under this Contract,

whichever is the earliest to occur (the "**Warranty Period**"), that all Goods furnished under this Contract will be free from Defects.

13.3.2 If the Contracting Entity notifies the Supplier in writing of any Defect in the Goods discovered during the Warranty Period, subject to clause 13.3.5, the Supplier shall remedy the Defect at the Supplier's expense by repair or replacement. Such repair or replacement shall be conducted at times acceptable to the Contracting Entity. The Supplier shall not remove any Goods from the Site for the purposes of complying with this clause 13.3.2, unless such repair or replacement cannot be undertaken without removing such Goods or part thereof and with the prior written consent of the Contracting Entity.

13.3.3 For Defects rectified after Provisional Acceptance pursuant to clause 13.3.2 and in accordance with the requirements of this Contract, the Warranty Period in respect of such repaired or replaced Goods shall be extended upon the date of remedy for a further period of twelve (12) months (the "**Extended Warranty Period**").

13.3.4 Where the Supplier fails to repair or replace such Defect within a reasonable time following written notice from the Contracting Entity, the Contracting Entity may correct such Defect, or engage another contractor to correct such Defect, and the Supplier shall be liable to the Contracting Entity for the cost (and any associated losses to the Contracting Entity) of doing so.

13.3.5 If and to the extent any Defect discovered during any Warranty Period (or any Extended Warranty Period) relates to Goods which have already been incorporated by the EPC Contractor into the EPC Works (or, following

commissioning of the EPC Works, the operational Pipeline), the Supplier shall, if so required by the Contracting Entity, rectify such Defect by delivering to the Contracting Entity or, if so directed by the Contracting Entity, the EPC Contractor (or any other contractor engaged by the Contracting Entity for this purpose) replacement Goods (in place of the Goods affected by the Defect) for incorporation by the EPC Contractor (or other contractor) into the EPC Works (or, following commissioning of the EPC Works, into the operational Pipeline). Any such replacement Goods shall be delivered by the Supplier to a Delivery Point, or to the Site, or as may otherwise be directed by the Contracting Entity. The Supplier shall be liable for, and shall reimburse to the Contracting Entity on demand, the costs of such incorporation by the EPC Contractor (or other contractor) and any associated costs or losses of the Contracting Entity.

13.3.6 The Contracting Entity shall procure that reasonable access is made available to the Supplier (including such reasonable access as may be required to be provided by the EPC Contractor) at any Delivery Point, storage yard or at the Site (as the case may be) at which the Goods are located following Provisional Acceptance of those Goods, for the purposes of attending on and inspecting any Goods for any Defect (including any Latent Defect), and (subject to clause 13.3.5) for the purposes of carrying out any repair or replacement of any Goods which are the subject of any Defect.

13.3.7 Notwithstanding clause 13.3.1 or clause 13.3.3, the Supplier shall be liable for any Latent Defects in the Goods 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 Law.

14. FORCE MAJEURE

14.1 Force Majeure Event

14.1.1 In this Contract a "**Force Majeure Event**" means an exceptional event or circumstance:

14.1.1.1 which is beyond a Party's control;

14.1.1.2 which such Party could not have reasonably have provided against before entering into the Contract;

14.1.1.3 which such Party could not reasonably have avoided or overcome;

14.1.1.4 which is not substantially attributable to the other Party; and

14.1.1.5 which is limited to the following (subject to clauses 14.1.1.1 to 14.1.1.4):

(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 Supplier's personnel and other employees of the Supplier and Subcontractors;
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Supplier's use of such munitions, explosives, radiation or radio-activity; and
- (e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

14.2 **Burden of Proof**

In the event that the Parties are unable in good faith to agree that a Force Majeure Event has occurred, or the effect thereof, the Party claiming the Force Majeure Event may submit the dispute for resolution pursuant to clause 23 (*Dispute Resolution*), provided that the burden of proof as to whether a Force Majeure Event has occurred shall be upon the Party claiming a Force Majeure Event.

14.3 **Excused Performance**

14.3.1 If either Party is or will be rendered wholly or partially prevented from performing its obligations under this Contract by a Force Majeure Event, then that Party (the "**Affected Party**") shall give notice to the other Party of the event or constituting the Force Majeure Event, 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 Event. Such notice shall be given within fourteen (14) Days after the Affected Party became aware, or should have become aware, of the relevant event constituting the Force Majeure Event (and the Affected Party thereafter shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event).

14.3.2 The Affected Party shall, having given notice pursuant to clause 14.3.1, be excused from performance of such obligations (to the extent so affected by the Force Majeure Event) for so long as such Force Majeure Event 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 Event.

14.3.3 Notwithstanding any other provision of this clause 14 (*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 Supplier shall not be entitled to be paid by the Contracting Entity for any Goods which have been delivered by the Supplier and affected by an Force Majeure Event and in relation to which as a consequence the Contracting Entity has derived no benefit from them.

14.3.4 No liability of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall be excused as a result of the occurrence.

14.3.5 The Affected Party shall continue to perform all of its obligations hereunder which are not impaired by the Force Majeure Event.

14.4 **Duty to Minimise Delay**

14.4.1 Each Party shall use all reasonable endeavours to prevent, minimise, mitigate or cure any delay or any effect of the delay in the performance of the Contract resulting from such Force Majeure Event.

14.4.2 The Affected Party shall give notice to the other Party when it ceases to be affected by the Force Majeure Event. Such notice shall specify the date upon which the Force Majeure Event 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.

14.5 **Force Majeure Affecting Subcontractor**

If any Subcontractor is entitled under any contract between it and the Supplier to relief from a Force Majeure Event on terms additional to or broader than those specified in this Contract, such additional or broader Force Majeure Events or circumstances shall not excuse the Supplier's non-performance or entitle him to relief under this Contract.

15. **CHANGES**

15.1 **Changes**

15.1.1 The Contract Parameters shall only be adjusted pursuant to:

15.1.1.1 clause 15.2 for Contracting Entity Changes; or

15.1.1.2 clause 15.3 for Mandatory Changes; or

15.1.1.3 any Pipe Length Variation Notice and/or Goods Variation Notice issued in accordance with clause 8.1 (*Contracted Quantity*).

15.1.2 Changes may only be authorised by a Change Order, provided always that any Change shall not contravene Art. 116 of the PPA.

15.1.3 Any work, services, or supplies, outside the supply of the Goods and the Supplier's associated obligations as described in this Contract, performed by the Supplier without it having received a Change Order shall be at the Supplier's sole risk and expense. Without prejudice to any other express remedy in the Contract, Change Orders will constitute the exclusive remedy to the Supplier for any Changes (including the events necessitating the relevant Change).

15.1.4 Notwithstanding anything in this clause 15 (*Changes*) to the contrary:

15.1.4.1 no Change Order shall be issued and no adjustment of any or all of the Contract Parameters shall be made to the extent that the same relates to any correction of errors, omissions, deficiencies, or improper or Defective work on the part of the Supplier or any Subcontractors in the supply of the Goods; and

15.1.4.2 costs for the preparation of any Change Order Request and/or Change Order shall not be included in any Change Order increasing the Contract Price.

15.1.5 For the avoidance of doubt, any change in the quantity required of any Type of Goods pursuant to any Goods Variation Notice or any Pipe Length Variation Notice issued by the Contracting Entity under and in accordance with clause 8.1 (*Contracted Quantity*) shall not constitute a Change pursuant to this clause 15 (and shall be priced in accordance with clause 8.1 (*Contracted Quantity*)).

15.2 Contracting Entity Changes

15.2.1 If the Contracting Entity wishes to make a Contracting Entity Change, it shall submit a Change Order Request to the Supplier specifying the scope of the proposed change. Any such Change shall not substantially change the extent or nature of the Goods to be provided under this Contract in accordance with Art. 116 para 1 item 5 of the PPA.

15.2.2 The Supplier shall promptly review the Change Order Request and issue to the Contracting Entity a Change Order Notice within a reasonable time, having regard to the scope of the requested Contracting Entity Change, but in no event later than seven (7) Days following receipt of the Change Order Request. The Change Order Notice shall set out (in each case without double counting):

15.2.2.1 whether relief is required from any of the Supplier's obligations under this Contract during implementation of the Contracting Entity Change;

15.2.2.2 any proposed revision to the Guaranteed Completion Dates, Delivery Schedule and/or the Test and Inspection Plan, required as a result of the Contracting Entity Change;

15.2.2.3 any new or amended Applicable Permit required as a result of the Contracting Entity Change;

15.2.2.4 for any types of goods required pursuant to the Change Order Request for which no Unit Price is specified in the Price Offer, the unit price for those types of goods (being a unit price per metre);

15.2.2.5 any Change in Costs of the Supplier in supplying the Goods (and otherwise complying with its obligations under this Contract) as a result of the Contracting Entity Change;

15.2.2.6 the proposed revised Contract Price following implementation of the Contracting Entity Change, calculated in accordance with clause 15.7 (*Price Change for Contracting Entity Changes*) below; and

15.2.2.7 any other matter which the Contracting Entity may specify, acting reasonably, to allow it assess the implications of the Contracting Entity Change.

- 15.2.3 Within thirty (30) Days of receipt of the Change Order Notice from the Supplier, the Contracting Entity shall respond by either (at its option):
- 15.2.3.1 advising the Supplier that it no longer wishes to proceed with the Contracting Entity Change; or
 - 15.2.3.2 issuing a Change Order directing the Supplier to perform the Contracting Entity Change.
- 15.2.4 The Supplier shall perform all Contracting Entity Changes for which it receives a Change Order regardless of whether any adjustment to the Contract Parameters has been agreed, provided that the Supplier shall not be required to undertake any Change to the extent that would put it in breach of Applicable Laws.

15.3 **Mandatory Changes**

- 15.3.1 Mandatory Changes generally
- 15.3.1.1 Pursuant to and to the extent specified in the provisions of this clause 15.3 (*Mandatory Changes*), the Supplier shall be entitled to a Change for any Mandatory Change Event ("**Mandatory Change**").
 - 15.3.1.2 The Supplier and the Contracting Entity shall use reasonable efforts to mitigate any potential impact on the Contract Parameters caused by Mandatory Change Events. To the extent that:
 - (a) the Supplier fails to use reasonable efforts to mitigate any impact on the Contract Parameters; or
 - (b) the impact on the Contract Parameters is caused by or attributable to any act or omission of the Supplier or any Subcontractor of the Supplier,the Supplier shall not be entitled to an adjustment of such Contract Parameters by a Mandatory Change or otherwise.
 - 15.3.1.3 The Supplier shall not be entitled to a Mandatory Change (and shall not be entitled to any extension of time pursuant to clause 15.6 (*Extensions of Time*) nor to payment of any compensation pursuant to clause 15.8 (*Compensation for Mandatory Change Events*), nor to any other relief from its obligations in respect of a Mandatory Change Event) if the Supplier:
 - (a) fails to notify the Contracting Entity of the circumstance warranting the Mandatory Change ("**Mandatory Change Notice**"):
 - (i) in the case of a Force Majeure Event, within the time period specified in clause 14.3.1; or
 - (ii) in the case of a Compensation Event, within the time period specified in clause 15.5.2.1; or

- (iii) in the case of any other Mandatory Change Event, within ten (10) Days of the date the Supplier became aware, or should reasonable have become aware, of the Mandatory Change Event; or
- (b) fails to:
 - (i) in the case of a Compensation Event, provide the information required within the time period specified in clause 15.5.2.2; or
 - (ii) in the case of any other Mandatory Change Event, provide an estimate of the effect of such Mandatory Change on the Contract Parameters within a further ten (10) Days from the date of the Mandatory Change Notice described in ((a)(i)) or ((a)(iii)) above, as applicable.

15.3.2 Mandatory Change Events

15.3.2.1 The following events shall be "**Mandatory Change Events**":

- (a) a Force Majeure Event;
- (b) a suspension of the supply of Goods by the Contracting Entity or the Supplier pursuant to the provisions of clause 19.4 (*Suspension by the Contracting Entity*) or 19.5 (*Suspension and Termination by the Supplier*) (to the extent that such suspension is not due to an act or omission of the Supplier);
- (c) a Change Law, as described and in accordance with clause 15.4 (*Changes in Law*);
- (d) a Compensation Event, as described and in accordance with clause 15.5 (*Compensation Events*); and
- (e) any other event expressly referred to in this Contract as being treated as a Mandatory Change Event or for which this Contract expressly refers to clause 15.3 (*Mandatory Changes*) applying.

15.3.3 Consequences of Mandatory Change Events

- 15.3.3.1 If and to the extent that a Mandatory Change Event prevents the Supplier from achieving the relevant Guaranteed Completion Date, the Supplier shall be entitled to a Change Order extending the relevant Guaranteed Completion Date, as set out in clause 15.6 (*Extensions of Time*) (and/or such other relief from the Supplier's obligations as may be agreed between the Parties pursuant to clause 15.4 (*Changes in Law*) or 15.5 (*Compensation Events*) (if at all)).
- 15.3.3.2 If and to the extent that a Mandatory Change Event, other than a Force Majeure Event, increases the Supplier's costs of supplying the Goods

or any part thereof, then the Supplier will be entitled to compensation in an amount calculated pursuant to clause 15.8 (*Compensation for Mandatory Change Events*).

15.3.4 Mandatory Change Order

Pursuant to and to the extent specified in the provisions of this clause 15.3 (*Mandatory Changes*), the Contracting Entity shall issue a Change Order for a Mandatory Change within thirty (30) Days of the later of:

15.3.4.1 receipt from the Supplier of the Mandatory Change Notice (together with supporting documentation and evidence to the Contracting Entity's satisfaction) in respect of the Mandatory Change Event; and

15.3.4.2 the date of agreement of the matters described in clause 15.4 (*Changes in Law*) and/or 15.5 (*Compensation Events*) (if applicable).

15.4 **Changes in Law**

15.4.1 If a 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:

15.4.1.1 any necessary change to the Goods or the Supplier's associated obligations;

15.4.1.2 whether any changes are required to the terms of the Contract to deal with the Change in Law;

15.4.1.3 whether relief from compliance with any obligations under the Contract is required as a result of the Change in Law;

15.4.1.4 any extension of time is required for any delay which the Supplier suffers or will suffer as a result of the Change in Law; and

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

in each case giving in full detail the procedure for implementing the Change in Law (to the extent that it is necessary to implement the Change in Law). Responsibility for any costs of such implementation (and any resulting variation to payments due under this Contract or other payment method at the Contracting Entity's discretion) shall be dealt with in accordance with clause 15.8 (*Compensation for Mandatory Change Events*)).

15.4.2 As soon as reasonably practicable after receipt of any notice from either Party under clause 15.4.1, the Parties shall discuss and agree the issues referred to in clause 15.4.1 and any ways in which the Supplier can mitigate the effect of the Change in Law and the Supplier shall:

15.4.2.1 provide evidence to the Contracting Entity that the Supplier has used and shall continue to use all reasonable endeavours to minimise any increase in costs and maximise any reduction in costs; and

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

15.4.2.3 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 Change in Law concerned and which relate to that Change in Law have been taken into account by the Supplier.

15.4.3 As soon as reasonably practicable after the issues referred to in clause 15.4.2 have been agreed between the Parties, the Contracting Entity shall issue a Change Order pursuant to clause 15.3.4.

15.5 Compensation Events

15.5.1 If, as a direct result of the occurrence of a Compensation Event, the Supplier:

15.5.1.1 is unable to achieve delivery of a Milestone by the Guaranteed Completion Date for such Milestone;

15.5.1.2 is unable to comply with its obligations under this Contract; and/or

15.5.1.3 incurs additional costs,

then, to the extent that the Supplier can demonstrate to the Contracting Entity's satisfaction that:

15.5.1.4 there has been a resultant material adverse effect on the Supplier's ability to perform its obligations pursuant to this Contract; and

15.5.1.5 the Supplier has neither predominantly caused nor materially contributed to the occurrence, effect or duration of the Compensation Event,

the Supplier shall be entitled to apply for an extension of time and other relief from its obligations and/or claim compensation under this Contract.

15.5.2 If any Compensation Event occurs, the Supplier shall:

15.5.2.1 notify the Contracting Entity as soon as practicable (and in any case no later than ten (10) Days after the date the Supplier became aware, or should reasonably have become aware, of the Compensation Event) of the likely occurrence, severity and duration of the Compensation Event (with a copy of such notice to the EPC Contractor, if the Compensation Event is an EPC Contractor Event);

15.5.2.2 within a further ten (10) Days from the date of the Supplier's notification under clause 15.5.2.1, provide to the Contracting Entity full details of the Compensation Event and the extension of time and/or compensation claimed; and

15.5.2.3 demonstrate to the reasonable satisfaction of the Contracting Entity that:

(a) the Compensation Event was the direct cause of the cost or delay claimed; and

- (b) the cost and/or delay or other relief claimed could not reasonably be expected to be mitigated or recovered by the Supplier acting in accordance with Good Industry Practice and taking all reasonable steps to so mitigate; and
- 15.5.2.4 be responsible for continuously recording the effect of the Compensation Event and its duration and for providing the Contracting Entity with regular, accurate and comprehensive updates throughout the duration of such event, including details of impact, mitigation measures, emerging additional costs and duration.
- 15.5.3 The Supplier shall take all reasonable measures to prevent and to mitigate any Compensation Event from materially adversely affecting the proper performance of this Contract, including measures which may be advisable in order to exclude any reoccurrence.
- 15.5.4 For any Compensation Event which is an EPC Contractor Event, the Supplier shall arrange a meeting with the EPC Contractor and the Owner's Engineer to discuss and agree a plan for corrective measures necessary to address the EPC Contractor Event and to permit the Supplier to resume unrestricted (or the best, even if restricted, level of) performance of the Contract within the shortest practicable time period. It shall be the Supplier's responsibility to obtain the Contracting Entity's prior consent to, and the EPC Contractor's support for, the use of any corrective measures taken by the Supplier, whether temporary or permanent.
- 15.5.5 In the event the Supplier has complied with its obligations under this clause 15.5 (*Compensation Events*) above, then:
 - 15.5.5.1 in the event of a delay, the Guaranteed Completion Dates shall be postponed in accordance with clause 15.6 (*Extensions of Time*);
 - 15.5.5.2 in the case of additional Cost being incurred by the Supplier, the Contracting Entity shall compensate the Supplier in accordance with clause 15.8 (*Compensation for Mandatory Change Events*); and
 - 15.5.5.3 the Contracting Entity shall grant to the Supplier such relief from its obligations under this Contract as is reasonable for such a Compensation Event.
- 15.5.6 As soon as reasonably practicable after the issues referred to in clause 15.5.1 have been agreed between the Parties, and subject always to clause 15.5.3, the Contracting Entity shall issue a Change Order pursuant to clause 15.3.4.

15.6 Extensions of Time

15.6.1 Extension to Guaranteed Completion Date

Unless otherwise agreed between the Parties, to the extent that a Change (or the event necessitating a Change) prevents or will prevent the Supplier from achieving a Milestone by a Guaranteed Completion Date for that Milestone, then the Change Order shall extend the applicable Guaranteed Completion Date by a number of Days equal to the number of Days of delay to the achievement of that Milestone caused by the Change (or due to the event necessitating such Change)

except to the extent that such Change or event is caused by the act or omission of the Supplier, Subcontractors or any employees or agents thereof (including any failure by the Supplier to mitigate the impact of the event causing such delay).

15.6.2 Concurrent Delay

For the avoidance of doubt, any extension to a Guaranteed Completion Date shall be reduced to the extent of any concurrent delay for which the Supplier is responsible.

15.7 Price Change for Contracting Entity Changes

15.7.1 The Contract Price shall be adjusted as a result of any Contracting Entity Change on the basis of the following principles:

15.7.1.1 for any change in type or quantity of goods required under this Contract:

- (a) the Unit Price for each Type of Goods specified in the Price Offer shall remain fixed as set out in the Price Offer for all quantities of Goods within the Variable Volume Threshold; and
- (b) the unit price for:
 - (i) any type of goods which is not specified in the Price Offer (including for any goods which is of a Type specified in the Price Offer but of a different length to the length or lengths specified for that Type in the Bill of Quantities); and
 - (ii) any Goods required in excess of the Variable Volume Threshold; and
 - (iii) any Goods if there is a reduction in the quantity of Goods required below the Variable Volume Threshold,

shall be as proposed by the Supplier in respect of those Goods in the Change Order Notice (or as otherwise agreed with the Contracting Entity), and upon implementation of the Change such unit prices shall become Unit Prices for the purposes of this Contract; and

- (c) upon implementation of the Contracting Entity Change the revised quantity (in metres) of Goods (including any new types of goods as described in 15.7.1.1(b)(i)) shall become the Revised Quantity of Goods for the purposes of this Contract; and
- (d) the Revised Goods Price shall be calculated as the sum of the prices for each Type of Goods (including any new types of goods as described in clause 15.7.1.1(b)(i)), calculated for each Type by multiplying the Unit Prices (including any new

Unit Prices as described in clause 15.7.1.1(b)(i)) for that Type by the total number of metres of that Type of Goods included in the Revised Quantity of Goods; and

- 15.7.1.2 for any other change, subject to clause 15.7.2 the Contract Price shall be adjusted to reflect the Change in Costs to the Supplier of implementing the Contracting Entity Change (without double counting, taking into account the extent to which those Costs are taken into account in the Goods Price), by:
- (a) where the Change in Costs is a positive amount, including an amount equal to that Change in Costs; or
 - (b) where the Change in Costs is a negative amount, deducting an amount equal to that Change in Costs,
- the amount of such adjustment being the **"CE Change Contract Price Adjustment"**.
- 15.7.2 The Supplier shall use all reasonable endeavours to minimise any increase in Costs and to maximise any reduction in Costs arising as a result of any Contracting Entity Change.
- 15.7.3 The calculation of any CE Change Contract Price Adjustment and any revised Contract Price will be prepared by the Supplier and submitted for the Contracting Entity's review and approval as part of the Change Order Notice in accordance with clause 15.2.2. Such calculation shall be based on the specification documents available at the time such calculations are made. The Supplier shall provide the Contracting Entity with:
- 15.7.3.1 such purchase orders, quotations, invoices and other documents and evidence as may be required by the Contracting Entity to verify, to its satisfaction, the Supplier's Change in Costs, including rates used or omitted in association with effecting such Change; and
 - 15.7.3.2 such evidence as the Contracting Entity may reasonably require to verify, to its satisfaction, the Supplier's compliance with clause 15.7.2
- 15.7.4 Upon the issue of a Change Order for a Contracting Entity Change, to the extent that the CE Change Contract Price Adjustment is a positive amount, the CE Change Contract Price Adjustment shall be paid either (at the Contracting Entity's election) by:
- 15.7.4.1 a lump sum payment within thirty (30) Days of the date of the relevant Change Order; or
 - 15.7.4.2 an adjustment to each of the Milestone Payments, for Milestones which have yet to be achieved as at the date of the Change Order, such adjustments to be made in each case in proportion to the proportion of the Change in Costs attributable to the Goods comprised in the relevant Milestone.
- 15.7.5 Where a Change Order for a Contracting Entity Change results in a negative CE Change Contract Price Adjustment, such amount shall be deducted from the

Milestone Payments for each Milestone which has yet to be achieved as at the date of the Change Order, in each case such adjustment to be made in proportion to the proportion of the Change in Costs which is attributable to the Goods comprised in the relevant Milestone.

15.8 Compensation for Mandatory Change Events

15.8.1 Subject to the preceding provisions of this clause 15 (*Changes*) and compliance by the Supplier with its obligations thereunder, the Supplier shall be compensated in respect of any Mandatory Change Event (other than any Force Majeure Event) for its Change in Costs arising as a direct result of the Mandatory Change Event by either (where the Supplier's Change in Costs are a positive amount) at the Contracting Entity's election):

15.8.1.1 where the Supplier's Change in Costs are a positive amount, a lump sum reimbursement of the Supplier's Change in Costs directly incurred, or to be incurred, as a result of the Mandatory Change Event, such payment to be made by the Contracting Entity within thirty (30) Days of the date of the Change Order in respect of such Mandatory Change; or

15.8.1.2 by an adjustment to the Contract Price to reflect the Change in Costs to the Supplier arising as a direct result of the Mandatory Change Event by:

(a) where the Change in Costs is a positive amount, including an amount equal to that Change in Costs; or

(b) where the Change in Costs is a negative amount, deducting an amount equal to that Change in Costs,

the amount of such adjustment being the "**Mandatory Change Contract Price Adjustment**".

15.8.2 Where the Contracting Entity elects that the Supplier is to be compensated pursuant to clause 15.8.2.1 by way of a Mandatory Change Price Adjustment, such adjustment shall be applied by way of an adjustment (which may be positive or negative) to each of the Milestone Payments for Milestones which have yet to be achieved as at the date of the relevant Change Order, such adjustments to be made in each case in proportion to the proportion of the Change in Costs attributable to the Goods comprised in the relevant Milestone.

15.8.3 The calculation of the Supplier's Change in Costs arising as a result of any Mandatory Change Event (other than a Force Majeure Event) will be prepared by the Supplier and submitted for the Contracting Entity's review and approval within ten (10) Days of the Mandatory Change Notice. Such calculation shall be based on the specification documents available at the time such calculations are made. The Supplier shall provide the Contracting Entity with such purchase orders, quotations, invoices and other documents and evidence as may be required by the Contracting Entity to verify, to its satisfaction, the Supplier's Change in Costs, including rates used or omitted in association with effecting such Mandatory Change.

15.9 Adjustment to Performance Guarantee

In the event that, and each time that, the Contract Price is changed pursuant to a Change Order, the Supplier shall, within seven (7) Days thereof, increase or decrease the value of the Performance Guarantee accordingly (such that it equates to five per cent (5%) of the Contract Price, as amended) and deliver such new guarantee to the Contracting Entity. Upon receipt of the new guarantee, the Contracting Entity shall immediately return the preceding guarantee to the Supplier.

15.10 No Compensation for Concurrent Delays

If there are two or more concurrent causes of delay and any one of them is not an event or circumstance for which the Supplier is entitled to compensation pursuant to clauses 15.7 (*Price Change for Contracting Entity Changes*) or 15.8 (*Compensation for Mandatory Change Events*), the Supplier shall not be entitled to any delay-related costs compensation pursuant to clauses 15.7 (*Price Change for Contracting Entity Changes*) or 15.8 (*Compensation for Mandatory Change Events*) referable to the period of concurrent delay.

15.11 No Double Recovery

The Supplier shall not be entitled to, and shall not be entitled to include in any claim it makes under this clause 15 (*Changes*), any payment, compensation, Contract Price Adjustment, extension of time or other relief from its obligations, for or in respect of any Cost, matter, event or circumstance, to the extent that Cost, matter, event or circumstance is provided for under any other provision in this Contract.

15.12 Continued Performance Pending Resolution of Disputes

Notwithstanding a dispute regarding the amount of any increase or decrease of the Supplier's costs or any extension, or lack thereof, to the relevant Guaranteed Completion Date with respect to a Change Order, the Supplier shall proceed with the performance of such Change promptly following the Contracting Entity's issuance of the corresponding Change Order, pending the determination of the relevant change to the Contract Parameters.

15.13 Documentation

All claims by the Supplier for adjustments to any Contract Parameters as a result of Changes under this clause 15 (*Changes*) shall be supported by such documentation as the Contracting Entity may reasonably require to verify the accuracy thereof.

16. INDEMNIFICATION

16.1 Supplier Indemnities

The Supplier shall indemnify (on demand) and hold harmless the Contracting Entity Indemnitees from and against:

16.1.1 all claims, actions, damages, demands, costs, losses, liabilities and expenses (including legal fees and expenses) arising out of or in respect of:

16.1.1.1 any breach by the Supplier of any provision of this Contract;

16.1.1.2 any failure by the Supplier to comply with any Applicable Laws; and

16.1.1.3 the employment, or termination of the employment, of any of the Supplier's personnel, or anything done, or omitted to be done, by the Supplier in relation to the Supplier's personnel.

16.1.2 any and all liability in respect of:

16.1.2.1 death or personal injury;

16.1.2.2 loss of or damage to property (excluding the Goods, prior to the point of delivery of those Goods at a Delivery Point);

16.1.2.3 breach of statutory duty; and

16.1.2.4 third party actions, claims, demands, costs, charges and expenses brought against the Contracting Entity (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of:

(i) the performance or non-performance by the Supplier of its obligations under this Contract; or

(ii) the presence on any site at which the Goods are delivered or (following delivery) situated, of the Supplier, any Sub-Contractor or any of their respective personnel or agents; or

(iii) any defective design, materials, equipment or workmanship in respect of the Goods.

16.2 **Patent and Copyright Indemnification**

The Supplier shall indemnify the Contracting Entity Indemnitees against all actions, claims, demands, costs, charges and expenses arising out of claims of infringement of any Intellectual Property, proprietary or confidentiality rights with respect to materials and information designed or used by the Supplier or any Subcontractor in supplying the Goods under this Contract or in any way incorporated in or related to the Goods. If, in any such suit or claim, a temporary restraining order or interlocutory injunction is granted, the Supplier shall make every reasonable effort, by giving a satisfactory guarantee or otherwise, to secure the suspension of the injunction or restraining order. If, in any such suit or claim, the Goods, or any part, combination or process thereof, is held to constitute an infringement and its use is permanently enjoined, the Supplier shall promptly make every reasonable effort to secure for the Contracting Entity a license, at no cost to the Contracting Entity, authorizing continued use of the infringing work. If the Supplier is unable to secure such license within a reasonable time, the Supplier shall, at its own expense and without impairing performance requirements, either replace the affected work, or part, combination or process thereof with non-infringing components or parts of the same quality and the same fitness for purpose or modify the non-infringing components or parts so that they become non-infringing.

16.3 Contracting Entity Indemnity

Subject to clause 12.4 (*Aggregate Liability of the Contracting Entity*), the Contracting Entity shall indemnify (on demand) and hold harmless the Supplier 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:

16.3.1 any failure by the Contracting Entity to comply with any applicable laws; and

16.3.2 the employment, or termination of the employment, of any of the Contracting Entity's personnel, or anything done, or omitted to be done, by the Contracting Entity in relation to the Contracting Entity's personnel.

16.4 Conduct of Proceedings

If a Party is entitled to be indemnified under this clause 16 (*Indemnification*), 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 same, 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). The other Party (and the other Party's personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless and until the indemnifying Party shall have failed to take over the conduct of the negotiations, litigation or arbitration within a reasonable time of being requested to do so by the other Party, and/or shall otherwise have failed to comply 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 clause 16.4 (*Conduct of Proceedings*).

16.5 Survival

The indemnities set out in this clause 16 (*Indemnification*) shall survive the termination of this Contract, subject to any applicable statute of limitations.

17. RISK OF LOSS AND TRANSFER OF TITLE

17.1 Risk of Loss

17.1.1 Prior to Delivery

Prior to the point of delivery of Goods at a Delivery Point, the 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 Goods, regardless of whether the Contracting Entity has title thereto under this Contract, unless such loss or damage is a result of the negligence or intentional misconduct of the Contracting Entity, its employees or agents (in which case the Supplier shall continue to bear full responsibility for replacement, repair or reconstruction but shall be entitled to recover the costs thereof as a Compensation Event). The Supplier shall not await the receipt of any insurance proceeds prior to proceeding with such replacement, repair or reconstruction.

17.1.2 After Delivery

Upon and from the point of delivery of Goods at a Delivery Point, subject to clause 13.3 (*Defective Workmanship and Materials*) the EPC 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 Goods which occurs after such point of delivery, unless such loss or damage is as a result of an act or omission of the Supplier, any Subcontractor or their employees or agents, including any such loss, damage or destruction occasioned by the Supplier in the course of operations carried out by it for the purpose of completing any outstanding work or of complying with its warranty obligations, in which case the Supplier shall be responsible for making good such loss, damage or destruction to the Goods at its own expense.

17.2 Transfer of Title

Title in Goods supplied by the Supplier (itself or through subcontracts) pursuant to this Contract shall vest in the Contracting Entity on the date on which such Goods have been:

- (a) shipped by the Supplier to a Delivery Point by the Supplier in accordance with this Contract; and
- (b) delivered to the Contracting Entity, inspected by the Contracting Entity and such delivery has been accepted by the Contracting Entity, by the issue of a Provisional Acceptance Certificate, in respect of such Goods.

17.3 No Liens or Encumbrances

The Supplier warrants and guarantees that title to the Goods shall pass to the Contracting Entity free and clear of all liens, claims, security interests and other encumbrances in accordance with this clause 17 (*Risk of Loss and Transfer of Title*) and that none of such Goods shall be acquired by the Supplier subject to any agreements under which a security interest or other lien or encumbrance is retained by any Person.

18. INSURANCE

18.1 Supplier Insurances

18.1.1 The Supplier shall obtain and maintain in full force and effect until the expiry of the Warranty Period or, if applicable, the Extended Warranty Period, the types of insurance as identified in this clause 18.1 (*Supplier Insurances*) in the amounts (where specified) and with the terms and limits indicated in this clause 18.1 (*Supplier Insurances*). The Supplier shall include the Contracting Entity and such other parties as the Contracting Entity may designate and their respective affiliates, officers, directors and employees as additional insureds to the insurance policies described below. The insurance coverage afforded under the policies described herein shall be primary and non-contributing with respect to any insurance carried independently by the additional insureds (whether named or otherwise). All such insurance policies shall indicate that as respects the insureds (whether named or otherwise), cross-liability and severability of interests shall exist for all coverage provided thereunder. Any capitalised terms used in this clause 18.1 (*Supplier Insurances*), to the extent not defined in clause 1.1 (*Definitions*), shall have the meaning commonly assigned to those terms in the international procurement insurance industry. The cost of such insurance shall be

included as part of the Contract Price. All policies of insurance required under this clause shall be written on an "occurrence" basis and shall incorporate a provision requiring the giving of notice to the additional insureds at least thirty (30) Days prior to the cancellation, non-renewal or material modification of any such policies.

18.1.2 The Supplier shall obtain and maintain the following insurance policies:

18.1.2.1 employer's liability insurance for personal injury to or death of any person with whom it is in a contract of service or apprenticeship in accordance with the requirements of the Applicable Laws and (without prejudice to that) with a minimum cover of €5,000,000 (five million Euros) for each and every occurrence, and shall further provide that a claim in rem shall be treated as a claim against the employer. Such insurance shall include Indemnity to Principals as co-insured;

18.1.2.2 workers' compensation insurance in compliance with the laws of all jurisdictions in which any portion of the Goods are supplied, covering the Supplier's obligations to all individuals under a contract of service or apprenticeship by the Supplier on all Goods to be supplied under this Contract;

18.1.2.3 the Supplier's plant and equipment insurance to cover loss or damage to any procurement tools and equipment up to full replacement value;

18.1.2.4 third party automobile and passenger liability insurance for an amount of EUR 5,000, 000 (five million) or such amount as is required by the Applicable Laws, whichever is the greater, for any occurrence; and

18.1.2.5 general third party liability insurance in a form approved by the Contracting Entity for any incident or series of incidents covering the activities of the Supplier under this Contract in an amount of EUR 5.000.000 (five million) any one occurrence.

18.1.3 All insurances listed above in clause 18.1.2 shall include Indemnity to Principals. The Supplier shall maintain such insurance after Provisional Acceptance to cover the Supplier and Subcontractors during any work carried out at the Site and/or at the Delivery Points.

18.2 Status and Evidence of Insurance

18.2.1 Certificates

On request from the Contracting Entity, the Supplier shall provide evidence to the reasonable satisfaction of the Contracting Entity to confirm that the insurances which the Supplier is obliged to procure under clause 18.1 (*Supplier Insurances*) are in force. The Supplier shall provide the Contracting Entity with certificates showing that the said insurance is in force and the amount of the insurer's liability thereunder. All copies of certificates of insurance submitted under this clause 18.2.1 (*Certificates*) shall be in form and content reasonably acceptable to the Contracting Entity.

18.2.2 Standards

18.2.2.1 All insurances described in clause 18.1 (*Supplier Insurances*) shall be written by Approved Insurers subject to the approval of the Contracting Entity if required and otherwise shall be in form and substance reasonable and customary for business in the Republic of Bulgaria and/or the Republic of Greece (as appropriate) and the international gas transportation industry, in compliance with Applicable Law and Good Industry Practices and acceptable to the Contracting Entity, which acceptance shall not be unreasonably withheld. If any Approved Insurer which is providing insurance pursuant to this clause 18.2.2.1 is no longer an Approved Insurer due to a downgrading of its credit rating, the Supplier shall notify the Contracting Entity and shall propose an alternative Approved Insurer for approval by the Contracting Entity. If approved by the Contracting Entity, the Supplier shall take out replacement insurances from such Approved Insurer. The Supplier and all Subcontractors shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance described herein.

18.3 **No subrogation or vitiation**

18.3.1 The Supplier shall:

18.3.1.1 use reasonable endeavours to procure that the insurances to be maintained by the Supplier pursuant to this clause 18 (*Insurance*) contain a waiver of subrogation against the Contracting Entity, any shareholder, affiliate, consultant or contractor (other than the Supplier) of the Contracting Entity, and any of their respective employees, agents, directors and officers (together the "**Contracting Entity Parties**" and each a "**Contracting Entity Party**"); and

18.3.1.2 not bring any claim or action against the Contracting Entity (or any Contracting Entity Party) in respect of any losses, damages, liabilities, costs, expenses and charges in circumstances where and to the extent that the Supplier 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 Supplier (or any shareholder, affiliate or Subcontractor of the Supplier, or any of their respective employees, agents, directors and officers (together the "**Supplier Parties**" and each a "**Supplier Party**"), including but not limited to non-disclosure or under-insurance; and

18.3.1.3 not bring any claim or action against the Contracting Entity (or any Contracting Entity Party) due to the application of policy exclusions or for losses in excess of policy limits under any insurance to be maintained by the Supplier pursuant to this clause 18 (*Insurance*), except to the extent any claim arising is due to the act or omission of the Contracting Entity or a Contracting Entity Party; and

18.3.1.4 bear all deductibles payable in respect of claims made under the insurances to be maintained by it pursuant to this clause 18

(Insurance) except to the extent any claim arising is due to the act or omission of the Contracting Entity or a Contracting Entity Party.

18.3.2 The Supplier shall not 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 Supplier 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.

18.3.3 Neither failure to comply nor full compliance with the provisions of this clause 18 (*Insurance*) shall relieve the Supplier of his liabilities and obligations under this Agreement.

18.4 Responsibility for Uninsured Losses

The Supplier shall be responsible for any losses that are not compensated by the insurances to be maintained by under clause 18.1 (*Supplier Insurances*).

18.5 No Limitation of Liability

The required coverages referred to and identified in clause 18.1 (*Supplier Insurances*) shall in no way affect, nor are they intended as a limitation of, the Supplier's liability with respect to its supply of the Goods.

19. TERMINATION AND OTHER REMEDIES

19.1 Termination at the Contracting Entity's Convenience

At any time the Contracting Entity may at its convenience terminate this Contract with immediate effect by written notice to the Supplier. In the event of termination by the Contracting Entity under this clause 19.1 (*Termination at the Contracting Entity's Convenience*), the Contracting Entity shall pay to the Supplier (or the Supplier shall pay to the Contracting Entity) such amounts (if any) as are required pursuant to clause 19.6 (*Consequences of Termination Where No Supplier Default*).

19.2 Termination for Extended Force Majeure

If either Party is unable to perform all of its obligations under this Contract due to a Force Majeure Event for a continuous period of more than twelve (12) months, then either Party shall be entitled to terminate this Contract by written notice to the other Party. In the event of termination by a Party pursuant to this clause 19.2 (*Termination for Extended Force Majeure*), the Contracting Entity shall pay to the Supplier (or the Supplier shall pay to the Contracting Entity) such amounts (if any) as are required pursuant to clause 19.6 (*Consequences of Termination Where No Supplier Default*).

19.3 Termination in accordance with the PPA

Without prejudice to the Contracting Entity's rights pursuant to clause 19.1 (*Termination at the Contracting Entity's Convenience*), where:

19.3.1 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;

- 19.3.2 one of the statutory grounds for mandatory exclusion of the Supplier from the Public Procurement (pursuant to Article 54, paragraph 1, item 1 of the PPA) applied in respect of the Supplier such that they should have been excluded from the Public Procurement; or
- 19.3.3 the Contract should not have been awarded to the Supplier 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 Contracting Entity may terminate this Contract with immediate effect by written notice to the Supplier. In the event of termination by the Contracting Entity under clause 19.3.1 or 19.3.3, the Contracting Entity shall pay to the Supplier (or the Supplier shall pay to the Contracting Entity) such amounts (if any) as are required pursuant to clause 19.6 (*Consequences of Termination Where No Supplier Default*). In the event of termination by the Contracting Entity under clause 19.3.2, clause 19.7 (*Termination and Suspension of Payment Upon Supplier Default*) shall apply.

19.4 **Suspension by the Contracting Entity**

- 19.4.1 The Contracting Entity may elect to suspend the supply of Goods with immediate effect by written notice to the Supplier indicating:
- 19.4.1.1 the portion of the Goods which the Contracting Entity has elected to suspend;
 - 19.4.1.2 the Contracting Entity's estimate of the duration of such suspension; and
 - 19.4.1.3 the effective date of such suspension of the supply of Goods.
- 19.4.2 Upon receipt of and consistent with the effective date of such notice, the Supplier shall suspend the supply of those Goods which the Contracting Entity has elected to suspend.
- 19.4.3 If the supply of Goods are only partially suspended, the Supplier shall continue to supply the unsuspended Goods.
- 19.4.4 The Goods suspended in accordance with clause 19.4.1 shall be recommenced by the Supplier on the date which is fifteen (15) Days after the receipt by the Supplier of written notice from the Contracting Entity requesting the recommencement of the supply of Goods (or such other period of notice as may be agreed between the Contracting Entity and the Supplier).
- 19.4.5 In the event of a suspension of the supply of Goods pursuant to this clause 19.4 (*Suspension by the Contracting Entity*), where such suspension is due to the Supplier's act or omission (including any act or omission by a Subcontractor) or any breach by the Supplier of any obligations under this Contract, the Supplier shall not be entitled to claim any costs or an extension of time in respect of such suspension, and the Supplier shall be liable for any losses and costs which are incurred by the Contracting Entity.

19.5 Suspension and Termination by the Supplier

- 19.5.1 The Supplier shall be entitled to suspend the supply of the Goods:
- 19.5.1.1 where the Contracting Entity has failed to pay any amount not subject to a bona fide dispute under this Contract when required, and such non-payment has not been cured within ninety (90) Days of notice of non-payment from the Supplier; or
 - 19.5.1.2 where the Contracting Entity becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under Applicable Laws) has a similar effect to any of these acts or events.
- 19.5.2 The Supplier shall be entitled to terminate this Contract:
- 19.5.2.1 where the Contracting Entity has failed to pay any amount not subject to a bona fide dispute under this Contract when required, and such non-payment has not been cured within the later of one hundred and twenty (120) Days of notice of non-payment from the Supplier or thirty (30) Days of the commencement of suspension of the supply of Goods pursuant to clause 19.5.1.1; or
 - 19.5.2.2 where the Contracting Entity becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under Applicable Laws) has a similar effect to any of these acts or events, which has not be discharged within ninety (90) Days.
- 19.5.3 In the event of such a termination by the Supplier, the Contracting Entity shall pay to the Supplier such amounts as are required pursuant to clause 19.6 (*Consequences of Termination Where No Supplier Default*).
- 19.5.4 Notwithstanding the foregoing, the Contracting Entity shall not be treated as in breach of this Contract and the Supplier shall not be entitled to suspend performance under this Contract by reason of the withholding by the Contracting Entity of any payment which is subject to a bona fide dispute.

19.6 Consequences of Termination Where No Supplier Default

- 19.6.1 **Payment Reconciliation on a termination under clause 19.2 (Termination for extended Force Majeure) or 19.3.3.**
- 19.6.1.1 In the event of termination of this Contract pursuant to clause 19.2 (*Termination for Extended Force Majeure*) or clause 19.3.3, the Supplier shall be entitled to be paid (without double counting) an amount ("**FM Termination Payment**") equal to:
- (a) any outstanding amounts which are due and payable to the Supplier, but unpaid, as at the date of termination, by the

Contracting Entity in accordance with the terms of this Contract;

LESS

- (b) the outstanding amount of any Advance Payment not repaid pursuant to clause 8.2 (*Advance Payment*) (calculated as the amount of the Advance Payment less the sum of all Advance Payment Deductions applied in accordance with clause 8.2.2 as at the date of termination),

(the "**Termination Reconciliation**"),

PLUS

- (c) that proportion of the Contract Price applicable to all Goods which, as at the date of termination, have achieved Provisional Acceptance but which are not, at that date, comprised within a completed Milestone (if any), ("**Provisional Acceptance Goods Price**") such proportion to be calculated for each Type of Goods by:
 - (i) multiplying the Unit Price for the relevant Type of Goods by the total number of metres of that Type of Goods; and
 - (ii) applying that proportion of any Contract Price Adjustment which has been applied to the Contract Price, as at the date of termination, which is attributable to those Goods.

19.6.1.2 The Termination Reconciliation calculated pursuant to clauses 19.6.1.1(a) to 19.6.1.1(b) may be a positive or a negative amount.

19.6.1.3 The FM Termination Payment calculated pursuant to clause 19.6.1.1 may be a positive or a negative amount.

19.6.2 **Payment on a termination under clause 19.1 (*Termination at the Contracting Entity's Convenience*), 19.3.1 or 19.5 (*Suspension and Termination by the Supplier*)**

19.6.2.1 In the event of termination of this Contract pursuant to clause 19.1 (*Termination at the Contracting Entity's Convenience*), 19.3.1 or 19.5 (*Suspension and Termination by the Supplier*), the Supplier shall be entitled to be paid (without double counting) an amount equal to:

- (a) the Termination Reconciliation amount calculated pursuant to clause 19.6.1.1;

PLUS

- (b) the Provisional Acceptance Goods Price (if any);

PLUS

- (c) subject to clause 19.6.2.3, the Supplier's reasonable, actual, documented costs which were properly incurred directly and in good faith in the expectation of the performance by the Supplier of its obligations under this Contract, in connection with the manufacture of Goods or the performance by the Supplier of its related obligations under this Contract (including without limitation transportation and/or storage of Goods), in respect of Goods which as at the date of termination have not achieved Provisional Acceptance, such costs to include:
- (i) any amounts paid by the Supplier to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges or irrevocable advance payments paid by the Supplier under those subcontracts; and
 - (ii) the cost of satisfying all other obligations and commitments to third parties undertaken by the Supplier in good faith, on reasonable commercial terms consistent with terms entered into in the ordinary course of business,

(together the "**CE Termination Payment**").

19.6.2.2 The CE Termination Payment calculated pursuant to clause 19.6.2.1 may be a positive or a negative amount.

19.6.2.3 The Supplier shall mitigate to the fullest extent reasonably possible all costs to be borne by the Contracting Entity under this clause 19.6.2.

19.6.3 Verification of the Termination Calculation

19.6.3.1 The Supplier shall, within sixty (60) Days of any termination pursuant to clause 19.1 (*Termination at the Contracting Entity's Convenience*), 19.2 (*Termination for Extended Force Majeure*), 19.3.1, 19.3.3 or 19.5 (*Suspension and Termination by the Supplier*) of all or part of the Goods, submit to the Contracting Entity its calculation of any FM Termination Payment pursuant to clause 19.6.1, or any CE Termination Payment pursuant to clause 19.6.2, as the case may be, together with (in the case of clause 19.6.2) all invoices and other documentation as is sufficient to enable the Contracting Entity to verify any costs claimed by the Supplier as described in clause 19.6.2.1(c), and to determine the amount of the CE Termination Payment. The CE Termination Payment shall not include the costs or loss of future anticipated profit.

19.6.3.2 All costs claimed by the Supplier as described in clause 19.6.2.1(c) shall be audited and accepted by an independent quantity surveying firm selected by the Contracting Entity and reasonably acceptable to the Supplier.

19.6.4 Termination Overpayment and Termination Payment

19.6.4.1 In the event that the FM Termination Payment calculated pursuant to clause 19.6.1, or the CE Termination Payment calculated pursuant to clause 19.6.2, (as the case may be) is a negative amount, an amount equal to such negative amount (the "**Termination Overpayment**") shall be paid by the Supplier to the Contracting Entity in accordance with clause 19.6.5.

19.6.4.2 In the event that the FM Termination Payment calculated pursuant to clause 19.6.1, or the CE Termination Payment calculated pursuant to clause 19.6.2, (as the case may be) is a positive amount, such amount (the "**Termination Payment**") shall be paid by the Contracting Entity to the Supplier in accordance with clause 19.6.5.

19.6.5 Payment of the Termination Payment and Termination Overpayment

The Contracting Entity shall pay the Termination Payment to the Supplier or the Supplier shall pay the Termination Overpayment to the Contracting Entity, as applicable, within sixty (60) Days of the Contracting Entity's receipt of the Supplier's submission and documentation required under clause 19.6.3.

19.6.6 Limitation of Liability

Payment of any Termination Payment shall be the sole and exclusive liability of the Contracting Entity, and the sole and exclusive remedy of the Supplier, with respect to termination of this Contract pursuant to clause 19.1 (*Termination at the Contracting Entity's Convenience*), 19.2 (*Termination for Extended Force Majeure*), 19.3.1, 19.3.3 or 19.5 (*Suspension and Termination by the Supplier*).

19.7 Termination and Suspension of Payment Upon Supplier Default

19.7.1 Supplier's Default

The Supplier shall be immediately in default of its obligations hereunder upon the occurrence of any one or more of the following events, acts or conditions (each a "**Supplier Event of Default**"):

19.7.1.1 the Supplier fails to pay to the Contracting Entity any amount as required hereunder and such failure continues for twenty eight (28) Days after written notice thereof has been given to the Supplier by the Contracting Entity;

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

19.7.1.3 the Supplier assigns or transfers this Contract (or any right or interest herein) without the express written consent of the Contracting Entity, or there has been a change in Control of the Supplier;

- 19.7.1.4 the Supplier:
- (a) knowingly fails to maintain any insurance coverages required of it pursuant to and in accordance with clause 18 (*Insurance*); or
 - (b) otherwise fails to maintain and, within twenty (20) Days of its receipt of notice from the Contracting Entity with respect thereto, fails to correct its failure to maintain any such required insurance coverages;
- 19.7.1.5 the Supplier's Performance Guarantee or Advance Payment Guarantee is not fully maintained, effective or increased in accordance with the terms of this Contract;
- 19.7.1.6 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 Supplier has not provided a replacement Performance Guarantee and/or Advance Payment Guarantee (as the case may be) to the Contracting Entity in a form which satisfies the requirements of clause 9 (*Advance payment guarantee and Performance guarantee*);
- 19.7.1.7 at any time when the Performance Guarantee or Advance Payment Guarantee is required by this Contract to be in effect or the insurances are required 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 Supplier has not provided a replacement Performance Guarantee and/or Advance Payment Guarantee (as the case may be), to the Contracting Entity in a form which satisfies the requirements of clause 9 (*Advance payment guarantee and Performance guarantee*) or the Supplier has not proposed an alternative Approved Insurer replacement insurances or taken out replacement insurances with an Approved Insurer which is approved pursuant to clause 18.2.2.1;
- 19.7.1.8 the Supplier fails to make payments to Subcontractors in accordance with provisions of the relevant subcontract, and does not diligently remedy any such failure within twenty eight (28) Days after the Supplier receives a notice from the Contracting Entity with respect thereto;
- 19.7.1.9 the Supplier has abandoned its obligations or has met or exceeded the liability cap for Delay Liquidated Damages in clause 12.1.1;
- 19.7.1.10 the Supplier fails to proceed with the supply of the Goods with due diligence and expedition and fails to remedy any such failure within twenty eight (28) Days after the Supplier receives a notice from the Contracting Entity with respect thereto;
- 19.7.1.11 a Persistent Breach occurs;

- 19.7.1.12 the Supplier fails to comply with any reasonable instructions given to it in writing by the Contracting Entity or its representatives in connection with the supply of the Goods and fails to remedy any such failure within twenty eight (28) Days after the Supplier receives a notice from the Contracting Entity or its representatives with respect thereto;
- 19.7.1.13 the Supplier subcontracts, or attempts to or subcontract, any part of this Contract in breach of clause 7 (*Subcontracts*) without the Contracting Entity's prior written approval and fails to remedy any such failure within twenty eight (28) Days after the Supplier receives a notice from the Contracting Entity or its representatives with respect thereto;
- 19.7.1.14 the occurrence of any event or circumstance which becomes known to the Supplier after the Effective Date which is materially inconsistent with any of the warranties, representations or undertakings given under clause 2 (Representation, Warranties and Undertaking of the Supplier), resulting in any such warranty, representation or undertaking being materially incorrect and which has or is likely to have a material adverse effect on the performance by the Supplier of its obligations under this Contract, which the Supplier fails to remedy within twenty eight (28) Days after the Supplier receives a notice from the Contracting Entity with respect thereto;
- 19.7.1.15 the Supplier is in breach of clause 5.11 (Anti-Bribery and Anti-Corruption and Undertakings);
- 19.7.1.16 the Supplier fails to perform or observe in any respect any other material provision of this Contract not otherwise addressed in this clause 19.7.1 and fails to remedy any such failure within twenty-eight (28) Days after the Supplier receives a notice from the Contracting Entity with respect thereto; or
- 19.7.1.17 clause 19.3.2 applies.

19.7.2 Persistent Breach

- 19.7.2.1 If a breach by the Supplier of any of its obligations under this Contract has occurred more than twice then the Contracting Entity may serve a notice ("**Persistent Breach Notice**") on the Supplier:
- (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.
- 19.7.2.2 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 Contracting Entity

may serve another notice ("**Final Persistent Breach Notice**") on the Supplier:

- (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.

19.7.3 Contracting Entity's rights and remedies

19.7.3.1 In the event of a Supplier Event of Default pursuant to clause 19.7.1, the Contracting Entity shall have any or all of the following rights and remedies (in addition to any other rights and remedies that may be available to the Contracting Entity under this Contract or otherwise) and the Supplier shall have the following obligations:

- (a) the Contracting Entity shall be entitled to withhold the whole or part of any payments due to the Supplier under this Contract during any period a Supplier Event of Default is continuing; and
- (b) the Contracting Entity may, without prejudice to any other right or remedy the Contracting Entity may have hereunder, terminate this Contract immediately upon delivery of notice to the Supplier, provided that (i) the Contracting Entity notifies the Supplier of the Supplier Event of Default; (ii) the Supplier does not cure the Supplier Event of Default within the cure period for such Supplier Event of Default set out in clause 19.7.1 (if any, and the Contracting Entity may immediately terminate this Contract on the occurrence of the events listed in clauses 19.7.1.2, 19.7.1.3, 19.7.1.4(a), 19.7.1.5, 19.7.1.9, 19.7.1.11, 19.7.1.15 and 19.7.1.17), and the Contracting Entity subsequently notifies the Supplier of its intent to terminate this Contract,

and the Contracting Entity may seek equitable remedies including injunctive relief with respect to the Supplier's obligations under this Contract, or for restitution by the Supplier of amounts improperly received under this Contract.

19.7.4 Payment on termination for Supplier Default

19.7.4.1 In the event that the Contracting Entity elects to terminate the Contract for a Supplier Event of Default pursuant to clause 19.7.3.1(b), the Supplier shall be entitled to be paid (without double counting) an amount ("**Supplier Default Termination Amount**") equal to:

(a) the Termination Reconciliation;

PLUS

(b) subject to clause 19.8.2, the Provisional Acceptance Goods Price (if any);

LESS

(c) the sum of the Excess Costs to Complete.

19.7.4.2 The "**Excess Costs to Complete**" referred to in clause 19.7.4.1 above shall be the amount by which the sum of:

(a) the costs to the Contracting Entity of execution and all other costs and expenses reasonably incurred by the Contracting Entity in completing the supply of the Goods (including any amounts payable to a replacement supplier, the cost to the Contracting Entity of procuring, appointing and mobilising such replacement supplier, and any additional costs, fees, expenses and administrative costs (including the Contracting Entity's internal costs) directly incurred by the Contracting Entity in respect of such replacement) ("**Costs to Complete**"); and

(b) all other losses, liabilities and damages incurred by the Contracting Entity as a result of or in connection with the termination of this Contract; and

(c) the sum of all Milestone Payments paid in respect of Milestones achieved as at the date of termination, plus the Termination Reconciliation amount,

exceeds the Contract Price. If the Excess Costs to Complete calculated pursuant to this clause 19.7.4 is a negative amount, the Excess Costs to Complete shall be deemed to be zero.

19.7.5 Supplier Default Termination Overpayment and Termination Payment

19.7.5.1 In the event that the Supplier Default Termination Amount calculated pursuant to clause 19.7.4.1 is a negative amount, an amount equal to such negative amount (the "**Supplier Default Termination Overpayment**") shall be paid by the Supplier to the Contracting Entity in accordance with clause 19.7.6.1.

19.7.5.2 In the event that the Supplier Default Termination Payment calculated pursuant to clause 19.7.4.1 is a positive amount, subject to clause 19.7.6.3 such amount (the "**Supplier Default Termination Payment**") shall be paid by the Contracting Entity to the Supplier in accordance with clause 19.7.6.2.

19.7.6 Payment of the Supplier Default Termination Payment and Termination Overpayment

19.7.6.1 The Supplier shall pay any Supplier Default Termination Overpayment to the Contracting Entity within ten (10) Days of the Contracting Entity's demand.

19.7.6.2 The Contracting Entity shall pay any Supplier Default Termination Payment, within sixty (60) Days following the date the requirements in clause 19.7.6.3 are satisfied.

19.7.6.3 The Contracting Entity shall not be liable to make any payments to the Supplier under this clause 19.7 until:

(a) the Supplier has transferred to the Contracting Entity all rights, title and interests of the Supplier in and to those assets and matters required to be transferred to the Contracting Entity under clause 19.8.1; and

(b) the Excess Costs to Complete can reasonably be ascertained.

19.7.7 Limitation of Liability

Payment of any Supplier Default Termination Payment shall be the sole and exclusive liability of the Contracting Entity, and the sole and exclusive remedy of the Supplier, with respect to termination of this Contract pursuant to this clause 19.7 (*Termination and Suspension of Payment Upon Supplier Default*).

19.8 **Consequences of termination**

19.8.1 Upon any termination of this Contract pursuant to this clause 19 (*Termination and Other Remedies*), the Supplier shall promptly:

19.8.1.1 cease supply of the Goods (and all related services under this Contract), except to the extent instructed otherwise by the Contracting Entity for the purpose of protecting and/or delivering Goods for which the Supplier has or is entitled to receive payment;

19.8.1.2 deliver to the Contracting Entity all Goods which are comprised within completed Milestones, to the extent not already delivered to the Contracting Entity;

19.8.1.3 in the case of termination pursuant to clause 19.1 (*Termination at the Contracting Entity's Convenience*), 19.2 (*Termination for Extended Force Majeure*), 19.3.1, 19.3.3 or 19.5 (*Suspension and Termination by the Supplier*), or in the case of termination pursuant to clause 19.7 (*Termination and Suspension of Payment Upon Supplier Default*) subject to clause 19.8.2, deliver to the Contracting Entity all Goods which have achieved Provisional Acceptance but which are not comprised within a completed Milestone, to the extent not already delivered to the Contracting Entity;

19.8.1.4 in the case of termination pursuant to clause 19.1 (*Termination at the Contracting Entity's Convenience*), 19.3.1 or 19.5 (*Suspension and*

Termination by the Supplier), deliver to the Contracting Entity any Goods (whether or not completed, including any parts thereof) which have been manufactured or obtained by the Supplier in anticipation of the performance by the Supplier of its obligations under this Contract and to which the costs claimed by the Supplier pursuant to clause 19.6.2.1(c) are attributable;

- 19.8.1.5 deliver to the Contracting Entity any and all documentation required to be prepared by the Supplier in relation to the Goods under the terms of this Contract (including any storage manuals, handling and transport manuals, and other manuals, specifications and documents as specified in the Technical Specification), to the extent prepared by the Supplier as at the date of termination, and any other information in relation to the Goods reasonably requested by the Contracting Entity (which may be used by the Contracting Entity and/or any contractor of the Contracting Entity (including any replacement supplier and/or the EPC Contractor and/or any replacement works contractor) in relation to the Project following such termination; and
 - 19.8.1.6 upon the Contracting Entity's written request, assign to the Contracting Entity, but only to the extent the Supplier has been replaced as supplier in accordance with Article 116 of the PPA, such of the subcontracts with Subcontractors relating to this Contract as the Contracting Entity may request.
- 19.8.2 The Contracting Entity shall be entitled to elect, by notice to the Supplier, to purchase:
- 19.8.2.1 without prejudice to clause 19.8.1.4, any Goods (whether or not completed, including any parts thereof) which have been manufactured or obtained by the Supplier in anticipation of the performance by the Supplier of its obligations under this Contract, at cost price (without any mark up or margin of the Supplier in respect of profit);
 - 19.8.2.2 in the case of termination under clause 19.7 (*Termination and Suspension of Payment Upon Supplier Default*), any Goods which have achieved Provisional Acceptance as at the date of termination but which are not comprised within a completed Milestone, at the Provisional Acceptance Goods Price. If the Contracting Entity does not elect to purchase such Goods, in the event of termination under clause 19.7 (*Termination and Suspension of Payment Upon Supplier Default*), the Contracting Entity shall have no obligation to pay any Provisional Acceptance Goods Price (and the Provisional Acceptance Goods Price shall be disregarded in the calculation of the Supplier Default Termination Amount pursuant to clause 19.7.4) and the Contracting Entity shall make available such Goods for collection by the Supplier from the Contracting Entity.

19.9 Surviving Obligations

- 19.9.1 All provisions of this Contract which are expressly or by implication to continue in force and effect after the expiration or termination of this Contract, including without limitation the provisions of this clause 19.9, clause 1 (*Definitions and*

Interpretation), clause 16 (*Indemnification*), clauses 19.6 (*Consequences of Termination Where No Supplier Default*), 19.7 (*Termination and Suspension of Payment Upon Supplier Default*) and 19.8 (*Consequences of termination*), clause 21 (*Confidentiality*), clause 23 (*Dispute Resolution*) and clauses 24.1 (*No waiver*), 24.7 (*Governing law*), 24.8 (*Notices*), 24.10 (*Set-off*), 24.13 (*Relationship of Parties*), 24.14 (*Cumulative remedies*) and 24.15 (*Counterparts*) shall remain in effect and be enforceable following such expiration or termination, subject to the applicable statute of limitation.

19.9.2 Except as otherwise provided in any provision of this Contract expressly limiting the liability of either Party, termination of this Contract shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination, and shall not relieve the Supplier of its obligations as to Goods already supplied or of obligations assumed by the Supplier prior to the date of termination.

20. ASSIGNMENT

20.1 The Contracting Entity may freely assign or transfer this Contract, or any portion thereof, to:

20.1.1 any affiliate of the Contracting Entity and/or the EPC Contractor without the Supplier's consent; and

20.1.2 to any other Person with the Supplier's consent, such consent not to be unreasonably withheld, conditioned or delayed.

20.2 The Supplier shall not assign or transfer this Contract, or any portion thereof, to any other Person without the Contracting Entity's prior written consent.

21. CONFIDENTIALITY

21.1 Except with the prior written consent of the other Party, neither Party shall disclose or cause or permit their employees, professional advisers, agents or subcontractors (including Subcontractors) to disclose to third parties any Confidential Information.

21.2 Notwithstanding clause 21.1, the Contracting Entity may disclose Confidential Information to its shareholders in connection with the Project.

21.3 The restrictions on use and disclosure as set forth in clause 21.1 shall not apply to any information:

21.3.1 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;

21.3.2 which the receiving Party can establish by written proof was already in its possession at the time of disclosure by the disclosing Party and was not acquired directly or indirectly from the disclosing Party;

21.3.3 which at any time after the Effective Date has been acquired from any third party who did not acquire such information directly or indirectly from the disclosing Party or any other the disclosing Party's employees or professional advisers;

- 21.3.4 which by proof in writing has been independently developed by the receiving Party without the use of Confidential Information;
 - 21.3.5 which is required to be disclosed by law or order of a court of competent jurisdiction or government, department, agency or other public authority; or
 - 21.3.6 which the disclosing Party necessarily provides to its legal, financial or insurance advisers, or to the EPC Contractor, Owner's Engineer or Third Party Inspector.
- 21.4 The obligations set forth in clause 21.1 shall expire three (3) years after supply of the Goods or the termination of this Contract (whichever is the earlier).

22. INTELLECTUAL PROPERTY

- 22.1 All Intellectual Property held in any medium, whether electronic or otherwise, created by the Supplier during the supply of the Goods (the "**Foreground Intellectual Property**") shall be vested in the Supplier. The Supplier shall grant to the Contracting Entity a royalty-free worldwide licence to use and copy the Foreground Intellectual Property for any purpose in connection with the supply of Goods pursuant to this Contract.
- 22.2 All Background Intellectual Property shall remain the property of the Supplier. The Supplier hereby grants to the Contracting Entity, or agrees to procure the grant to the Contracting Entity of an unrestricted royalty-free licence to use and copy the Background Intellectual Property to the extent reasonably required to enable the Contracting Entity to make use of the Goods.
- 22.3 The Supplier shall ensure that the Foreground Intellectual Property and the Background Intellectual Property, to the extent incorporated into the supply of Goods, will not infringe any Intellectual Property or other rights of any third party.
- 22.4 The Supplier shall not be liable for the use by any person of the Background Intellectual Property or the Foreground Intellectual Property for any purpose other than the purpose for which it was originally intended.

23. DISPUTE RESOLUTION

23.1 Amicable Dispute Resolution

- 23.1.1 If any dispute arises out of or in connection with this Contract 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.
- 23.1.2 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 clause 23.2 (*Adjudication*), even if the meeting referred to in clause 23.1.1 has not taken place.

23.2 Adjudication

- 23.2.1 Unless settled amicably, any dispute arising out of or in connection with this Contract may be referred by either Party to adjudication in accordance with the Rules for Adjudication in Appendix 6 (*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 Appendix 5 (*General Conditions of Dispute Adjudication Agreement*), with such amendments as are agreed between them.

- 23.2.2 If the dispute to be referred to adjudication under this clause 23.2 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 Contracting Entity and a third party, the Parties hereby agree that, upon notice of election by the Contracting Entity, the adjudicator agreed or appointed shall be the adjudicator already appointed to determine the related adjudication.
- 23.2.3 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.
- 23.2.4 If either Party is dissatisfied with the adjudicator's decision:
- 23.2.4.1 the dissatisfied Party may give a notice of dissatisfaction to the other Party, with a copy to the adjudicator;
 - 23.2.4.2 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
 - 23.2.4.3 this notice shall be given within twenty eight (28) days of receiving the adjudicator's decision.
- 23.2.5 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 clause 23.2.4.
- 23.2.6 Except as stated in clause 23.5 (*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 clause 23.2.4 or 23.2.5. 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.
- 23.2.7 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.
- 23.2.8 If the adjudicator has given its decision as to a matter in dispute to both Parties, and no notice under clause 23.2.4 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.
- 23.2.9 Adjudication may be commenced before or after the issuing of the Final Acceptance Certificate. The obligations of the Parties shall not be altered by

reason of any adjudication being conducted prior to the issuing of the Final Acceptance Certificate.

23.3 Amicable Settlement

23.3.1 Where a notice has been given under clause 23.2.4 or 23.2.5, 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.

23.4 Arbitration

23.4.1 Unless settled amicably, subject to clause 23.2 (*Adjudication*) and clause 23.5 (*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 finally settled by international arbitration. Unless otherwise agreed by both Parties:

23.4.1.1 the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce;

23.4.1.2 the seat of the arbitration shall be Vienna;

23.4.1.3 the dispute shall be settled by three arbitrators appointed in accordance with these Rules; and

23.4.1.4 the arbitration shall be conducted in English.

23.4.2 The arbitrator(s) shall have full power to open up, review and revise any ruling or decision of the adjudicator.

23.4.3 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 clause 23.2 (*Adjudication*).

23.4.4 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 clause 23.2 (*Adjudication*). Any decision of the adjudicator shall be admissible in evidence in the arbitration.

23.4.5 Arbitration may be commenced before or after the issuing of the Final Certificate. The obligations of the Parties shall not be altered by reason of any adjudication being conducted during prior to the issuing of the Final Certificate.

23.5 Failure to Comply with Adjudicator's Decision

23.5.1 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 clause 23.4 (*Arbitration*) and clause 23.1 (*Amicable Dispute Resolution*), clause 23.2 (*Adjudication*) and clause 23.3 (*Amicable Settlement*) shall not apply to this reference. The arbitral tribunal (constituted under clause 23.4

(*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.

23.5.2 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.

23.5.3 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.

23.6 **Performance to Continue**

23.6.1 Performance of this Contract shall continue during negotiations, adjudication or arbitration.

23.7 **Survival**

23.7.1 The provisions of this clause 23 shall survive the expiry or earlier termination of this Contract.

24. **MISCELLANEOUS**

24.1 **No waiver**

24.1.1 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.

24.1.2 No right or remedy under, or in connection with, this Contract shall be precluded, waived or impaired by:

24.1.2.1 any failure to exercise or delay in exercising it;

24.1.2.2 any single or partial exercise of it;

24.1.2.3 any earlier waiver of it, whether in whole or in part; or

24.1.2.4 any of the above in relation to any other right or remedy (be it of similar or different character).

24.2 **Entire Agreement**

24.2.1 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).

24.2.2 Each Party confirms that it has not relied upon, and (subject to clause 24.2.4 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.

24.2.3 Subject to clause 24.2.4, 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.

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

24.3 **Amendments**

Subject to the provisions of clause 15 (*Changes*), this Contract can only be amended with the written agreement of the Parties. Further, and without prejudice to the foregoing, this Contract may only be amended where the circumstances set out in Art. 116 of the PPA are satisfied.

24.4 **Severability**

If any term or provision under 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.

24.5 **Further Assurances**

Each Party shall at the reasonable request and cost of the other (save where it is expressly provided that the cost of such act or execution shall be for that Party's account) do any act or execute any document that may be necessary to give full effect to the Contract.

24.6 **Interest**

Any payment which is payable by either Party under and in accordance with this Contract and which is not paid when due hereunder shall incur interest at the rate of [*rate to be inserted on date of contract*] (being the rate equal to two per cent (2%) above the rate of Euribor on the Effective Date) calculated for the period from the date such late payment was due through the date on which such amount has actually been paid by the relevant Party. It is agreed that the provisions of this paragraph constitute a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

24.7 **Governing law**

This Contract and any non-contractual obligations arising out of or in connection with it shall in all respects be governed by and construed in accordance with the laws of England and Wales.

24.8 Notices

- 24.8.1 Wherever this Contract provides for the giving or issuing of a notice, or other form of communication including without limitation approvals, consents, instructions and decisions, then such notice or communication shall be:
- 24.8.1.1 where it is a notice identified as such with reference to the clause under which it is issued;
 - 24.8.1.2 where it is another form of communication, identified as such with reference to the clause under which it is issued where appropriate;
 - 24.8.1.3 in writing and delivered by hand, sent by pre-paid special or recorded mail or courier, or, subject to clause 24.8.3 transmitted by email or via the document management system for documentation exchange, using the software described by the Supplier in the Technical Offer; and
 - 24.8.1.4 delivered, sent or transmitted to the address for the recipient's communications as stated in this clause 24.8. However:
 - (a) if the recipient gives notice of another address, notices and other forms of communication shall thereafter be delivered accordingly; and
 - (b) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.
- 24.8.2 Notices and other forms of communication shall be deemed duly served:
- 24.8.2.1 if sent via personal delivery, on proof of delivery; or
 - 24.8.2.2 if sent via hand, on proof of delivery; or
 - 24.8.2.3 if sent by pre-paid special or recorded delivery mail or delivery by courier, on proof of delivery; or
 - 24.8.2.4 if sent via email or via the document management system for documentation exchange, using the software described by the Supplier in the Technical Offer, 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.
- 24.8.3 Electronic communication (whether by email or via the document management system for documentation exchange, using the software described by the Supplier in the Technical Offer) shall not be used in respect of:
- 24.8.3.1 the issue by the Contracting Entity of a notice of termination pursuant to clause 19.1 (*Termination at the Contracting Entity's Convenience*), 19.3 (*Termination in accordance with the PPA*) or 19.7 (*Termination and Suspension of Payment Upon Supplier Default*); or

24.11 Own Costs

Each Party shall bear its own costs incurred in connection with the negotiation, drafting and execution of this Contract.

24.12 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.

24.13 Relationship of Parties

24.13.1 Nothing contained in this Contract shall be construed as creating a partnership, agency or joint venture between the Parties.

24.13.2 Where the Supplier consists of a joint venture or consortium then members of such joint venture or consortium shall be jointly and severally liable under the Contract.

24.13.3 If there is a change in Control of the Supplier, the Contracting Entity shall be informed immediately by the Supplier in writing.

24.14 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.

24.15 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.

IN WITNESS WHEREOF the Parties, intending to be legally bound, have caused this Contract to be executed as a deed as of the date first above written.

AUTHORISED SIGNATORY OF THE CONTRACTING ENTITY

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:

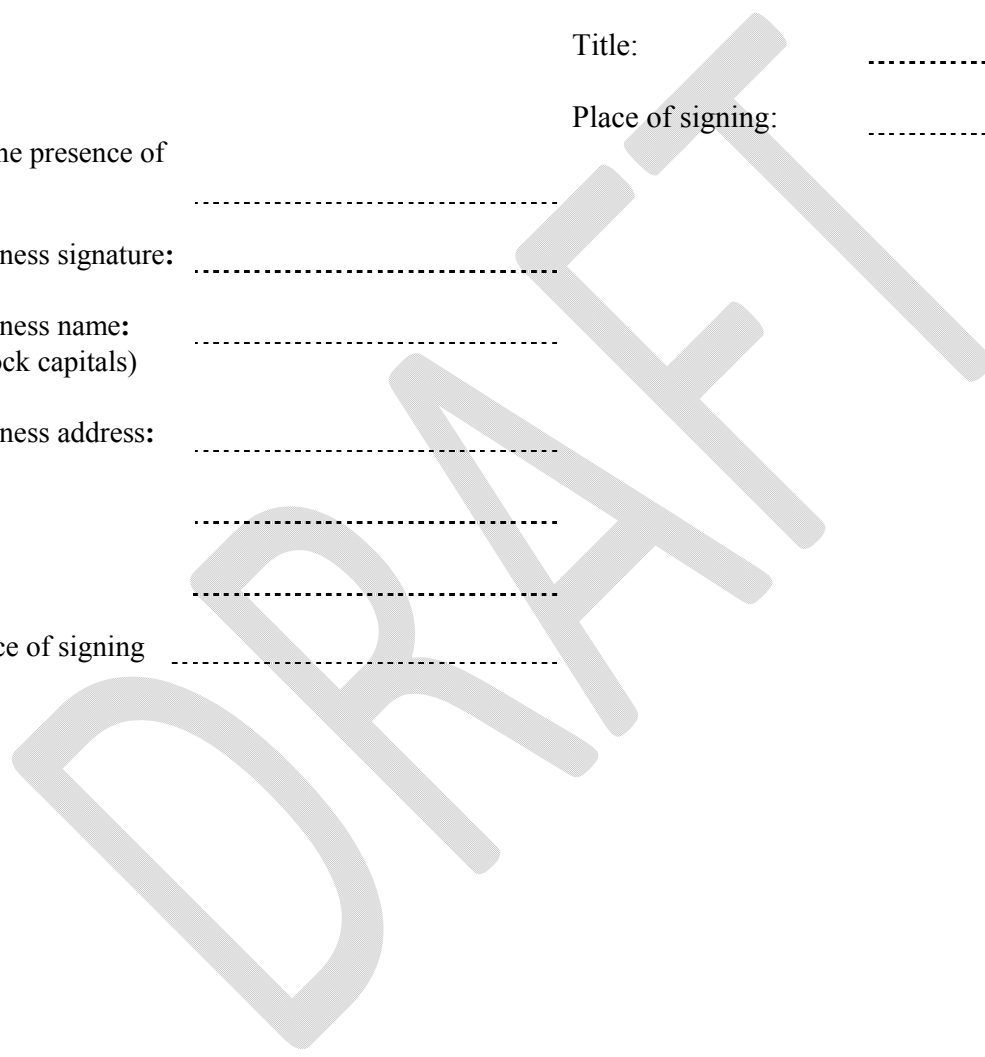
Witness name:
(block capitals)

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:

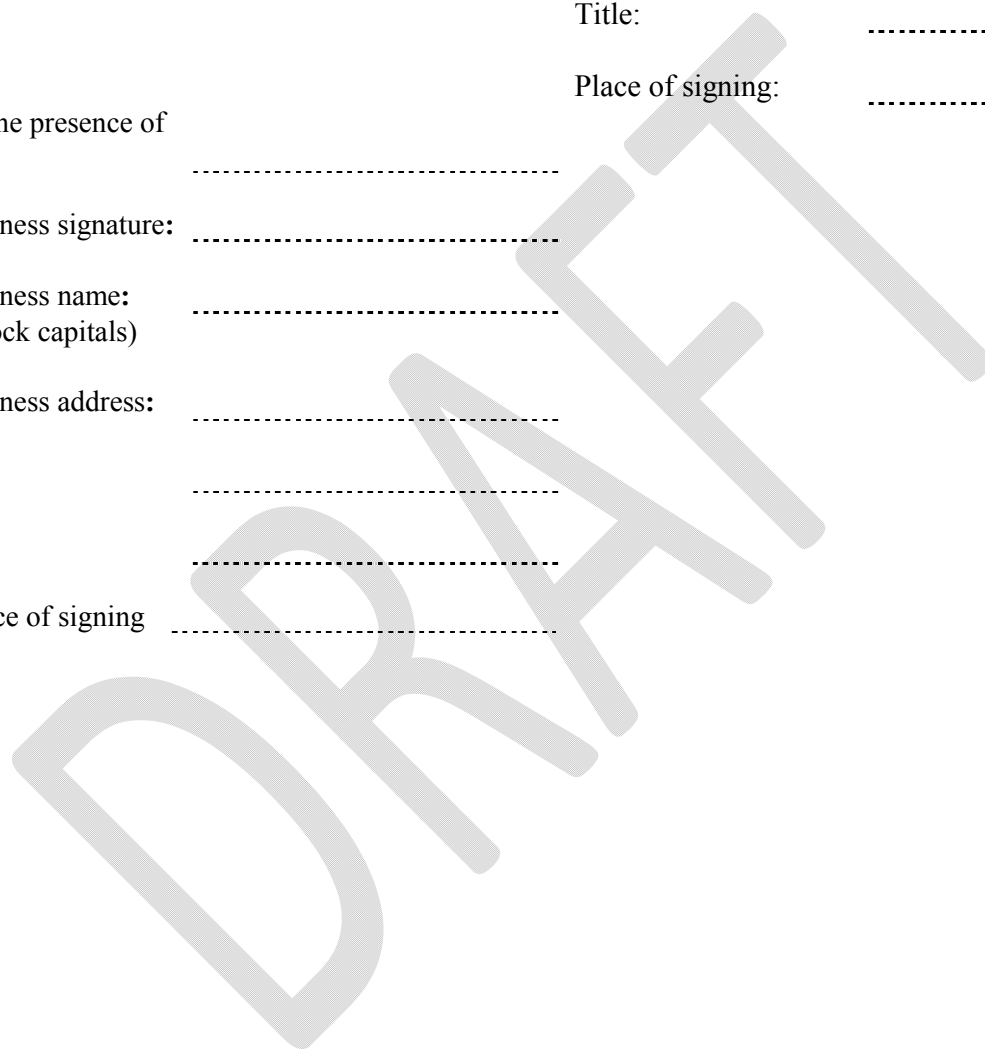
In the presence of

Witness signature:

Witness name:
(block capitals)

Witness address:

Place of signing



AUTHORISED SIGNATORY OF THE SUPPLIER:

Executed (but not delivered until the date)
written at the start of this Contract) as a Deed)
by an authorised signatory of

[NAME OF SUPPLIER]

Signature:

Name (block capitals):

Title:

Place of signing:

In the presence of
Witness signature:

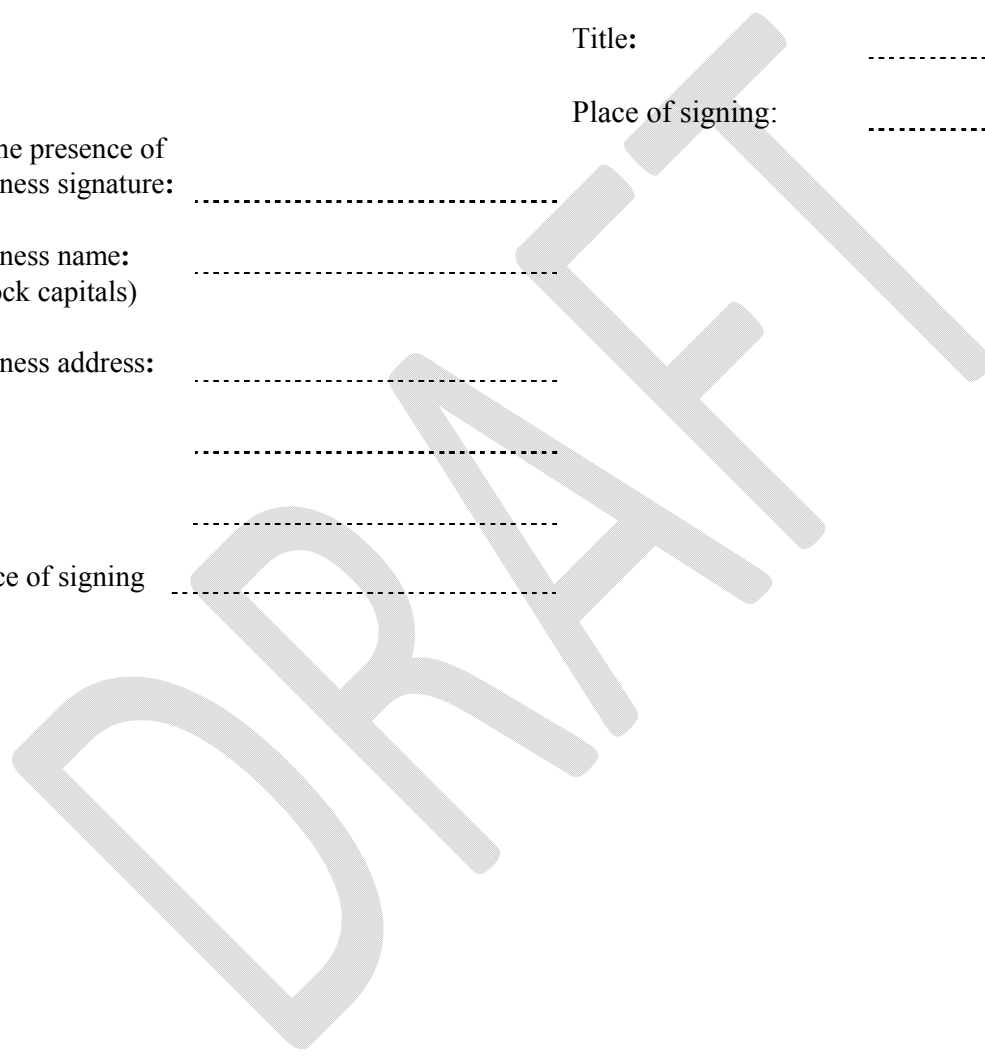
Witness name:
(block capitals)

Witness address:

.....

.....

Place of signing



APPENDIX 1: TECHNICAL SPECIFICATION

[To be inserted from Procurement Documentation]

DRAFT

APPENDIX 2: PRICE OFFER

[Successful Bidder's Price Offer to be inserted]

DRAFT

APPENDIX 3: TECHNICAL OFFER

[Successful Bidder's Technical Offer to be inserted]

DRAFT

APPENDIX 4: PRELIMINARY DELIVERY SCHEDULE

Overall delivery period - twelve (12) full months from the Commencement Date:

Milestone	Description of Milestone	Delivery Period	Guaranteed Completion Date
1	Provisional Acceptance being achieved in respect of Goods, measured in length, equal to twenty five per cent (25%) of the Contracted Quantity of Goods, measured in length.	Commencement Date to the last day of the fourth (4th) full month following the Commencement Date	The last day of the fourth (4th) full month following the Commencement Date
2	Provisional Acceptance being achieved in respect of Goods (not comprised within any previous Milestone), measured in length, equal to twenty per cent (20%) of the Contracted Quantity of Goods (as at that date), measured in length.	The first to the last day of the sixth (6th) full month following the Commencement Date	The last day of the sixth (6th) full month following the Commencement Date
3	Provisional Acceptance being achieved in respect of Goods (not comprised within any previous Milestone), measured in length, equal to twenty five per cent (25%) of the Contracted Quantity of Goods (as at that date), measured in length.	The first to the last day of the eighth (8th) full month following the Commencement Date	The last day of the eighth (8th) full month following the Commencement Date
4	Provisional Acceptance being achieved in respect of Goods (not comprised within any previous Milestone), measured in length, equal to twenty per cent (20%) of the Contracted Quantity of Goods (as at that date), measured in length.	The first to the last day of the tenth (10th) full month following the Commencement Date	The last day of the tenth (10th) full month following the Commencement Date
5	Provisional Acceptance of all remaining Goods comprised within the Contracted Quantity (as at that date), not previously included within Milestones 1 to 4 above.	The first to the last day of the twelfth (12th) full month following the Commencement Date	The last day of the twelfth (12th) full month following the Commencement Date

- Fifty per cent (50%) of the pipes for the cold bending shall be delivered not later than the first Guaranteed Completion Date;
- the other fifty per cent (50%) of the pipes for the cold bending shall be delivered not later than the third Guaranteed Completion Date; and
- the emergency stocks shall be delivered during the 12th month.

In calculating any period of full months following the Commencement Date for the purposes of this Appendix 4, the calendar month in which the Commencement Date occurs shall be disregarded.

APPENDIX 5: GENERAL CONDITIONS OF DISPUTE ADJUDICATION AGREEMENT

1. Definitions

"Dispute Adjudication Agreement" is a tripartite agreement by and between:

1.1.1 the "Contracting Entity";

1.1.2 the "Supplier"; and

1.1.3 the "Adjudicator".

The Contracting Entity and the Supplier have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Adjudication Agreement, which incorporates this Appendix. In the Dispute Adjudication Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2. General Provisions

- (a) The Dispute Adjudication Agreement shall take effect when the Contracting Entity, the Supplier and 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 Contracting Entity and Supplier. 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 Contracting Entity and the Supplier relied upon the Adjudicator's representations that he/she is:
 - (i) experienced in the work which the Supplier 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

The Adjudicator shall:

- (a) have no interest financial or otherwise in the Contracting Entity or the Supplier, 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 Contracting Entity or the Supplier, except in such circumstances as were disclosed in writing to
-

the Contracting Entity and the Supplier before they signed the Dispute Adjudication Agreement;

- (c) have disclosed in writing to the Contracting Entity and the Supplier 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 Contracting Entity or the Supplier, 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 Contracting Entity or the Supplier, except as may be agreed in writing by the Contracting Entity and the Supplier;
- (e) comply with the Procedural Rules contained in Appendix 6 (*Procedural Rules*) of the Contract and with clause 23.2 (*Adjudication*) of the Contract;
- (f) not give advice to the Contracting Entity or the Supplier 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 Contracting Entity or the Supplier 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 Supplier 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 Contracting Entity and the Supplier.

5. General Obligations of the Contracting Entity and the Supplier

- (a) The Contracting Entity and the Supplier shall not request advice from or consultation with the Adjudicator regarding the Contract. The Contracting Entity and the Supplier shall be responsible for compliance with this provision.
 - (b) The Contracting Entity and the Supplier undertake to each other and to the Adjudicator that the Adjudicator shall not, except as otherwise agreed in writing by the Contracting Entity, Supplier 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 Contracting Entity and the Supplier 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.
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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 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 Contracting Entity and the Supplier;
 - (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 Supplier, with a copy to the Contracting Entity, 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 Supplier 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.
 - (d) Thereafter the Adjudicator shall submit to the Supplier, with a copy to the Contracting Entity, 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 Supplier 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 Contracting Entity under the Contract for reimbursement of one-half of the amounts of these invoices. The Contracting Entity shall then pay the Supplier in accordance with the Contract.
 - (f) If the Supplier fails to pay to the Adjudicator the amount to which he/she is entitled under the Dispute Adjudication Agreement, the Contracting Entity 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 Contracting Entity's rights or remedies. In addition to all other rights arising from this default, the
-

Contracting Entity 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 clause 24.6 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 Contracting Entity and the Supplier. The notice shall take effect when received by them both. Any such notice shall be final and binding on the Contracting Entity, the Supplier 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 Contracting Entity and the Supplier 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 (3) arbitrators appointed in accordance with these Rules of Arbitration.

Form of Adjudication Agreement

- (1) [NAME AND DETAILS OF CONTRACT]
- (2) [NAME AND ADDRESS OF CONTRACTING ENTITY]
- (3) [NAME AND DETAILS OF SUPPLIER]
- (4) [NAME AND ADDRESS OF ADJUDICATOR]

BACKGROUND:

The Contracting Entity and the Supplier 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 Contracting Entity, Supplier 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 Contracting Entity and the Supplier in accordance with clause 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 Contracting Entity and the Supplier jointly and severally undertake to pay the Adjudicator, in consideration of the carrying out of these services, in accordance with clause 6 of the General Conditions of Dispute Adjudication Agreement.
6. This Dispute Adjudication Agreement shall be governed by the law of England and Wales.

¹ A brief description or name of dispute to be added.

SIGNED by for and on behalf of the Contracting Entity:

.....
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 Supplier:

.....
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

APPENDIX 6: 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 the 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 every other Party to the 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 the 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 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 the 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 party to the dispute) which is the appointing authority named in the 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 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 parties to the dispute 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(2)(b) and 6(1)(c) must communicate the selection of an adjudicator to the referring party within five 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 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 the Contract to act as adjudicator, or
 - (b) request the nominating body (if any) referred to in the 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 (1) shall indicate whether or not he is willing to act within two 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 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, the line pipe supply 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 (1) and (2), send copies of those documents to every other party to the dispute.
 8. (1) The adjudicator may, with the consent of all the parties to those disputes, adjudicate at the same time on more than one dispute under the Contract.
 - (2) The adjudicator may, with the consent of all the parties to those disputes, adjudicate at the same time on related disputes under different contracts, whether or not one or more of those parties is a party to those disputes.
 - (3) All the parties in paragraphs (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 to the dispute.
-

- (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 (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 any party to the dispute 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 to a dispute 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 the contract and shall reach his decision in accordance with the applicable law in relation to the 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.
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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 any party to the Contract to supply him with such documents as he may reasonably require including, if he so directs, any written statement from any party to the Contract 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 Contracting Entity, the Supplier 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.
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The adjudicator shall not give advice to the parties or their representatives concerning the supply of the Goods 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 (2) below, any 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 to the dispute 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 any of the parties to the dispute and shall make available to them any information to be taken into account in reaching his decision.
18. The adjudicator and any party to the dispute 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 to the dispute may, after the giving of that notice, agree.
- (2) Where the adjudicator fails, for any reason, to reach his decision in accordance with paragraph (1)
 - (a) any of the parties to the dispute 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 to the contract.

Adjudicator's decision

20. The adjudicator shall decide the matters in dispute. He may take into account any other matters which the parties to the dispute agree should be within the scope of the adjudication or which are matters under the 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 the contract unless the contract states that the decision or certificate is final and conclusive,
 - (b) decide that any of the parties to the dispute is liable to make a payment under the contract (in the currency of the Contract) and when that payment is due and the final date for payment,
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- (c) having regard to any term of the 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, the Contract.

Effects of the decision

23. (1) In his decision, the adjudicator may, if he thinks fit, order any of the parties 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 the Contract) or by agreement between the parties.
24. The adjudicator shall treat the details of the 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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