

**KINGDOM OF THAILAND  
MINISTRY OF TRANSPORT AND COMMUNICATIONS  
NEW BANGKOK INTERNATIONAL AIRPORT COMPANY LIMITED**

**CONTRACT**

**FOR**

**THE CONSTRUCTION OF AIRFIELD PAVEMENTS**

**FOR**

**SECOND BANGKOK INTERNATIONAL AIRPORT PROJECT  
(SUARNABHUMI AIRPORT)**

**BETWEEN**

**NEW BANGKOK INTERNATIONAL AIRPORT CO., LTD.**

**AND**

**ITALIAN-THAI DEVELOPMENT PUBLIC CO., LTD.  
OBAYASHI CORPORATION  
TAKENAKA CORPORATION**

**23 MAY 2003**

**(Documents A,B,C )**



**ORIGINAL**

**KINGDOM OF THAILAND  
MINISTRY OF TRANSPORT AND COMMUNICATIONS  
NEW BANGKOK INTERNATIONAL AIRPORT COMPANY LIMITED**

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**23<sup>rd</sup> MAY 2003**



**NEW BANGKOK INTERNATIONAL AIRPORT CO., LTD.  
บริษัท ท่าอากาศยานนานาชาติกรุงเทพ จำกัด**



ORIGINAL

## A. THE CONTRACT AGREEMENT



NEW BANGKOK INTERNATIONAL AIRPORT CO., LTD.  
บริษัท ท่าอากาศยานนานาชาติแห่งใหม่ กรุงเทพฯ จำกัด

Signature



**CONTRACT AGREEMENT  
FOR THE CONSTRUCTION OF AIRFIELD PAVEMENTS  
FOR THE SECOND BANGKOK INTERNATIONAL AIRPORT PROJECT  
(SUARNABHUMI AIRPORT)**

**CONTRACT NO. NBIA (P.P.) 32/2546**

This Contract is made on this 23<sup>rd</sup> day of May B.E.2546 (2003 A.D.) at the headquarter of New Bangkok International Airport Co., Ltd., 99 Bangna-Trad Road, Km.15, Rachathewa, Bangphli, Samutprakan 10540, Thailand between

**New Bangkok International Airport Co., Ltd. (NBIA)** incorporated under the laws of the Kingdom of Thailand with its registered business office at 99 Bangna-Trad Road, Km.15, Rachathewa, Bangphli, Samutprakan 10540, Thailand, represented by General Somchai Somprasong, Vice Chairman of the Board of Directors, Acting President who is the Authorized Representative; hereinafter called "**the Employer**" of the one part and

**Italian-Thai Development Public Co., Ltd.** incorporated under the laws of Kingdom of Thailand with its registered business office at ItalThai Tower 2034/132-161, New Petchburi Road, Bangkok, Huaykwang, Bangkok 10320, Thailand, represented by Mr. Premchai Karnasuta, President who is the Authorized Representative, and

**Obayashi Corporation** incorporated under the laws of Japan with its registered business office at Shinagawa Intercity Tower B, 2-15-2, Konan, Minato-ku, Tokyo, Japan, represented by Mr. Toshio Tokuda, General Manager, Overseas Civil Engineering Construction Department, who is the Authorized Representative, and

**Takenaka Corporation** incorporated under the laws of Japan with its registered business office at 21-1, 8-chome, Ginza, Chuo-ku, Tokyo, Japan, represented by Mr. Makoto Obata, Assistant Director, who is the Authorized Representative;

jointly called "**IOT Joint Venture**"; hereinafter called "**the Contractor**" of the other part.

The three (3) companies collectively referred to above as the Contractor undertake to jointly perform and jointly and severally be responsible for and liable to perform the Works for the Employer pursuant to this Contract.

The Employer and the Contractor mutually agree as follows:

**C-1 Contract Documents :**

The following documents are attached to this Contract and made an integral part of this Contract as though fully written out and set forth herein :

- A. The Contract Agreement.
- B. The Letter of Acceptance.
- C. Conditions of Contract and the Appendices thereto including Footnote to Appendix 11.



NEW BANGKOK INTERNATIONAL AIRPORT CO. LTD.  
บริษัท ท่าอากาศยานนานาชาติสุวรรณภูมิ จำกัด



Sino



D. The Power of Attorney of an Authorized Representative of the Contractor for signing this Contract and the Documents Evidencing the Registration of the Contractor as Juristic Person, inclusive of Joint Venture Agreement.

E. Tender Documents Volume I: Instructions to Tenderers and Conditions of Contract.

- Part 1: Instructions to Tenderers AP3-TC-06  
of January 2003.  
(See C-1-J. and K. below)  
(Delete Part 6.05.1 1) - 3))
- Part 2: Conditions of Contract AP3-TC-04  
of August 2002.  
(See C-1-J. and K. below)  
(Not used. Refer to Section C. above)

F. Tender Documents Volume II: Technical Specifications

Volume IIA : Technical Specifications Divisions 1-10 of September 1998  
AP202-00-TS-00/1

Volume IIB : Technical Specifications Divisions 15-16 of September 1998  
AP202-00-TS-00/2

Procurement Package - Gate Management System - Performance Specifications  
of September 1998 AP202-03-PS-00

Procurement Package-Visual Docking Guidance System- Performance Specification  
of September 1998 AP202-04-PS-00

Volume II : Technical Specifications Book 1: Division 1A-General Requirements  
of August 2002 AP3-TS-04  
(See C-1-I., J. and K. below)

G. Tender Documents Volume III: Bills of Quantities

1. Priced Bills of Quantities, submitted by the Contractor's Tender Proposal under the Contractor's letter Ref : IOT/NBIA/AP3-TC-06 dated 11<sup>th</sup> March, 2003 and including Preamble to Bills of Quantities and Section 01025 Method of Measurement.  
(same as C-1-N.24 below)
2. Bills of Quantities of the Tender Documents AP3-TQ-04  
of August 2002.  
(See C-1-J. and K. below)  
(Not used. Refer to Section G.1 above)

H. Tender Documents Volume IV: Drawings

**Runway and Taxiways Areas**

Volume IVA of IV - Airfield Pavements of September 1998 AP202-01-TD-00/1

Volume IVB of IV - Airside Roads and Fences of September 1998 AP203-01-TD-00/2

Volume IVC of IV - Surface Drainage of September 1998 AP202-01-TD-00/3

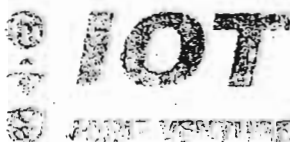
Volume IVD of IV - Visual Aids of September 1998 AP204-01-TD-00/4

**Apron Areas**

Volume IVA of IV - Airfield Pavements of September 1998 AP202-02-TD-00/1

Volume IVB of IV - Airside Roads and Fences of September 1998 AP203-02-TD-00/2

Volume IVC of IV - Surface Drainage of September 1998 AP202-02-TD-00/3



NEW YORK AIRPORT AUTHORITY  
USDA AIRPORTS AND AIRWAYS ADMINISTRATION



Volume IVD of IV – Visual Aids and Airfield Lighting Buildings  
of September 1998

AP204-02-TD-00/4

(See C-1-I.,J and K. below)

- I. Tender Documents Addendum No.1 of August 2002 AP3-TA-04  
(See C-1-K. below)
- J. Tender Documents Addendum No.2 of February 2003 AP3-TA-05  
(See C-1-K. below)
- K. Tender Documents Addendum No.3 of February 2003 AP3-TA-06
- L. The Employer's letters as follows:
  - 1. The Employer's letter of Invitation to Tender dated 9<sup>th</sup> January 2003, reference No.NBIA (P.P.)/039.
- M. The Contractor's Tender Proposals, submitted under the Contractor's letter Ref : IOT/NBIA/AP3-TC-06 dated 11<sup>st</sup> March, 2003, consisting of the following documents:

**Volume 1 : Technical Proposal**

- 1. Original and Copy of Letter of Submission of the Tender
- 2. Original and Copy of Notarized Power of Attorney or similar documents
- 3. Copy of Tender Security
- 4. Overall Index of Documents contained in the Tender
- 5. Photocopy of Alien Business Act License to do business in Thailand, and Vat Registration
- 6. Photocopy of Certificate of Company Registration for the Juristic Person
- 7. Letter from Bankers of Financial Institutions for Line of Credit
- 8. Certified Copy of Joint Venture Agreement
- 9. Duly Completed Form of Confidentiality Agreement
- 10. Duly Completed Form of Non-Collusion Certification
- 11. Duly Completed Form of Affidavit of Site Inspection and Clarifications
- 12. Duly Completed Form of Acknowledgement of Addenda
- 13. Duly executed Certificate of Special Privilege or Immunity
- 14. Project Programs
  - 14.1 General
  - 14.2 Electronic Format of Project Programs with CD ROM
  - 14.3 The Proposed Overall Execution of the Work Program
    - 14.3.1 Key Dates and Interface Dates
    - 14.3.2 Activity ID Code Structure
    - 14.3.3 Estimate Number Calendar Day of Working Days
    - 14.3.4 Bar Chart Program
    - 14.3.5 Network Program
    - 14.3.6 Work Output Analysis for Major Work Activities
    - 14.3.7 Anticipated Rate of Production of Major Activities
    - 14.3.8 Resource Load
  - 14.4 An "S-curve" for the progress works
- 15. Co-ordination Procedure
  - 15.1 Purpose
  - 15.2 Objectives
  - 15.3 Responsibilities



NEW BANGKOK INTERNATIONAL AIRPORT CO., LTD.  
บริษัท ท่าอากาศยานนานาชาติกรุงเทพ จำกัด (มหาชน)

หน้า ๓



17.1.17 Internal Quality Audit

17.1.18 Training

17.1.19 Servicing

17.1.20 Statistical Technique

17.2 Quality Assurance Reporting

17.3 Taking Over Procedure

17.4 Standard Forms

Attachment

Exhibit A

- Generic Procedure Flowchart (Figure 1 –20)

Exhibit B

- Project Organization Chart
- Quality Responsibility Matrix
- QA/QC Organization Chart
- Level of Quality Documentation

Exhibit C

- ISO 9001 Certificates

Exhibit D

- The Quality Control / Assurance of the Previous Projects

## 18. Progress Monitoring and Control Procedures

18.1 Home Office Organization and Site Office Organization Chart

18.2 Project Monitoring & Project Control Organization

18.3 The Proposed Progress Control Procedure

18.3.1 Introduction

18.3.2 Planning and Controlling Process

18.3.3 Analyzing Effect of Delay

18.3.4 Corrective Action

18.3.5 Updating Process

18.3.6 Proposed Method of Progress Monitoring

18.4 Form of the Monthly Progress Report

Exhibit A Form of the Monthly Progress Report of Previous Project

Exhibit B Company Profile

Exhibit C Company's Standard Manual or Procedure

## 19. Procurement Procedure

19.1 Proposed Procurement Procedure

19.1.1 Code of Ethics

19.1.2 Procurement Planning

19.1.3 Preparation and Approval of the Request for Quotation

19.1.4 Short-Listing of Prospective Suppliers and Sub-Contractors

19.1.5 Obtaining Quotations from the Prospective Suppliers and Sub-Contractors

19.1.6 Evaluation of the Quotations and Selecting the Suppliers and Sub-Contractors

19.1.7 Negotiation and Award of Contracts

19.1.8 Monitoring of Progress and Expediting to Remedy Delays

19.1.9 Inspection

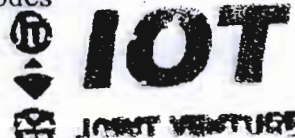
19.1.10 Shipping, Customs Clearance and Inland Transportation

19.1.11 Quality Assurance by the Suppliers and Sub-Contractors and Auditing

19.1.12 Traffic Regulating Measure to the Site and Traffic Management

19.1.13 List Source and Origin of Materials and Equipment

19.1.14 Standard and Codes





**19.2 Contractor's Network of Procurement Function**

Exhibit A : Traffic Regulating Measure to the Site and Traffic Management

Exhibit B : Appendix 12 List of Source and Origin of Material and Equipment

**20. Construction Plan****20.1 List of Major Proposed Construction Plant and Equipment**

20.1.1 List of Contractor's Equipment to be used for the work

20.1.2 List of Owned Contractor's Equipment

**20.2 List of Major Proposed Materials to be incorporated in the Works****20.3 Manning, Assignment Schedule of the Key Personnel**

20.3.1 Assignment Schedule of Key Personnel

**20.4 Recruitment and Mobilization Plan for the Labor Manpower Listed in the Histograms**

20.4.1 Recruitment and Mobilization

20.4.2 Labor Management Plan

20.4.3 Sources of the Labor Manpower Listed in the Histograms

20.4.4 Currently Labor Manpower Available In-House

**20.5 Detail Method Statement**

20.5.1 Permanent Drainage

20.5.2 Earth Works

20.5.3 Cement Treated Base Course

20.5.4 Sand Cement Treated Base Course

20.5.5 Asphalt Concrete for Airfield Pavements &amp; Roadway

(including Asphalt Bound Base, Binder and Wearing and PMA-JFR Asphalt)

20.5.6 Concrete Pavement for Apron (PQC-Concrete)

20.5.7 AFL Buildings

20.5.8 Airfield Ground Lightings

20.5.9 Commissioning and Testing of Airfield Ground Lighting System

**20.6 Proposed Health, Safety and Security Management Plans and Procedures**

20.6.1 Construction Safety

20.6.2 Safety Plan

20.6.3 Safety Procedures

20.6.4 Safety Plan Implement and Co-ordination

20.6.5 Summary Plan for Public Safety

**20.7 Temporary Facility Complex**

20.7.1 Layout Plan of Temporary Facilities

20.7.2 Site Office Buildings, Facilities and Temporary Utilities

20.7.3 Site Office Buildings

20.7.4 Maintenance Shop and Oiler

20.7.5 Storage Warehouse

20.7.6 CTB Mixing Plant Layout

20.7.7 Asphalt Plant Layout

20.7.8 Concrete Batching Plant Layout

20.7.9 Material Stockpile Area

20.7.10 Sewage Treatment System

20.7.11 Grease Trap

**20.8 Labor Housing Plan**

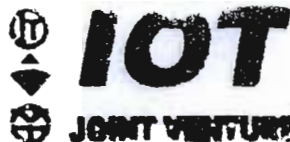
20.8.1 Contractor's Camp, Labor Housing and Sanitary Plan

20.8.2 Labor Housing

20.8.3 Forman Housing

20.8.4 Engineer Housing

20.8.5 Canteen



NEW BANGKOK INTERNATIONAL AIRPORT CO., LTD.

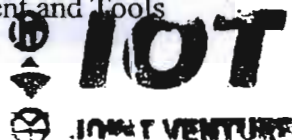
บริษัท ท่าอากาศยานนานาชาติกรุงเทพ จำกัด (มหาชน)



- 20.8.6 Septic Tank
- 20.9 Information on Sub-Contractors
- 20.10 Testing and Commissioning Procedures
  - 20.10.1 Introduction
  - 20.10.2 Scope
  - 20.10.3 Objective
  - 20.10.4 Proposed Inspection, Checking, Testing and Commissioning Plan and Procedure
  - 20.10.5 The Standard Inspection, Checking, Testing and Commissioning Procedure used in other similar projects
- 21. Environmental Protection Management Plan
  - 21.1 Introduction
  - 21.2 Objective
  - 21.3 Scope
  - 21.4 Description of Site
  - 21.5 Contractor's Environmental Policy
  - 21.6 Organization Structure for Environmental Protection Management
  - 21.7 Mitigation Measures
    - 21.7.1 Air Quality
    - 21.7.2 Water Quality
    - 21.7.3 Noise
    - 21.7.4 Traffic Management
    - 21.7.5 Waste Water
    - 21.7.6 Solid Waste
  - 21.8 Monitoring, Sampling, Testing and Reporting
    - 21.8.1 Environmental Monitoring and Sampling
    - 21.8.2 Calibration Procedure
    - 21.8.3 Monitoring Records
    - 21.8.4 Reporting
    - 21.8.5 Environmental Audit
    - 21.8.6 Non Conformance / Corrective Action
    - 21.8.7 Review Procedure
  - 21.9 Sub-Contractor and Supplier
  - 21.10 Standard Forms
- 22. Technical Informations
  - 22.1 List of Technical Information
  - 22.2 The Proposed Materials and Equipment, Relevant Catalogue and Data Sheet
  - 22.3 Airport Ground Lighting (AGL) System and Control & Monitoring System (CMS)
  - 22.4 High Mast Flood Lighting
  - 22.5 PAPI System
  - 22.6 Gate Management System (GMS)
  - 22.7 Visual Docking Guidance System (VDGS)
  - 22.8 External Specialist / Consultant

## Volume 2 : Commercial Proposal

- 23. Duly completed Form of Tender
- 24. Fully completed priced Bills of Quantities in printed and electronic format (same as C-1-G.1 above)
- 25. Fully completed schedule of Daywork Rates
- 26. Monthly Cashflow of Anticipated Contract Payments
- 27. Priced List of Test Equipment and Tools



NEW BANGKOK INTERNATIONAL AIRPORT CO., LTD.  
บริษัท ท่าอากาศยานนานาชาติกรุงเทพ จำกัด (มหาชน)

Signature



28. Priced List of Operation and Maintenance Equipment and Tools

29. Priced List of Spare Parts and Consumables

N. Post-Tender Correspondence as follows:

1. The Contractor's letter Ref : IOT/NBIA/AP3-TC-08 dated 21<sup>st</sup> April 2003, regarding Price Negotiation for the Construction of Airfield Pavements Clarifications and enclosed Breakdown pay item Ref.No.W.B.S.AP402.0 G1&G2.
2. The Contractor's letter Ref : IOT/NBIA/AP3-TC-09 dated 22<sup>nd</sup> April 2003, regarding Price Negotiation for the Construction of Airfield Pavements Price Confirmation.

All of the foregoing documents, together with this Contract, are referred to herein as the Contract Documents. Also incorporated into this Contract, and made part hereof, are all codes, designations, standards, standard specifications and similar requirements, which are referred to in the Conditions and Specifications.

**C-2 Obligation of the Contractor**

The Contractor agrees to perform efficiently and faithfully all of the work and to furnish all of the equipment and materials described in the Contract Documents and to supply or provide all equipment, materials, supplies, labor and other facilities requisite for or incidental to the successful completion of the Works and in carrying out all duties and obligations imposed by the Contract Documents.

It is agreed that the Contractor shall, in the performance of the Works, provide and employ technicians who have passed the technical standard test from the Control Standard and Labor Test Committee or have obtained a professional Certificate or a High Professional Certificate or a Technical Training Certificate or equivalents from the institution approved by the Office of the Civil Service Commission for entering the government service for not less than ten percent (10 %) of each technical branch.

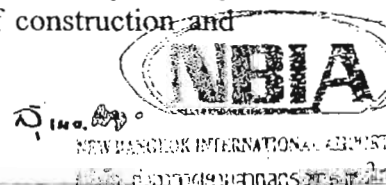
The Contractor shall prepare a list showing the number of all technicians categorized according to their technical branches and levels, and the names of the technicians who have passed the technical standard test or acquire the Certificate as mentioned above. The list together with related evidence shall be submitted to the Inspection Committee or Employer's Representative before the Commencement of the Works and shall be kept ready for inspection at any time by the Employer or his representative during the term of this Contract.

**C-2-1 Clarifications**

It is hereby agreed that the Contractor shall submit evidence and policies of Insurances in accordance with the provisions of Conditions of Contract, Clause 26.1A

It is hereby agreed that in accordance with the requirements of Conditions of Contract, Clause 60.6, and in particular the timing of such submittals to the Employer, the Contractor shall provide full and detailed particulars to the Employer as part of the Progress Reports. Such Progress Reports to be submitted to the Employer in accordance with the Conditions of Contract, Clause 14.6.

The Contractor, in the spirit of cooperation and to provide impetus to achieve the Government of Thailand policy to implement the Project without any undue delay, hereby confirms that he will expend all endeavors to achieve for the purpose of construction and





programming the Key Dates originally proposed in the Conditions of Contract, Appendix 11. In recognition of the Contractor's commitment to the Government policy and the Project and to promote the continued spirit of cooperation, the Employer hereby confirms, that due to the late Commencement of the Works, namely eighteen (18) Days, the provisions of Conditions of Contract, Clause 50.1 and Clause 50.3 shall not be implemented until such time as the relevant Key Dates originally proposed have been exceeded by an equivalent period of eighteen (18) Days.

### C-3 Obligation of the Employer.

The Employer agrees, subject to the terms and conditions of the Contract Documents, to pay the Contractor the amount specified, and at the rates and terms and in the manner set forth in the Contract Document.

### C-4 Value of Works and Completion Time:

The Employer agrees to pay for the cost of the Works and the Contractor agrees to accept the cost for the Works done in the total cost of the amount of **Four Billion Five Hundred Eighty Two Million Eight Hundred Two Thousand Six Hundred Ninety Two point Ninety Eight Yen (Yen 4,582,802,692.98) and Five Billion Seven Hundred Ninety Two Million Seven Hundred One Thousand Six Hundred Nineteen Baht and Sixty Five Satang (Baht 5,792,701,619.65)** excluding VAT. The VAT will be as stipulated by Thai law.

The above amount is based on Lump Sum Works and the actual quantities of the Remeasured Works all as specified in the Bill of Quantities as a Fixed Unit Price Quantity Re-measurement Contract and such other sums as may be ascertained under the Conditions of Contract.

The Contractor shall complete the Works within **Seven Hundred and Ninety Three (793) calendar days** from and including the Commencement Date stipulated in the Letter of Acceptance, namely 2 June 2003.

### C-5 Notice :

All notices called for by the terms of the Contract Documents shall be in writing in the English language and shall be delivered by hand or by registered mail to the party's address to which it is given. All notices shall be deemed to be duly made when received by the party to whom it is addressed at the following addresses or such other address as such party may subsequently notify to the other one :

**The Employer :** President  
New Bangkok International Airport Company Limited  
99 Bangna-Trad Road, Km.15,  
Rachathewa, Bangphli,  
Samutprakarn 10540, Thailand

**The Contractor :** Mr. Turdtum Pongpatana  
Project Manager  
IOT Joint Venture  
Italhai Tower 2034/132-161  
New Petchburi Road  
Bangkapi, Huaykwang,  
Bangkok 10320, Thailand



NEW BANGKOK INTERNATIONAL AIRPORT CO. LTD.  
บริษัท ท่าอากาศยานนานาชาติกรุงเทพ จำกัด  
จำกัด



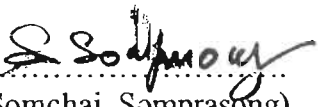
**C-6 Integration :**

The Employer and the Contractor agree that this Contract, including the Contract Documents, expresses all of the agreements, understandings, promises, and covenants of the parties, and that it integrates, combines, and supersedes all prior and contemporaneous negotiations, understandings, and agreements, whether written or oral and that no modification or alteration of this Contract shall be valid or binding on either party, unless expressed in writing and executed with the same formality as this Contract, except as may otherwise be specifically provided in the Contract Documents.

**C-7 Counterparts**

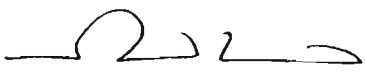
This Contract is executed in two ( 2 ) identical counterparts, one for the Employer, the other for the Contractor. Both parties have read and understood all details in this Contract and all of the Contract Documents and have hereto appended their respective signatures and affixed their seals ( if any ) in the presence of witnesses.

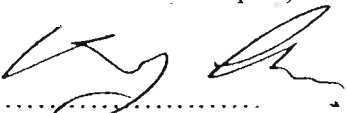
**The Employer**

By General   
(Somchai Somprasong)  
Vice Chairman of the Boards of Directors  
Acting President  
Authorized Representative  
New Bangkok International Airport Co., Ltd.

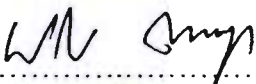


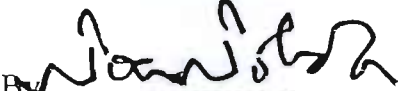
NEW BANGKOK INTERNATIONAL AIRPORT CO., LTD.  
บริษัท ท่าอากาศยานนานาชาติกรุงเทพ จำกัด

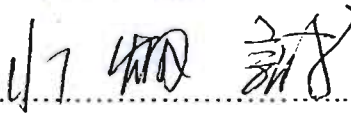
Witness   
(Mr. Somchai Sawasdeepon)

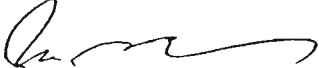
Witness   
(Mr. Kamolpong Choomanee)

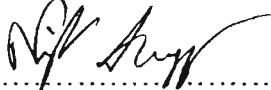
**The Contractor**

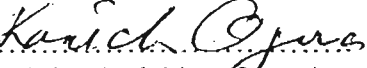
By   
(Mr. Premchai Kamasuta)  
President  
Authorized Representative  
Italian-Thai Development Public Co., Ltd.

By   
(Mr. Toshio Tokuda)  
General Manager  
Overseas Civil Engineering Construction Department  
Authorized Representative  
Obayashi Corporation

By   
(Mr. Makoto Obata)  
Assistant Director  
Authorized Representative  
Takenaka Corporation

Witness   
(Mr. Pathai Chakornbundi)

Witness   
(Mr. Nipart Akarapong)

Witness   
(Mr. Kanichiro Ogura)



## B. THE LETTER OF ACCEPTANCE



**IOT**



**JOINT VENTURE**



NEW BANGKOK INTERNATIONAL AIRPORT CO., LTD.

บริษัท ท่าอากาศยานนานาชาติกรุงเทพ จำกัด

๗๒๐



ORIGINAL

NBIA (P.P.)/ ๑๘๑

19 May 2003

**IOT Joint Venture**

2034/132-161, ItalThai Tower,  
New Petchburi Road,  
Kwaeng Bang Kapi,  
Khet Huay Kwang,  
Bangkok 10320  
THAILAND

**Attn: Mr. Pathai Chakornbundit**  
**Authorized Representative of IOT Joint Venture**

Dear Sir,

**Subject: Second Bangkok International Airport Project (Suvarnabhumi Airport)**  
**The Construction Of Airfield Pavements**  
**Contract No. NBIA (P.P.) 32/2546**

**LETTER OF ACCEPTANCE**

1. We, New Bangkok International Airport Co., Ltd. (hereinafter referred to as "NBIA"), refer to the Tender for The Construction of Airfield Pavements submitted by IOT Joint Venture, comprising, Italian-Thai Development Public Company Limited, a company incorporated under the laws of the Kingdom of Thailand with its registered business office at 2034/132-161 New Petchburi Road, Bang Kapi, Huay Kwang, Bangkok 10320, Thailand, Obayashi Corporation, a company incorporated under the laws of Japan with its registered business office at Shinagawa Intercity Tower B, 2-15-2, Konan Minato-ku, Tokyo, Japan and Takenaka Corporation, a company incorporated under the laws of Japan with its registered business office at 21-1, 8-chome, Ginza, Chuo-ku, Tokyo, Japan, hereinafter collectively called "the Contractor" of the other part, in its Form of Tender dated 11 March 2003 and the subsequent clarification and negotiation, in which the Contractor has offered:

- (i) to execute the Works specified in the contract for the Construction of Airfield Pavements, including the making good of all defects therein, as more fully prescribed and in conformity with the documents referred to in paragraph 2 (2) of this Letter of Acceptance (hereinafter referred to as "the Contract"), and

- (ii) to complete the Works within **Seven Hundred and Ninety Three (793) Days** inclusive of the Commencement Date of **2 June 2003**

for the sum of **Four Billion Five Hundred and Eighty Two Million Eight Hundred and Two Thousand Six Hundred and Ninety Two point Ninety Eight Yen** (Japanese Yen 4,582,802,692.98) and **Five Billion Seven Hundred and Ninety Two Million Seven Hundred and One Thousand Six Hundred and Nineteen Baht and Sixty Five Satang only** (Thai Baht 5,792,701,619.65) being the **Contract Price**

**IOT**  
JOINT VENTURE

**NBIA**

NEW BANGKOK INTERNATIONAL AIRPORT CO., LTD.



ORIGINAL

confirmed in your letter IOT/NBIA/AP3-TC-09 dated 22 April, 2003, (hereinafter referred to as "the Contract Price"). The VAT will be as stipulated by the Thai Law.

2. We, NBIA, hereby accept this offer on the following basis:
  - (1) The Contractor's offer is on the basis that the Contractor is solely and fully liable under the Contract in all respects for the execution of the Works in accordance with the Contract.
  - (2) The documents, which are to constitute the Contract, shall exclusively consist of those documents identified and listed under Clause 1 of the Contract Agreement, which Contract Agreement shall form an integral part of the Contract.
3. We, NBIA, undertake to pay the Contractor, in consideration of the execution and completion of the Works in accordance with the Contract, the Contract Price or such other sum as may be ascertained in accordance with the Contract, and at the times and in the manner prescribed in the Contract.
4. The Contract between NBIA and the Contractor shall be effective from the date of the signing of the Contract. Any costs incurred by the Contractor prior to signing of the Contract shall be for the Contractor's own account.
5. The Contractor's offer as defined in Paragraph 1 above, together with the provisions of the documents identified and listed under Clause 1 of the Contract Agreement, shall constitute a binding contract between NBIA and the Contractor for the execution and completion of the Works specified in the Contract.
6. The Contractor shall enter into and execute the Contract Agreement and sign (for the purpose of identification) all other documents referred to in paragraph 2 (2) above as documents forming an integral part of the Contract, within the time to be specified by NBIA. In the event that the Contractor fails to comply with this requirement, NBIA may, without prejudice to any rights and remedies it might have under the Contract, at any time thereafter, terminate the Contract by giving notice to the Contractor and NBIA shall not be required thereafter to perform any of its obligations under the Contract.
7. The Contractor's attention is drawn to the Conditions of Contract, in particular Clause 10.1A Performance Bond, further to which the Contractor is required to deliver to NBIA the following, before or at the time of executing the Contract Agreement:
  - (i) A Performance Security for the sum of **Four Hundred and Fifty-Eight Million Two Hundred and Eighty Thousand Two Hundred and Sixty-Nine point Thirty Yen (Japanese Yen 458,280,269.30) and Five Hundred and Seventy-Nine Million Two Hundred and Seventy Thousand One Hundred and Sixty-One Baht and Ninety-Seven Satang only (Thai Baht 579,270,161.97)** being 10% of the Contract Price.

In the event that the Contractor fails to comply with this requirement then NBIA may, without prejudice to any rights and remedies it might have under the Contract, at any time thereafter terminate the Contract by giving notice to the Contractor and, shall not be required thereafter to perform any of its obligations under the Contract.



8. The words and expressions used in this Letter of Acceptance have the same meaning as are assigned to them in the Conditions of Contract.
9. The Contractor's attention is drawn to the Conditions of Contract, Clause 81, further to which the Contractor is required to pay to the relevant authorities the Stamp Duty, amounting to **Seven Million Four Hundred and Forty-Four Thousand Baht only (Thai Baht 7,444,000.00)**.
10. This Letter of Acceptance is issued to the Contractor in duplicate. The Contractor is required to acknowledge receipt thereof and agreement thereto by signing in the space provided below, such signing being by the Authorized Representative and duly witnessed, and return one original copy to the NBIA for the attention of the President of NBIA, by return.

Yours faithfully,

*S. Somprasong*

General Somchai Somprasong  
Vice Chairman of NBIA Board of Directors  
Acting President

For and on behalf of IOT Joint Venture

Received and Agreed:

Witnessed:

*[Signature]*

By: Mr. Pathai Chakornbundit  
Authorized Representative  
Date: 26<sup>th</sup> May, 2003

*Sumate Surabotsopon.*

By:

Date: 20<sup>th</sup> May, 2003



NEW BANGKOK INTERNATIONAL AIRPORT  
บริษัท ท่าอากาศยานนานาชาติสุวรรณภูมิ จำกัด



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## C. CONDITIONS OF CONTRACT AND THE APPENDICES THERETO



JOINT VENTURE



NEW BANGKOK INTERNATIONAL ENGINEERING ASSOCIATION LTD.  
บริษัท ภาววิศวกรรมนานาชาติกรุงเทพ จำกัด

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## CONDITIONS OF CONTRACT



NEW BANGKOK INTERNATIONAL AIRPORT CO., LTD.  
บริษัท ท่าอากาศยานนานาชาติกรุงเทพ จำกัด (มหาชน)

Sign.



**Second Bangkok International Airport Project**  
**(Suvarnabhumi Airport)**

**The Construction  
of  
Airfield Pavements**

**Conditions of Contract**

**May 2003**

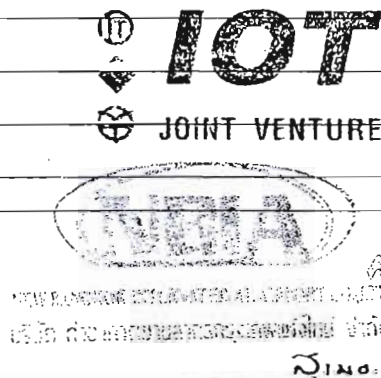


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บริษัท ท่าอากาศยานนานาชาติสุวรรณภูมิ จำกัด




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DISCLAIMER

# The Construction of Airfield Pavements

## Conditions of Contract





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## 1. DEFINITION AND INTERPRETATION

### 1.1 Definition:

A. In the Contract (as hereinafter defined) the following words and expressions shall have the meanings herein assigned to them, except where the context requires otherwise:

<b>"Acceleration Measures"</b>	has the meaning ascribed to it in Clause 49.2A.
<b>"Acceleration Proposals"</b>	has the meaning ascribed to it in Clause 49.2A.
<b>"Advance Payment"</b>	means a sum equal to the amount named in Appendix 1 and paid to the Contractor by the Employer by way of advance payment of the Contract Price in accordance with Clause 66.
<b>"Airside Zone"</b>	means the areas defined and listed in Appendix 13.
<b>"Ancillary Contracts"</b>	has the meaning ascribed to it in Clause 32 and as listed in Appendix 10.
<b>"Ancillary Contractors"</b>	means Contractors and/or Suppliers engaged by the Employer or by any subsidiary company of the Employer, to perform contract works within the boundaries of the Site and whose contract depends for its execution on the Contract or upon which the Contract is dependent for its own execution.
<b>"Approval"</b>	means written approval of the Employer or the Employer's Representative on the particular and specified subject including subsequent written confirmation of previous verbal approval or consent and "Approved" means approved in writing, including as aforesaid.
<b>"Arbitration Proceedings"</b>	means arbitration proceedings conducted in accordance with the Arbitration Rules as Clause 76.
<b>"Arbitration Rules"</b>	means the Arbitration Rules of the Arbitration Institute, Ministry of Justice of Thailand published in the Government Gazette, Volume 107, Part 54, dated 3rd April 1990, and any additions or amendments thereto during the continuance of the Works, insofar as they are not inconsistent with the provisions of Clause 76.
<b>"Bills of Quantities"</b>	means the document or documents identified as such in the Contract Agreement and forming part of the Contract and including, without limitation, the Method of Measurement, Bills of Quantities for Remeasured Works and the Price Breakdown.
<b>"Bills of Quantities for Remeasured Works"</b>	means the bills of quantities for the Remeasured Works.
<b>"Commencement Date"</b>	means the date upon which the Contractor receives the notice to commence issued by the Employer's Representative pursuant to Clause 45.





**"Commissioning Tests"**

means such tests to be made by the Contractor before the Works are taken over by the Employer as are provided for in the Contract (whether by Clause 41 or otherwise) or otherwise agreed between the Employer's Representative and the Contractor or reasonably required by the Employer's Representative.

**"Conditions of Contract"**

means these Conditions of Contract.

**"Construction Superintendent"**

has the meaning ascribed to it in Clause 17.2A(3)

**"Contract"**

means the documents listed in the Contract Agreement.

**"Contract Agreement"**

means the agreement entered into or to be entered into by the parties hereto and forming part of the Contract.

**"Contract Documents"**

has the same meaning as Contract and shall be read, interpreted and construed accordingly.

**"Contract Price"**

means the sum stated in the Letter of Acceptance as payable to the Contractor for the Execution of the Works in accordance with the provisions of the Contract.

**"Contractor"**

means the person whose tender has been accepted by the Employer and the legal successors in title to such person, but not (except with the consent of the Employer) any assignee of such person.

**"Contractor's Plant"**

means all appliances and things of whatsoever nature (other than Temporary Works) required for the Execution of the Works, but does not include Equipment, materials or other things intended to form or forming part of the Permanent Works.

**"Conciliation"**

means conciliation conducted in accordance with the Conciliation Rules.

**"Conciliation Rules"**

means the Conciliation Rules of the Arbitration Institute, Ministry of Justice of Thailand published in the Government Gazette, Volume 107, Part 54, dated 3rd April 1990, and any additions or amendments thereto during the continuance of the Works, insofar as they are not inconsistent with the provisions of Clause 76.

**"Construction Documents"**

means all drawings, design calculations, computer software (programs), software documentation, specifications, samples, patterns, models, testing procedures, operation and maintenance manuals, and other manuals, documents and information of a similar nature, to be submitted by the Contractor and approved, and subject to any approved amendment, provided that this definition shall exclude documents submitted pursuant to Clause 14 and insurance policies.







means individuals who are considered by the Employer's Representative to be critical to the completion of the Works in accordance with the Contract and as listed as such in Clause 17.1D as being Key Personnel.

means the areas defined and listed in Appendix 13.

means the letter from the Employer to the Contractor as formal acceptance by the Employer, subject to any matter agreed between the parties and identified in or in an attachment to the letter, of the Contractor's priced offer to the Employer for the Execution of the Works in accordance with the provisions of the Contract.

means those damages provided by **Appendix 1** and/or **Appendix 11** and Clause 50 to be paid or allowed by the Contractor to the Employer as compensation for the respective defaults as stated therein. The parties recognise the expense and inconvenience likely to be incurred from any need to prove the loss and damage that will be suffered by the Employer in the event of any such default on the part of the Contractor. In consideration of the Employer agreeing to limit his right to damages as provided in **Appendix 1** and/or **Appendix 11** and Clause 50, which damages and limitation the parties have had the opportunity to consider and to reflect in the Contract Price, the parties acknowledge that such sums are the reasonable compensation for the respective losses and damages that will be suffered by the Employer in the event of any default on the part of the Contractor, the remedy for which is expressed by the Contract to be Liquidated Damages, and the parties irrevocably undertake that they will not, whether by legal proceedings or otherwise, contend that such sums and the limits thereon in **Appendix 1** and/or **Appendix 11** and Clause 50 are not sole, complete and reasonable compensation nor will the Contractor put the Employer to the proof thereof, nor will either party further contend that his agreement to such sum and undertaking as aforesaid was arrived at by force, duress, coercion, mistake or misrepresentation on the part of the other party.

means Thai Baht.

means the lump sum fixed price as identified in the Bills of Quantities and forming part of the Tender for the Execution of the Lump Sum Works.

means those items of work and goods, materials and services to be supplied hereunder as described in the



Contract Documents, which are to be performed under the Lump Sum.

### “Method of Measurement”

means the method of measurement contained in the Bills of Quantities and any modification thereof or addition thereto as may from time to time be furnished or approved in writing by the Employer's Representative.

**“Month”**

means a Gregorian calendar month and all time periods shall be calculated according to the Gregorian calendar.

### “Normal Design Development”

means in respect of the Works designed by the Employer, any variation, alteration, change, amendment, enhancement to or finalisation of the design of the Works or any part thereof (which for the purposes of this definition are collectively called a "Design Change") where, notwithstanding such Design Change:

- (a) the works to be Executed by the Contractor remain or ought reasonably to remain of a similar nature and character to those in respect of which the Contractor submitted his Tender; and
- (b) the conditions under which the Works are to be Executed remain or ought reasonably to remain similar to those reasonably anticipated prior to the Design Change;
- (c) the Design Change does not or ought not reasonably to require the Contractor to adopt methods of working significantly different or more costly to those methods which a reasonable and prudent contractor would have adopted prior to the Design Change.

### “Other Contractors”

means any of the following whose activities or the Related Works they are engaged to provide in any way at any time affect or are affected by the Works:-

- a. Contractors and/or Suppliers, other than those defined as Ancillary Contractors, engaged by the Employer or by any subsidiary company of the Employer, or public or private utility companies or statutory or other relevant authorities engaged on the Project from time to time;
- b. franchisees and concessionaires, other than those defined as Ancillary Contractors, appointed on the Project from time to time by the Employer or by any subsidiary company of the Employer; and
- c. sub-contractors of any tier of the contractors within category (a) above and contractors and sub-contractors of any tier of the utility companies, franchisees and concessionaires within categories (a) and (b) above

provided that the definition shall exclude the Contractor and his Sub-Contractors of any tier both as



### “Permanent Works”

### “Price Breakdown”

## “Project Master Programme”

## “Programme”

**“Project”**

## “Project Insurance”

**“Project Manager”**

**“Project Site”**

### “Provisional Sum”

### “Provisional Value”

## “Quality Assurance Manager”

### “Quality Assurance Plan”

### “Related Works”

## CONDITIONS OF CONTRACT



# LOT



NEW BANGKOK INTERNATIONAL CO., LTD.  
115/10 PHLOMTHITHEE ROAD, BANGKOK 10110

AP3 -TC - 04

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Employer or other contractors or suppliers of the Employer or by public or private utilities or statutory or other relevant authorities either concurrently or sequentially with the Works at, on, over or adjacent to the Project Site in connection with or related to the Project and which may be connected to, associated with, ancillary to or otherwise related to or relevant to the Works.

**"Remeasured Works"**

means the works as designed by the Employer and those items of work and goods, materials and services to be supplied hereunder as described in the Contract Documents and which are to be remeasured in accordance with the Contract.

**"Retention Money"**

means the aggregate of all monies retained by the Employer pursuant to Clause 68.3.

**"Security Plan"**

means the plan and all supplemental plans, as amended from time to time, submitted by the Contractor and approved by the Employer's Representative in accordance with Clause 36A.

**"Site"**

means the places provided by the Employer where the Works are to be Executed and any other places as may be specifically designated in the Contract as forming part of the Site.

**"Software"**

means all computer operating systems, utilities, service software and other programmes and associated documentation provided by the Contractor for use in connection with the Works.

**"Specification"**

means the document or documents identified as such and issued by or on behalf of the Employer subject to any amendment thereof or addition thereto as may from time to time be issued by the Employer's Representative.

**"Special Risk"**

has the meaning ascribed to it in Clause 73.

**"Staff Organisation Plan"**

means the plan to be prepared by the Contractor pursuant to Clause 17.1B in the form and detail prescribed by the Contract Documents based on the staffing schedule submitted with the Tender.

**"Stage"**

means any stage in the progress of the Works identified as such in the Contract Documents to which a Key Date is allocated.

**"Statutory Requirements"**

has the meaning ascribed to it in Clause 27.1A.

**"Sub-Contractor"**

means any person, including a Designated Sub-Contractor, named in the Contract as a Sub-Contractor for a part of the Works or any person to whom a part of the Works has been sub-contracted with the consent of the Employer's Representative and the legal successors in title to such person, but not any assignee of any such person.



**"Substantial Completion"**

has the meaning ascribed to it in Clause 51.1, subject only to the limitations imposed by Clause 51.6 and "Substantially Complete" and "Substantially Completed" shall be construed accordingly.

**"Supplier"**

means any person or persons other than the Contractor to whom the supply of any goods or materials has been sub-contracted with the consent of the Employer's Representative and includes Designated Suppliers and, where applicable, the permitted legal successors in title of such Supplier but not any assignee of the Supplier.

**"Taking-Over Certificate"**

means a certificate issued pursuant to Clause 51.1 or 51.2.

**"Taking-Over Certificate for the Whole of the Works"**

means the certificate issued pursuant to Clause 51.4.

**"Temporary Facilities Co-ordinator"**

shall have the meaning ascribed to it in Clause 17.2A(9).

**"Temporary Works"**

means all temporary works of every kind (including, without limitation, falsework, temporary structures, temporary earthworks and other things), and the goods, materials and other constituent parts forming or intended to form part thereof, required for the Execution of the Works but does not include Contractor's Plant.

**"Tender"**

means the Form of Tender and the appendices thereto as accepted by, and subject to the terms of, the Letter of Acceptance;

**"Tests on Completion"**

means the tests specified in the Contract and designated as such, and any other such tests as may be agreed by the Employer's Representative and the Contractor, which are to be carried out before the Works or any Stage thereof is "taken-over" by the Employer.

**"Time for Completion"**

means the time for completing the execution of and passing the Tests on Completion of the Works or any Section or part thereof as stated in the Contract (or as extended under Clause 48) calculated from the Commencement Date.

**"Total Provisional Value"**

means the cumulative total of the Provisional Values.

**"Variation"**

has the meaning ascribed to it in Clause 56.1.

**"Works"**

means the Permanent Works and the Temporary Works.

**"Works Areas"**

means the lands or other places identified as such in the Appendix 13.

**"Works Area Hand-Over Date"**

means a date identified as such in the Contract Documents for possession of a Works Area to be made available to or relinquished by the Contractor, as the same may be deferred by the Employer's Representative in accordance with Clause 46.



**1.2 Headings and Marginal Notes**

- A. The headings and marginal notes in these Conditions of Contract shall not be deemed a part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.

**1.3 Interpretation**

- A. Where the context so requires:
1. words importing the singular only also include the plural, and vice versa;
  2. words importing persons or parties shall include firms, partnerships, corporations, joint ventures and any organisation having legal capacity, and vice versa;
  3. words importing the masculine shall be construed as including the feminine, and vice versa; words importing the neuter shall be construed as including the masculine or the feminine as the case may be, and vice versa;
  4. references to Clauses and Appendices in these Conditions of Contract and the Appendices thereto shall, unless otherwise specified, be to Clauses and Appendices of these Conditions of Contract.

**1.4 Notices, Consents, Approvals, Confirmations, Certificates and Determination**

- A. Wherever in the Contract provision is made for the giving or issue of any notice, consent, approval, confirmation, certificate or determination by any person, unless otherwise specified such notice, consent, approval, confirmation, certificate or determination shall be in writing and the words "notify", "consent", "approve", "confirm", "certify" or "determine" shall be construed accordingly.

**1.5 Costs**

- A. Whenever by these Conditions of Contract the Contractor is entitled to be paid costs, such costs shall consist only of net costs, including overhead costs, reasonably and properly incurred wholly and directly in connection with the Works or for the purpose of the Contract and paid by the Contractor. For the avoidance of any doubt, the Contractor shall not be entitled to be paid as part of his costs any sums, whether or not such sums have been incurred by the Contractor, either directly or indirectly, in whole or in part, in connection with the Works or for the purposes of the Contract, for profit or financing charges (including, without limitation, interest on capital employed or monies borrowed).

**1.6 Time**

- A. Unless otherwise stated in the Contract, General Holidays shall be included in:
1. the time available to the Contractor for completion or achievement; and
  2. any period of time fixed by the Contract for doing any act or thing; and
  3. any period of time to be determined by the Employer's Representative as being fair or reasonable for doing any act or thing, including without limitation any extension of time granted under Clause 48.



## 2. EMPLOYER'S REPRESENTATIVE

### 2.1 Appointment of Employer's Representative

- A. Prior to the commencement of the Works, the Employer shall appoint a person, firm or corporation to act, on behalf of the Employer, as the Employer's Representative for the purposes of the Contract.
- B. Upon such appointment (by the Employer) the Employer's Representative shall carry out such duties and exercise such authority as may be delegated to the Employer's Representative by the Employer.
- C. The duties and authority delegated to the Employer's Representative shall be advised in writing to the Contractor.
- D. Subject to Sub-Clause C above, the Employer shall retain the specific duties and authority in respect of the following particular items;
  - 1. Consent in Assignment and Subletting.
  - 2. Extension of Time for Completion.
  - 3. Reduction of Liquidated Damages for delay.
  - 4. Any Variation that would cause an increase in the original Contract Price.
  - 5. Payments to the Contractor.
  - 6. Alterations and/or additional Works, which are subject to new rates or to be priced in accordance with the rates contained in the Contract.
  - 7. Suspension or Termination of the Contract.
  - 8. Alterations or Modifications to the Contract.
  - 9. Taking-Over Certificate.
  - 10. Defects Liability Certificate.

and the Employer's Representative shall have no authority to issue any instruction or written consent regarding matters referred to in items 1 to 10 above without the prior written approval of the Employer.

- E. Notwithstanding Sub-Clause D above, the Employer reserves the right to delegate such further duties and authority to the Employer's Representative to deal with the matters addressed in Sub-Clause D above.

### 2.2 Employer's Representative's Duties and Authority

- A. The Employer's Representative shall carry out the duties specified in the Contract and may exercise the authority specified in or necessarily to be implied from the Contract.
- B. Provided that the Employer's Representative shall not issue instructions, certificates or written consent regarding matters addressed in Clause 2.1D above, without the prior written approval of the Employer.
- C. Except as expressly stated in the Contract, the Employer's Representative shall have no authority to relieve the Contractor of any of his obligations under the Contract.
- D. Any written communication from the Contractor to the Employer's Representative shall be copied by the Contractor to the Employer.



### 2.3 Compliance with Instructions of the Employer's Representative

- A. If after receipt of a written notice from the Employer's Representative requiring compliance with an instruction the Contractor does not promptly comply therewith, then the Employer may employ and pay other persons to execute any work or services whatsoever which may be necessary to give effect to such instruction and all costs incurred in connection with such employment may be deducted by him from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor by the Employer as a debt to the Employer.

### 2.4 Employer's Representative's Authority to Delegate

- A. The Employer's Representative may, by notice in writing to the Contractor, from time to time delegate to any person, firm or corporation any of the duties and authorities vested in the Employer's Representative and he may, by further notice in writing, at any time revoke such delegation.
- B. Any communication given to the Contractor by such person, firm or corporation in accordance with such delegation shall have the same effect as though it had been given by the Employer's Representative. Provided that:
1. any approval of, or any failure of such person, firm, corporation or joint venture to disapprove any design, work, materials, Equipment or any part thereof shall not prejudice the authority of the Employer's Representative to disapprove such design, work, materials, Equipment or any part thereof and to give instructions for the rectification thereof; and
  2. if the Contractor questions any communication of such person, firm or corporation he may refer the matter to the Employer's Representative who shall confirm, reverse or vary the contents of such communication. Provided that the Contractor shall be deemed to have accepted such communication if he has not referred the matter to the Employer's Representative within seven (7) Days of the date of such communication.
- C. Any written communication from the Contractor to such person, firm or corporation shall be copied forthwith by the Contractor to the Employer's Representative and to the Employer.

### 2.5 Appointment of Assistants

- A. The Employer's Representative may appoint any number of persons (delegates or assistants) to assist the Employer's Representative in the carrying out of his duties under Clause 2.2. He shall notify the Contractor of the names, duties and scope of authority of such persons. Such assistants shall have no authority to issue any instructions to the Contractor save as may be specifically notified to the Contractor in writing in which case any such instructions shall be deemed to have been given by the Employer's Representative.
- B. Any written communication between the Contractor and any assistant of the Employer's Representative shall be copied forthwith by the Contractor to the Employer's Representative and to the Employer.

### 2.6 Acts or Omissions

- A. No act or omission by the Employer's Representative or the assistants to the Employer's Representative in the performance of any of the Employer's Representative's duties or the exercise of any of the Employer's Representative's



powers under the Contract shall in any way relieve the Contractor of any of the duties, responsibilities, obligations or liabilities imposed upon the Contractor by any of the provisions of the Contract.

## 2.7 Instructions in Writing

- A. Instructions given by the Employer's Representative or any delegate or assistant shall be in writing, provided that if for any reason the Employer's Representative or any delegate or assistant considers it necessary to give any such instruction orally, the Contractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the Employer's Representative, or delegate or assistant as the case may be, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this Clause. Provided that if the Contractor, within seven (7) Days, confirms by notice in writing to the Employer's Representative, delegate or assistant, as the case may be, any oral instruction of the Employer's Representative, delegate or assistant and such written confirmation is not contradicted in writing within seven (7) Days by the Employer's Representative, delegate or assistant, as the case may be, it shall be deemed to be an instruction of the Employer's Representative, delegate or assistant as the case may be.

## 2.8 Employer's Protection

- A. It is agreed and declared that provisions or requirements in the Contract that matters or work be done to the satisfaction of or be certified, determined, accepted or confirmed by the Employer's Representative or with the consent or approval of the Employer's Representative are inserted as protection to the Employer additional to any other rights whatsoever which the Employer may have for breach of any obligation under this Contract on the part of the Contractor. No payment by the Employer nor any expression or implication of satisfaction or acceptance nor any confirmation, certification, determination, consent, approval or notice by the Employer's Representative shall restrict, debar, exclude or waive any claims, rights or actions whatsoever by the Employer for any breach of any such obligation by the Contractor.

## 2.9 Employer's Representative to act Impartially

- A. Subject to the duty to comply with such requirements of his appointment by the Employer as may be stated under Clause 2.1 and/or 2.2, the Employer's Representative shall act impartially within the terms of the Contract having regard to all the circumstances.

## 2.10 Emergencies

- A. If, in the opinion of the Employer's Representative, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Employer's Representative, be necessary to remove or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Employer's Representative.



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B. Subject as aforesaid and to any express prohibitions elsewhere in the Contract, the Contractor shall be permitted to sub-contract parts of the Execution of the Works on the following terms:

1. prior to sub-contracting any part of the Execution of the Works the Contractor shall submit to the Employer's Representative for his consent full particulars of the part of the Works to be sub-contracted (indicating whether or not the Contractor gave notice of its intention to sub-contract such part of the Works at the time of submitting the Tender), the identity of the proposed Sub-Contractor and of the proposed sub-contract terms and conditions in sufficient time to enable the Contractor to make alternative arrangements to fulfil its obligations under the Contract should the Employer's Representative withhold consent to the proposed sub-contracting;
2. the Contractor shall not sub-contract any part of the Execution of the Works without the Employer's Representative's prior written consent (such consent not to be unreasonably withheld or delayed) as to the proposed sub-contracting, the identity of the proposed Sub-Contractor and the proposed sub-contract terms and conditions (other than the proposed prices and rates);
3. the proposed sub-contract terms and conditions shall impose on the Sub-Contractor such of the terms of the Contract as are applicable and appropriate to the part of the Execution of the Works to be sub-contracted to enable the Contractor to comply with its obligations under the Contract;
4. the Contractor shall use all reasonable endeavours to incorporate in the proposed sub-contract such terms and conditions as the Employer's Representative may reasonably request in writing;
5. unless the Employer's Representative shall have notified the Contractor in writing to the contrary, the proposed sub-contract terms and conditions shall include without limitation a requirement on the part of the proposed Sub-Contractor to provide the Employer with a warranty under seal in the form appearing in **Appendix 9** with only such amendments as may previously have been approved in writing by the Employer's Representative;
6. the Contractor shall, within twenty one (21) Days after receipt from the Employer's Representative of written consent to sub-contract, supply to the Employer's Representative a copy of the sub-contract terms and conditions when the sub-contract has been placed, and shall not thereafter amend, vary or waive such terms and conditions in any respect material to compliance by the Contractor with its obligations under the Contract without the consent in writing of the Employer's Representative;
7. except when otherwise specifically required in writing by the Employer's Representative, the provisions of Clauses 4.1B(1-6) inclusive shall not apply to sub-contracts only for the purchase of proprietary goods and materials;



- C. Notwithstanding Clause 4.1A and Clause 4.1B and any consent to sub-contract given by the Employer's Representative, if in his opinion he considers it necessary, the Employer's Representative shall have full power to order the removal of any Sub-Contractor from the Site or off-Site place of manufacture or storage, which power shall not be exercised unreasonably.
- D. Notwithstanding Clause 4.1A and Clause 4.1B, where the Contract provides that certain work or certain goods and/or materials shall be carried out by or obtained from a person named therein, then the Contractor shall sub-contract such work to or shall obtain such materials and/or goods from the person so named.
- E. If for any reason beyond the control of the Contractor, the Contractor is unable to enter into a sub-contract with any person referred to in Clause 4.1D, the Contractor shall, entirely at its own cost, select another person to carry out the work or the supply of goods and/or materials to a standard and quality equivalent to that which would have been provided by the person referred to in Clause 4.1D, subject to the written consent of the Employer's Representative, which consent shall not be unreasonably withheld.
- F. If any sub-contract between the Contractor and any person referred to in Clause 4.1D or Clause 4.1E is determined or discharged or if the employment of any such person is determined in accordance with the provisions of the sub-contract, the Contractor shall, entirely at its own cost, select another person to undertake or complete the execution of the work or the supply of the goods and/or materials to a standard and quality equivalent to that which would have been provided by the person previously so employed for the written consent of the Employer's Representative, such consent not to be unreasonably withheld.

#### 4.2 Assignment of Sub-Contractors' and Suppliers' Obligations

- A. The Contractor shall procure that any obligation undertaken by a Sub-Contractor or Supplier towards the Contractor in respect of work executed or to be executed, or materials, Equipment, or any part thereof or services supplied or to be supplied by such Sub-Contractor or Supplier shall be assignable to the Employer or to any nominee stipulated in writing by the Employer. Without prejudice to the aforesaid the Contractor shall procure that, with respect to any such obligation undertaken by a Sub-Contractor or Supplier for a period exceeding that of the relevant Defects Liability Period under the Contract, the benefit of such obligation for the remaining duration thereof shall at any time, after the expiration of such Defects Liability Period, be assigned to the Employer or nominee, as aforesaid, at the Employer's request and cost.

#### 4.3 Sub-Contractors' and Suppliers' Warranties

- A. The Contractor shall procure that all Sub-Contractors and Suppliers provide a duly executed warranty to the Employer. For the avoidance of doubt it is confirmed that the provision of such a warranty shall not in any way whatsoever affect, limit or in any respect relieve the Contractor from any of his obligations under the Contract, nor shall it restrict, debar, exclude or waive any claims, rights or actions whatsoever by the Employer for breach of any such obligation by the Contractor.
- B. In addition to the provisions of Clause 4.2, the Contractor shall procure that any manufacturers' or suppliers' warranties to be given in respect of any materials, and any part or parts of the Equipment shall be assignable to the Employer or to any nominee stipulated in writing by the Employer.



- C. The Contractor shall, as a condition precedent to its entitlement to receive any payment or to continue to receive any payment in relation to such Sub-Contractor and/or Supplier activities, procure that all Sub-Contractors and Suppliers provide the Employer with a duly executed warranty in the form appearing in **Appendix 9** hereto.

## 5. CONTRACT DOCUMENTS

### 5.1 Language

- A. For the purpose of the Project, the language used shall be English. All correspondence, Drawings, Specifications, Construction Documents and other documents of whatever kind prepared pursuant to the Contract or for the purposes of the Project shall be in the English language.

### 5.2 Priority of Contract Documents and Discrepancies

- A. The Contractor represents and warrants that he has the expertise, experience and ability to carry out and complete the Execution of the Works and that he has examined the various documents which together comprise the Contract and is satisfied that there are no discrepancies, ambiguities, divergences, inconsistencies, deficiencies, or design or construction impracticalities, or omissions from, in or between the documents comprising the Contract and that such documents are sufficient in all respects for the purposes of carrying out and completing the Execution of the Works.
- B. The several documents forming the Contract are to be taken as mutually explanatory of one another but if any discrepancy, ambiguity, divergence, inconsistency, deficiency, or design or construction impracticality, or omission from in or between any of the said documents including a discrepancy ambiguity, divergence, inconsistency, design or construction impracticality, or omission from in or between parts of any one of them is found, notice shall immediately be given to the Employer's Representative by the party finding the same, specifying the discrepancy, ambiguity, divergence, inconsistency, design or construction impracticality, or omission and the Employer's Representative shall issue instructions in regard thereto. No such discrepancy, ambiguity, divergence, inconsistency, deficiency or design or construction impracticality, or omission shall vitiate this Contract. No instruction given by the Employer's Representative under this Clause shall amount to a Variation and the Contractor shall not be entitled to any extension of time or extra payment in respect thereof and the cost of implementing the instructions shall be deemed to be included in the Contract Price.
- C. The Contractor shall provide within the Contract Price and without requiring a Variation therefore everything necessary for the Execution of the Works according to the true intent and meaning of the documents comprising the Contract taken together whether the same may or may not be particularly shown or described provided the same can be reasonably inferred therefrom or is necessarily incidental thereto.
- D. Nothing contained in the Drawings, Specifications or the Bills of Quantities shall override or modify the application or interpretation of that which is contained in the Contract Agreement, the Conditions of Contract or the Appendices.





### 5.3 Entire Agreement

- A. Notwithstanding anything to the contrary expressed or to be implied from the Contract, each party acknowledges that it has had or, as the case may be, is deemed to have had, full opportunity to include in the Contract any representation or warranty (if any) made to it by the other party leading up to the Contract. It is hereby agreed that the Contract embodies the entire understanding between the parties and there are no representations, promises, terms, conditions, warranties or obligations relied upon by either party, whether oral or written, other than those contained herein.

### 5.4 Contract Amendments

- A. All amendments to the Contract shall be in writing and signed by or on behalf of the parties.

## 6. CUSTODY AND SUPPLY OF DRAWINGS AND DOCUMENTS

### 6.1 Custody of Contract Documents

- A. The Contractor shall not, except for the purpose of the Contract or without the written consent of the Employer's Representative, use or divulge any information relating to the Execution of the Works provided in the Contract or otherwise howsoever by the Employer, the Employer's Representative, or any third party referred to in Clause 3.2A or any documentation. The Contractor shall ensure that its Sub-Contractors of any tier shall be bound by a like confidentiality undertaking and shall, if so required by the Employer's Representative, enforce the same at its own expense.
- B. Subject to obtaining the Employer's Representative's written consent, which shall not be unreasonably withheld or delayed, the Contractor may disclose relevant information to identified third parties as described in Clause 3.1B for the purpose of entering into a charge or assignment described in Clause 3.1B, provided that the Contractor shall procure that such third parties shall keep such information confidential and, if required by the Employer's Representative, shall so undertake directly to the Employer in writing.
- C. The Employer, the Employer's Representative, and any third party to whom an assignment has been made in accordance with Clause 3.2A may use any information provided by the Contractor in accordance with the Contract, but the Employer shall not, and shall use reasonable endeavours to procure that the Employer's Representative, and any third party referred to in Clause 3.2 shall not, divulge such information except for any purpose connected with the Contract, the Execution of the Works (including any repair, amendment, extension or other work connected with the Execution of the Works), or for the purpose of any assignment described in Clause 3.2A.
- D. Immediately after the execution of the Contract Agreement the Contractor shall provide without charge to the Employer twenty-five (25) certified true copies of the Contract. Upon receipt by the Employer, the Employer shall provide to the Contractor three (3) such certified true copies of the Contract free of charge.
- E. The Employer's Representative shall within 14 days of receiving a request from the Contractor provide further copies of the Contract upon payment at the standard rate laid down from time to time by the Employer.



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- F. Upon issue of the Defects Liability Certificate, the Contractor shall return to the Employer's Representative all Contract Documents and other documents provided under or for the purposes of the Contract.

## 6.2 One Copy of Contract Documents to be Kept on Site

- A. One (1) copy of the Contract Documents and all other documents provided to or supplied by the Contractor shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Employer's Representative, his delegates and assistants, and by any other person authorised by the Employer's Representative in writing.

## 6.3 Disruption of Progress

- A. The Contractor shall give notice to the Employer's Representative as soon as is reasonably practicable, whenever Execution of the Works is likely to be delayed or disrupted unless any further Drawing or instruction is issued by the Employer's Representative within a reasonable time. The notice shall include details of the Drawing or instruction required and of why and by when it is required and of any delay or disruption likely to be suffered if it is not issued within a reasonable time.

# 7. SUPPLEMENTARY DRAWINGS, INSTRUCTIONS AND CONSTRUCTION DOCUMENT REVIEW

## 7.1 Supplementary Drawings and Instructions

- A. The Employer's Representative shall have authority to issue to the Contractor, from time to time, Drawings and instructions as shall be necessary for the purpose of the Execution of the Works. The Contractor shall upon receipt of any such Drawing or instruction forthwith consider the extent to which it may modify or affect the Contractor's obligations under the Contract and if he is of the opinion that it does he shall so notify the Employer's Representative in writing as soon as possible, but in any event not later than within seven (7) Days of receipt of the same, and shall contemporaneously provide all reasonable supporting information upon which his opinion is based. The Contractor acknowledges that further Drawings and instructions will be supplied during the progress of the Works by reason of Normal Design Development and the Contractor shall carry out and be bound by the same without being entitled to any additional payment or extension of time in respect thereof.
- B. The Employer's Representative shall not be bound to issue any Drawing or Specification relating to any matter, which in his opinion, is the responsibility of the Contractor under the Contract in the absence of the Drawing or Specification.

## 7.2 Submission of Construction Documents to Employer's Representative

- A. Subject to any express provision contained elsewhere in the Contract, this Clause 7.2 shall apply to all submissions by the Contractor of Construction Documents in connection with the Execution of the Works.
- B. The Contractor shall submit one (1) reproducible, one (1) electronic format and five (5) paper sets of all drawings and five (5) copies of all such other Construction Documents to the Employer's Representative in accordance with any schedule for release of information agreed with the Employer's



Representative or otherwise as reasonably requested in writing by the Employer's Representative or at a reasonable time before the work shown or described thereon is to be carried out so as to permit the Employer's Representative and, where appropriate, the Employer sufficient time to examine the drawings or other Construction Documents properly.

- C. The Contractor shall give notice to the Employer's Representative, in sufficient time to enable the Employer's Representative to arrange for the preparation of and to issue the Drawings or Specifications without delaying the Execution of the Works, of any further or amended Drawing or Specification which the Contractor may require to Execute the Works but the Employer's Representative shall not in any event be obliged to issue the relevant Drawings or Specifications in advance of dates for their issue identified in the Programme.
- D. The Contractor shall submit during the progress of the Execution of the Works and as soon as reasonably practicable after any request, such additional drawings and Construction Documents relating to the Execution of the Works as the Employer's Representative may reasonably require.
- E. Unless otherwise provided in the Contract, within a reasonable period before the Works or any part thereof are taken over in accordance with Clause 51, the Contractor shall submit and have approved Operation and Maintenance Manuals and parts lists relative to the Works or part thereof to be taken over together with as-built drawings of the Permanent Works, all in accordance with the Contract and in sufficient detail to enable the Employer to operate, maintain, dismantle, reassemble and adjust the Permanent Works. The manuals, parts lists and as built drawings shall be in English and Thai. The Contractor shall supply to the Employer such number of sets of such Operation and Maintenance Manuals and hard copies, reproducible copies, and copies in electronic format, of the as-built drawings and parts lists as are specified in the Contract. Unless and to the extent otherwise provided in the Contract, the Works shall not be considered to be completed for the purposes of taking over in accordance with Clause 51 until such Operation and Maintenance Manuals and parts lists, together with as built drawings on completion, have been submitted to and approved by the Employer's Representative.

### 7.3 Review Procedure

- A. The Employer's Representative shall be entitled to approve or otherwise any drawing or Construction Document submitted in accordance with Clause 7.2B. The Employer's Representative shall approve or otherwise any such drawing or Construction Document within the period provided therefor elsewhere in the Contract or, if no time is therein specified, within twenty-one (21) Days after receiving the drawing or Construction Document submitted, and shall notify the Contractor in writing of his decision. If the Employer's Representative fails to give notice within such period, the drawing or Construction Document shall be deemed to be approved by the Employer's Representative.
- B. If the Employer's Representative has reasonable cause for being dissatisfied with the proposals set out in the Contractor's drawing or Construction Documents the Employer's Representative shall within such period as may expressly be stipulated in the Contract or if no time is therein specified, within twenty-one (21) Days after receiving the drawing or Construction Document submitted, require the Contractor in writing to make such amendments thereto as the Employer's Representative may consider reasonably necessary. The Contractor shall make



and be bound by such amendments at no additional expense to the Employer and shall resubmit the amended drawing or Construction Documents for the Employer's Representative's approval in accordance with Clause 7.2B.

- C. Within 14 days of notification of the Employer's Representative's approval under Clause 7.3A, the Contractor shall provide the Employer's Representative with the type and number of sets of the relevant drawing or Construction Documents as stipulated by Clause 7.2B.
- D. No examination by the Employer's Representative of the drawings or Construction Documents submitted by the Contractor under the provisions of this Clause 7 nor any approval of the Employer's Representative in relation to the same, with or without amendment, shall absolve the Contractor from any of its obligations under the Contract or any liability for or arising from such drawings or Construction Documents.

#### 7.4 Modification of Contractor's drawings or Construction Documents

- A. Should it be found at any time after notification of approval under Clause 7.3A that the relevant drawings or Construction Documents do not comply with the Contract or do not agree with drawings or Construction Documents in relation to which the Employer's Representative has previously notified his approval, the Contractor shall at its own expense and without entitlement to any extension of time make such alterations or additions as in the opinion of the Employer's Representative are necessary to remedy such non-compliance or non-agreement and shall submit all such varied or amended drawings or Construction Documents for the approval of the Employer's Representative in accordance with Clause 7.3.

#### 7.5 Provision of information by the Contractor

- A. The Contractor shall provide, in accordance with the Contract and within the time required by the Programme, working and detail drawings showing how the Equipment is to be affixed and any other information required for:
  1. preparing suitable foundations or other means of support; and
  2. providing suitable access on the Site for the Equipment and materials for incorporation into the Works and to the place where the materials and Equipment are to be incorporated into the Works; and
  3. making necessary connections to the Equipment.

#### 7.6 Use of Documents

- A. It is expressly agreed between the parties that all Drawings, Specifications, drawings, Construction Documents and all other documents pertaining to the Contract shall be the absolute property of the Employer and shall not be utilized or retained by the Contractor for any purposes other than with the permission of the Employer.

#### 7.7 Contractor's Plans and Specifications to use S.I. Units

- A. The Contractor's drawings and Construction Documents shall use the S.I. Units (System International Units) of measurement.



## 7.8 Operations and Maintenance Manuals

- A. Subject always to any specific requirements in the documents comprising the Contract and to any instruction of the Employer's Representative, the Contractor shall submit for approval draft Operations and Maintenance Manuals sufficiently in advance of the Date for Substantial Completion of the Works so as to permit the proper and timely performance by the Contractor of his obligations under the Contract.

## 8. CONTRACTOR'S GENERAL RESPONSIBILITIES

### 8.1 Contractor's Responsibility

- A. The Contractor shall, subject to the provisions of the Contract, and with due care and diligence, Execute the Works and carry out his other obligations under and/or in relation to and/or reasonably to be inferred from the Contract or could reasonably be inferred therefrom by a contractor experienced in work of similar nature and scope as the Works and provide all personnel and labour, including the supervision thereof, transport to and from the Site, materials, offices, workshops, tools, machinery, Contractor's Plant and all other resources and things, whether of a temporary or permanent nature, required in or for such execution and for the carrying out of such obligations.
- B. In the event that the Contractor comprises two or more parties acting in joint-venture or otherwise, the liability of each such party under this Contract shall be joint and several.

### 8.2 Contractor's General Warranty

- A. The Contractor warrants that he is fully experienced in the construction, testing, commissioning and operation and maintenance of and training in respect of major international projects of a similar scope, complexity, size, and technical sophistication as the Works and that he possesses the high level of skill and expertise commensurate with that experience which he will make available to the Employer. In so doing the Contractor recognises and acknowledges that the Employer is relying on the provision by the Contractor of such skill and expertise in and about the Execution of the Works.

### 8.3 Contractor's Guarantee

- A. The Contractor shall guarantee those parts of the Works set out in **Appendix 1** each for the respective period set out in **Appendix 1** (the Guarantee Period) and, each commencing from the date set out in **Appendix 1** to the intent that if during the period any defect, inadequacy or unsuitability of design (where and to the extent that such Works were designed by the Contractor), manufacture, workmanship or materials or failure to meet in any or all respects the requirements of the Contract shall arise or become apparent in the Works or any part thereof, written notice of such defect, inadequacy or unsuitability, or failure to meet the requirements of the Contract shall be given by the Employer to the Contractor who shall forthwith submit to the Employer for his approval his written proposals for the remedying of the same at no cost to the Employer. Upon receipt of the written approval of the Employer to the Contractor's proposals or any amendment thereto the Contractor shall forthwith, at a time or times convenient to the Employer, implement his proposals as approved with all due speed. If the Contractor shall fail to submit his written proposals within a



time considered reasonable by the Employer or if such proposals are not, in the Employer's opinion, satisfactory, the Employer may employ and pay other persons to carry out the necessary remedial work or carry out such work himself and the Contractor shall be liable for all costs in connection with such remedial work, which the Employer may recover from the Contractor as a debt.

- B. The Contractor shall at all times save harmless and indemnify the Employer from and against all claims, liabilities, expenses, costs and losses suffered or incurred by the Employer which may arise out of or in connection with any defect, inadequacy or unsuitability of design (where and to the extent that such design was to be performed by the Contractor under the Contract); manufacture, workmanship or materials or failure to meet in any or all respects the requirements of the Contract or the remedying thereof either by the Contractor, the Employer, or by others employed by the Employer.
- C. The Guarantee Period shall in respect of any part of the Works which require repair or replacement, including, for the avoidance of doubt any part of the Works which requires repair or replacement as a result of an endemic failure as certified by the Employer's Representative pursuant to Clause 53.5, and in respect of any part of the Works affected by such repair or replacement, be extended by a period equal to the period during which the part of the Works is out of operation and the provisions of this Clause 8.3 shall apply to any part of the Works remedied or replaced, or any part of the Works affected thereby as though the Guarantee Period in respect thereof had commenced on the date of such remedy or replacement.
- D. The Employer's rights under this Clause 8.3 are without prejudice to any other right which he may have whether at law or otherwise.

#### 8.4 The Contractor's Design Responsibility

- A. The Contractor shall, in accordance with the Contract, design:-
  - 1. the Temporary Works, save to the extent expressly provided to the contrary; and
  - 2. the Permanent Works (to the extent that the Contractor is required to carry out such design)

and the design shall include the selection and specification of the kinds and standards of Permanent Works, Temporary Works and Contractor's Plant and workmanship to be used therein or in relation thereto so far as not described or stated in the Contract.
- B. The Contractor shall be fully responsible for the Contractor's design, and liable for any mistake, inaccuracy, discrepancy or omission in it. Nothing contained in the Contractor's design shall relieve the Contractor from his obligations or liabilities pursuant to Clause 8.4C.
- C. To the extent of his obligations pursuant to Clauses 8.4A and 8.4B the Contractor warrants to the Employer that:-
  - 1. the Contractor has exercised and shall continue to exercise in the design (to the extent that the Contractor is required to carry out such design) of the Works all the skill and care to be expected of a professionally



qualified and competent designer experienced in work of a similar nature and scope;

2. the Works shall comply in all respects with the Contract;
3. the Works have been or shall be designed using proven internationally recognised codes of practice, modern, current and accomplished methods of design and acknowledged good engineering practice and to standards which are consistent with the Contract and the Works shall, when completed, comply with the Statutory Regulations and requirements;
4. no part of the Works generally known to be deleterious or otherwise not in accordance with good engineering practice has been or shall be specified or selected by the Contractor or anyone acting on his behalf. No part of the Works which, after its specification or selection by or on behalf of the Contractor but before being incorporated into the Works, becomes generally known to be deleterious or otherwise not in accordance with good engineering practice shall be incorporated into the Works; and
5. the design of the Works has taken or shall take full account of the effects of the intended manufacturing and construction methods (including the use of Contractor's Plant).

## 8.5 Site Operations and Methods of Construction

- A. The Contractor shall take full responsibility for the adequacy, suitability, appropriateness, stability and safety of all site operations and methods of construction.
- B. The Contractor shall give constant attention to the Execution of the Works to facilitate the progress thereof and shall co-operate with the Employer's Representative, his delegates or assistants, Ancillary Contractors and Other Contractors in every way possible to facilitate the timely completion of the Project.

## 8.6 Works as an Integral Part of the Project

- A. The parties agree that the principal objective of the Contract is the economic and timely completion of the Project of which the Works form an integral part. As an experienced contractor upon whose skill and expertise in the planning, programming and co-ordination of construction activities the Employer is relying, the Contractor hereby represents and warrants:
1. that he recognises that the process of design, engineering, manufacture, procurement, installation, testing and commissioning of the Works will require the closest consultation, co-operation, communication and co-ordination between himself, the Employer's Representative and the Employer. The Contractor further recognises that it will be necessary for the parties to develop and agree systems, methods and procedures to enable such process to be carried out.
  2. that he fully appreciates the importance of the integration of the Works with the Related Works and the need to fully and completely co-ordinate the Works with the Related Works and that as a consequence:



- i. the Contract Price is inclusive of the cost of proper compliance with the Contractor's obligations under this Clause and Clause 32; and
  - ii. the Contractor has programmed and will continue to programme the Execution of the Works in such a way as to ensure his compliance with his obligations in respect of Related Works as set out in Clause 32.
3. that the Equipment supplied under the Contract shall be manufactured specifically for the Contract, be new and unused, and will jointly and severally meet the requirements of the Contract and, in particular, but without limiting the generality of the foregoing, such that the Works as a whole and each and every part thereof shall meet the requirements of the Contract.
  4. notwithstanding acceptance by the Employer, that all Equipment supplied under the Contract, will be complete in all its parts, will be free from defects in design, material and workmanship and will jointly and severally meet the requirements of the Contract.
- B. Without limiting the generality of Clause 8.6A, the completion of the Works designed by the Employer and contained within the Contract Documents and in accordance with the requirements of the Contract will be achieved by the adoption of a fast track system. The Contractor therefore acknowledges and accepts that at the date of this Contract the design of the Works prepared by the Employer and contained in the Contract Documents may not have been finalized and that design information will be released as it evolves to the Contractor during the Execution of the Works. As an experienced Contractor upon whose skill and expertise in the planning, programming and co-ordination of construction activities the Employer is relying, the Contractor hereby represents and warrants:
1. that the Contractor has been provided with sufficient information in the Drawings, Specifications, Bills of Quantities, and other documents provided to the Contractor properly to ascertain the general scope and nature of the design prepared by the Employer and to be Executed by the Contractor and to prepare the Contractor's Tender and that the Contractor's Tender is a reasonable price for those designs prepared by the Employer and contained in the Contract Documents; and
  2. that in preparing the Contractor's Tender (and subject only to the Contractor's rights under Clauses 48 and 63) the Contractor has made all due allowance for changes in the design prepared by the Employer which may be required as a result of Normal Design Development; and
  3. that the Contractor will advise the Employer's Representative of the details of any design information or decision from the Employer's Representative considered advisable by the Contractor in order to reduce or prevent delay and/or disruption of the Works and/or the Project and shall in this regard give written details of the design information or decision required and of why and when it is required and of any delay, disruption, cost or other adverse consequences likely to be suffered if it is not issued within such time.





## 8.7 Contractor's Representations and Warranties

- A. In addition to the provisions of Clause 8.4, the Contractor represents and warrants to the Employer that:
1. the Works will be Executed using proven good practice, the most recent and up to date systems and technology and accepted professional standards, codes of practice and regulations which are in force at the date of the Letter of Acceptance or are reasonably foreseeable by an experienced international contractor to be likely to come into force during the Execution of the Works and which are consistent with the requirements of the Contract; and
  2. he has the expertise, experience and ability to Execute the Works fully in accordance with the Contract and that he possesses the level of competence, knowledge and skill reasonably expected of an experienced contractor and in particular, and in addition to compliance by the Contractor with his obligations under Clauses 5.2, 8.1, 8.2 and 8.5, but without prejudice to the generality of the foregoing, that:
    - i. the personnel to be employed by the Contractor in or about the Execution of the Works will be properly skilled, competent and experienced having regard to the nature and extent of the Works; and
    - ii. he is adequately and properly financed to meet all the financial obligations which he may be required to assume under the Contract; and
    - iii. he will perform his obligations under the Contract in an expeditious and economical manner and shall at all times provide such supervision, labour, construction materials and Contractor's Plant of sufficient quantity and quality to maintain progress so as to achieve Substantial Completion of the Works by the Date for Substantial Completion; and
    - iv. the Works when completed will, consistent with the use of the said expertise, experience, ability and skill, meet the requirements of the Contract; and
    - v. he has performed and will continue to perform his obligations under the Contract in accordance with all applicable laws of Thailand from time to time in force and with all directions, orders, requirements and instructions whatsoever given by any authority competent to do so under any applicable law.

## 8.8 Associated Contracts

- A. The Contractor shall neither by virtue of any act, default or neglect of the Contractor whilst carrying out his obligations under any other agreement he has or will have with the Employer;
1. make any claim against the Employer under the Contract or for breach of it; nor



2. raise any excuse, set-off or defence with respect to any debt or claim made by the Employer against the Contractor under the Contract or for breach of it;

## 9. CONTRACT AGREEMENT

- A. The Contractor shall enter into and execute a Contract Agreement, to be prepared and completed at the cost of the Employer.

## 10. BONDS AND GUARANTEES

### 10.1 Performance Bond

- A. Within fourteen (14) Days of the date of the Letter of Acceptance but not later than the time of execution of the Contract, the Contractor shall provide to the Employer a duly issued Performance Bond(s) in Thai Baht and Japanese Yen, for the due observance and performance by the Contractor of the Contract, in amounts equivalent to that stipulated in **Appendix 1** as being from time to time applicable and in the form appearing in **Appendix 3** hereto with only such amendments thereto as may previously have been agreed in writing by the Employer's Representative. Within seven (7) Days of submission of such Performance Bond the Employer shall release the Tender Bond (if any) submitted by the Contractor with the Tender. The Contractor shall maintain and renew if necessary the said bond so that it shall remain in full force and effect until the expiry date set out in **Appendix 1** after which no claim shall be made against the said bond. The cost of obtaining the bond shall be at the expense of the Contractor and shall be included in the Contract Price.

### 10.2 Advance Payment Bond

- A. Within fourteen (14) Days of the date of the Letter of Acceptance but not later than the time of execution of the Contract, the Contractor shall provide to the Employer duly issued Advance Payment Bond(s) in Thai Baht and Japanese Yen, in amounts equivalent to the Advance Payment as stipulated in **Appendix 1** and in the form appearing in **Appendix 2** hereto with only such amendments thereto as may previously have been agreed in writing by the Employer's Representative. Within seven (7) Days of submission of such advance payment bond the Employer shall release the Tender Bond (if any) submitted by the Contractor with the Tender. The Contractor shall maintain and renew if necessary the said bond so that it shall remain in full force and effect for the amount specified in **Appendix 1**, as reduced pursuant to the provisions of Clause 66.1C, until the expiry of twenty-eight (28) Days from the date upon which the full amount of the Advance Payment shall have been repaid after which no claim shall be made against the said bonds. The cost of obtaining the bonds shall be at the expense of the Contractor and shall be included in the Contract Price.

### 10.3 Parent Company Guarantees

- A. Within fourteen (14) Days of the date of the Letter of Acceptance but not later than the time of execution of the Contract, the Contractor shall provide to the Employer a duly executed guarantee, in the form appearing in **Appendix 5** hereto with only such amendments thereto as may previously have been agreed in writing by the Employer's Representative, from each of the companies specified in **Appendix 1**. The cost of obtaining the guarantees shall be at the expense of the Contractor and shall be included in the Contract Price.



**10.4 Named Banks**

- A. The Performance Bonds and Advance Payment Bonds to be submitted by the Contractor pursuant to Clause 10.1 and 10.2 [and the Bond for Offshore Manufacture to be submitted by the Contractor pursuant to Clause 10.7] shall be issued by a bank as a surety details of which shall have been submitted in writing to the Employer prior to acceptance of the Tender and against which the Employer shall have raised no objection. If the Contractor shall wish to change the identity of the bank as a surety, it shall give full written details of the proposed replacement to the Employer and the Employer may within fourteen (14) Days, at its absolute discretion and without giving any reason, object in writing to the proposed replacement whereupon the Contractor may either revert to the original bank or other surety or propose a further replacement in the same manner as set out above. If the Employer shall not raise any objection in writing within fourteen (14) Days then the bank or other surety shall be deemed to be acceptable to the Employer.

**10.5 Condition Precedent to Payment**

- A. Notwithstanding any other provision of the Contract the provision by the Contractor of the Performance Bond, the Advance Payment Bond and the parent company guarantees, each in accordance with this Clause 10 shall be a condition precedent to the Contractor's entitlement to any payment, or any further payment as the case may be, by the Employer to the Contractor, under the Contract.

**10.6 Right to terminate**

- A. If the Contractor shall fail to provide, maintain and renew the Performance Bond, Advance Payment Bond and/or parent company guarantee in accordance with the foregoing provisions of Clauses 10.1, 10.2 and 10.3 then the Employer may, without prejudice to any other rights and remedies to which the Employer may be entitled, either suspend the Works or to terminate the Contract forthwith by notice in writing to that effect, notwithstanding that the Contractor may have been permitted to proceed with the Works, and the Contractor shall not be entitled to any compensation whatsoever as a consequence of such suspension or termination.

**10.7 Bond for Offshore Manufacture**

- A. If the Bills of Quantities requires the provision of a bond pursuant to this Clause 10.7 in relation to procurement, manufacturing, testing or other activities to be carried out offshore Thailand and unless the Employer has agreed in writing to the contrary, the Contractor shall as a condition precedent to its entitlement to receive any payment or to continue to receive any payment in relation to such activities provide the Employer with and maintain in existence a separate bond in the form appearing in Appendix 12 hereto, in the amounts and subject to the terms more particularly described in the Bills of Quantities with only such amendments thereto as may previously have been agreed in writing by the Employer's Representative. Each such bond shall be released in the manner described in the bond.





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to how the same should be interpreted and the Contractor shall make use of and interpret the same entirely at his own risk and responsibility.

- C. No claim by the Contractor for additional payment or extension of time will be allowed on the ground of any misunderstanding or misapprehension in respect of the matters referred to in this Clause 11 or otherwise on the ground that any fact is incorrect or that insufficient or inadequate information was given to him by any person acting for or on behalf of the Employer or the Employer's Representative nor shall the Contractor be relieved from any liability, risk or obligation imposed on or undertaken by him under the Contract on any such ground or on the ground that he did not or could not foresee, or that an experienced international contractor would not have foreseen any matter which may in fact affect or have affected the Execution of the Works.

## 12. SUFFICIENCY OF CONTRACT PRICE

- A. The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price and of the rates and prices stated in the Bills of Quantities, all of which rates and prices shall, except insofar as it is otherwise provided in the Contract, (including, but without limitation, those in respect of the supply of materials, Equipment, services or of contingencies for which there is a Provisional Sum) cover all his risks, liabilities and obligations set out or implied by the Contract and all matters and things necessary for the proper Execution of the Works according to the true intent and meaning of the documents comprising the Contract taken together whether the same may or may not be particularly shown or described provided the same can be reasonably inferred therefrom or is necessarily incidental thereto.
- B. The Contractor acknowledges responsibility for ascertaining and securing at its own cost:
1. conditions bearing upon the proper transportation, disposal, handling and storage of materials (including but not limited to hazardous toxic substances and excavated materials);
  2. availability of water and electricity;
  3. the type of Contractor's Plant and Temporary Works needed before and during the Execution of the Works;
  4. the protection of the environment and adjacent structures which will be necessary before and during the Execution of the Works;
  5. the location of and the authorisation required for and the means of diversion of any services and facilities required for the purposes of the Works.

## 13. WORK TO BE IN ACCORDANCE WITH CONTRACT

- A. Save insofar as it is legally or physically impossible, the Contractor shall Execute the Works in strict accordance with the Contract to the complete satisfaction of the Employer's Representative and for that purpose and to such satisfaction shall complete the design of the Works, to the extent specified in or necessarily to be implied from the Contract, including the selection of any specifications for any kinds and standards of the materials and workmanship to be used in the Execution of the Works so far as not described or stated in the Contract Documents.



- B. The Contractor shall comply with and adhere strictly to the Employer's Representative's instructions and directions on any matter whether mentioned in the Contract or not, touching or concerning the Works. The Contractor shall take instructions only from the Employer's Representative or, subject to the provisions of Clause 2, from any delegate or assistant of the Employer's Representative.

#### 14. PROGRAMMES AND PROGRESS REPORTS

##### 14.1 Issuing of relevant information from the Project Master Programme

- A. The Employer's Representative reserves the right to issue relevant programme details from the Project Master Programme to the Contractor. Furthermore, the Employer's Representative may from time to time issue the Contractor with updated information, which the Employer's Representative deems necessary and the effect of which, in the Employer's Representative's opinion, are relevant to the programming and/or Execution of the Works.

##### 14.2 Programme to be submitted

- A. The Contractor shall submit to the Employer's Representative within fourteen (14) Days of the Commencement Date in the form and content prescribed by the Contract Documents and in addition to any further requirements set out in the Contract Documents, the following:
1. an overall Execution programme covering the whole of the period for the Execution of the Works and including manufacture, procurement and other off-site activities.
  2. a detailed programme covering the activities for the first six (6) Months of the period for the Execution of the Works and including manufacture, procurement and other off-site activities.
  3. a detailed method statement setting out the method and manner in which the Contractor intends to Execute the Works.
  4. a detailed cash flow forecast, in quarterly intervals, of all payments to which the Contractor will be entitled under the Contract, and showing the relationship between expenditure and the progress of the Execution of the Works, with the aim of synchronizing cash flow to performance.
  5. the Contractor's proposals for complying with his obligations under Clause 32.
- B. Within twenty-eight (28) Days of the submittal referred to in Clause 14.2A, the Contractor shall submit to the Employer's Representative, for approval, in accordance with Clause 14.2C, an expanded and more detailed version of the programmes referred to in Clause 14.2A(1) and Clause 14.2A(2) in the form and content prescribed by the Contract Documents. Such submittals shall take proper account of all comments made by the Employer's Representative on the programmes submitted previously in accordance with Clause 14.2A(1) and this Clause 14.2(B).
- C. The Employer's Representative shall, within twenty-one (21) Days of receipt of a programme submitted for approval, pursuant to this Clause 14, notify the Contractor in writing:



1. that the programme is approved; or
  2. that the programme is rejected, in which case reasons for such rejection shall be given; or
  3. that further information is required to clarify or substantiate the programme or to satisfy the Employer's Representative as to its reasonableness.
- D. Provided that if none of the above actions is taken within the said period of twenty-one (21) Days the Employer's Representative shall be deemed to have approved the programme submitted.
- E. The Contractor shall within twenty-one (21) Days of receiving notification under Clause 14.2C(3), or within such further period as the Employer's Representative may allow in writing, provide the further information requested failing which the programme shall be deemed to have been rejected. The Employer's Representative shall within twenty-one (21) Days of receipt of such further information approve or reject the programme in accordance with Clause 14.2C.
- F. In the event of a programme being rejected under Clause 14.2C(2) or deemed to have been rejected under Clause 14.2E, the Contractor shall within twenty-one (21) Days thereafter submit a revised programme taking account of the reasons given for the rejection or incorporating the further information requested by the Employer's Representative, as the case may be.
- G. Unless and until an amended version is approved by the Employer's Representative in accordance with Clause 14.2C, the overall Execution programme referred to in Clause 14.2A(1) and submitted in accordance with Clause 14.2B shall be the Programme for the Works.

### 14.3 Revised Programme

- A. The Contractor shall submit to the Employer's Representative for approval, throughout the progress of the Execution of the Works and where set out in the Contract Documents in accordance with any specified requirements therein:
1. a detailed programme (together with updated forecasts of labour/Contractor's Plant utilisation) for each consecutive six (6) Month period each such programme to be consistent with the programme referred to in Clause 14.2A(2) as may be amended by the award of any extension of time and to be in respect of a period of at least three months of the immediately preceding programme. The first such programme will, unless otherwise specified in the Contract, be submitted within two (2) Months of the commencement of the Works to which the detailed programme referred to in Clause 14.2A(2) relates and each subsequent such programme shall be submitted at ninety (90) Day intervals thereafter.
  2. Twenty-eight (28) Days, or such other time as may be fixed by the Employer's Representative, before the commencement of any element of the Works to which Clause 32 applies, a detailed programme and method statement signed by the Contractor and the contractor responsible for the appropriate Related Works, such programme to be consistent with the programme referred to in Clause 14.2A(1) as may be amended by the



award of any extension of time and showing the order, sequence and method that the Contractor intends to adopt in order to comply with his obligations under Clause 32, or in the event the Contractor and the contractor responsible for the appropriate Related Works are unable to agree the said order, sequence and method, details of those issues that are preventing such agreement.

- B. The Contractor shall supply to the Employer's Representative at such times as the Employer's Representative may direct during the progress of the Execution of the Works, such further or special written particulars and information as are required by the Employer's Representative to enable a progress record to be maintained in respect of the Works.
- C. Should it appear to the Employer's Representative at any time that there is or will be a significant deviation between the actual or anticipated progress of the Works and the Programme, the Employer's Representative shall be entitled by written instruction to require the Contractor to produce a revised version showing such modifications to the Programme as may be necessary to ensure or to be consistent with Substantial Completion of the Works and the achievement of all Key Dates. The Contractor shall submit such revised programme within fourteen (14) Days of the Employer's Representative's instruction or within such other time as the Employer's Representative shall allow in writing.

#### 14.4 Contractor not Relieved of Duties or Responsibilities

- A. Approval by the Employer's Representative in accordance with Clause 14.2C shall not relieve the Contractor of any of its duties or responsibilities under the Contract nor, in the event that the Programme indicates that a Key Date has not or will not be met, constitute any form of acknowledgement that the Contractor is or may be entitled to an extension of time in relation to such Key Date. Furthermore, no such approval shall create any obligation or liability on the part of the Employer nor shall any approval of the Programme by the Employer's Representative establish the Programme as part of the Contract.
- B. Unless expressly stipulated or described in the Contract, the choice of methods of working and Temporary Works, programming of the Works and deployment of the Contractor's resources on the Site shall be the sole responsibility of the Contractor. The approval of the Programme and of any other Construction Document submitted to the Employer's Representative pursuant to this Clause 14 signifies merely the Employer's Representative's understanding of the proposed order, sequence and method of working but shall not relieve the Contractor from any of the Contractor's obligations under the Contract.

#### 14.5 Not Used

#### 14.6 Progress Reports

- A. The Contractor shall submit to the Employer's Representative by the end of each calendar month the Contractor's Monthly Progress Report, which shall, amongst other things, highlight actual or potential departures from the Programme and state the measures, which the Contractor proposes to take in order to make good or reduce any delays.





- C. The Contractor shall also submit to the Employer's Representative such other reports as may reasonably be required by any relevant authority or public body.

### 14.7 Cash Flow Estimates to be Revised

- A. The Contractor shall, if and when required to do so by the Employer's Representative, supply revised cash flow estimates amended where necessary to reflect actual progress of the Execution of the Works and the programmed future progress.

## 15. MANUFACTURE, INSTALLATION AND CONSTRUCTION METHODS

- A. The Contractor shall submit in accordance with Clause 7 such Construction Documents and information pertaining to the methods of manufacture, installation and construction which the Contractor proposes to adopt or use (and if applicable such calculations of stresses, strains and deflections and the like that will or may arise in the Works or to the other construction works or any parts thereof during installation from the use of such methods) as will enable the Employer's Representative to check whether, if such methods are adhered to, the Works can be Executed in accordance with the Contract and without detriment when completed to the Works and to the other construction works and in a manner which shall minimize disruption to other construction works.
- B. The Employer's Representative shall inform the Contractor in writing within twenty-one (21) Days after receipt of the information submitted in accordance with Clause 15A:
1. that the Contractor's proposed methods of manufacture, installation and construction have the consent of the Employer's Representative (which consent shall not be unreasonably withheld); or
  2. in what respects in the opinion of the Employer's Representative the Contractor's proposed methods of manufacture, installation and construction:
    - i. fail to comply with the Contract Documents; or
    - ii. would be detrimental to the Works and/or to the other construction works comprising the Project; or
  3. as to the further documents or information which are required to enable the Employer's Representative properly to assess the proposed methods of manufacture, installation and construction.
- C. In the event that the Employer's Representative does not give his consent, the Contractor shall take such steps or make such changes in the said methods or supply such further documents or information as may be necessary to meet the Employer's Representative's requirements and to obtain his consent. The Contractor shall not change the methods of manufacture, installation and construction which have received the Employer's Representative's consent without the further consent in writing of the Employer's Representative which shall not be unreasonably withheld.



- D. If the Employer's Representative's consent to the proposed methods of manufacture, installation and construction shall be unreasonably withheld or delayed or if the requirements of the Employer's Representative pursuant to Clauses 15B(2)(i) and (ii) could not reasonably have been foreseen by an experienced contractor at the time of tender and if in consequence of any of the aforesaid the Contractor unavoidably incurs delay or Cost the Employer's Representative shall:
1. subject to Clause 48 take such delay into account in determining any extension of time to which the Contractor is entitled, and
  2. subject to Clause 60 and as soon as reasonably practicable determine such sum in respect of the Cost incurred as the Employer's Representative considers fair in all the circumstances and notify the Contractor in writing of such determination.
- E. Notwithstanding the foregoing provisions of this Clause 15 or that certain of the Contractor's proposed methods of manufacture, installation and construction may be the subject of the consent of the Employer's Representative given in accordance with Clause 15B, the Contractor shall not be relieved of any liability or obligation under the Contract.

## 16. TEMPORARY WORKS

- A. The Contractor shall be responsible for the design and specification of the Temporary Works, except to the extent that the Contract provides expressly for the design of any Temporary Works to be carried out by the Employer's Representative.
- B. Unless the Contract provides expressly or the Employer's Representative instructs in writing to the contrary, the design of the Temporary Works shall be checked and certified:
1. as being structurally sound and competent and in accordance with good engineering practice, by the Contractor; and,
  2. as having no adverse effects on the Permanent Works, by the Contractor;
- C. The design of the Temporary Works shall include without limitation consideration of the adequacy of the foundations and supports of the Temporary Works, the effects of the Contractor's Plant on the Temporary Works and any other factors, which may affect the stability and safety of such Temporary Works during their construction, use and removal.
- D. The Contractor shall submit to the Employer's Representative in accordance with Clause 7 all design information, drawings or other Construction Documents relating to the Temporary Works (and the effect on the Temporary Works of Contractor's Plant) together with a Temporary Works design certificate signed by or on behalf of the Contractor.
- E. Without prejudice to the generality of Clause 7.3, the examination by the Employer's Representative and any approval of or consent to any design information, drawings or other Construction Documents relating to the



Temporary Works shall not extend to consideration of, nor absolve the Contractor of responsibility for, the safety and stability of the Temporary Works.

- F. The Contractor shall ensure that the Temporary Works are constructed, used and removed in accordance with the Temporary Works design and without any adverse effect upon the Permanent Works.
- G. If the Contractor wishes to change the construction, use or removal of the same the Contractor shall submit to the Employer's Representative in accordance with Clause 7 all relevant design information, drawings and other Construction Documents together with a duly signed Temporary Works design certificate before implementing any such change.
- H. In cases where the loading of such Temporary Works is applied as a separate operation after completion of their construction, before such loading is applied the Contractor shall submit to the Employer's Representative in accordance with Clause 7 a certificate signed by or on behalf of the Contractor confirming that the Temporary Works have been constructed in accordance with the design. In those cases where the loading is an integral part of the construction of such Temporary Works, the Contractor shall submit to the Employer's Representative such a certificate as soon after the construction of the same as is reasonably possible.
- I. Notwithstanding the foregoing provisions of this Clause 16 or that certain Temporary Works may be specified herein or subsequently certified by the Contractor, the Contractor shall not be relieved of any liability or obligation under the Contract.

## 17. CONTRACTOR'S SUPERINTENDENCE

### 17.1 Contractor's Superintendence - General

- A. The Contractor shall give or provide all necessary superintendence during the Execution of the Works and for the proper carrying out of its obligations under the Contract (including without limitation to the generality of the foregoing the taking of all reasonable steps to safeguard against the occurrence of accidents and loss or damage by reason of foreseeable hazards) and for as long thereafter as the Employer's Representative may consider necessary. Such superintendence shall be given by such number of persons having adequate knowledge of the nature of the operations to be carried out as may be requisite for the satisfactory Execution of the Works. Each part of the Works shall have sufficient such persons allocated to it as are appropriate to the magnitude and type of work being carried on from time to time at the several premises of the Contractor and any Sub-Contractors and Suppliers and at each part of the Site from time to time.
- B. Within twenty-one (21) Days after the date of the Letter of Acceptance, the Contractor shall in accordance with Clause 7 submit for the consent of the Employer's Representative the Staff Organisation Plan based on the staffing schedule submitted with the Contractor's tender. The Staff Organisation Plan shall include the details prescribed in the Contract Documents. Any revisions to the Staff Organisation Plan shall be submitted to the Employer's Representative for consent in accordance with Clause 7.
- C. The Contractor shall, so far as it is able to do so, inform the Employer's Representative at the time of submission of the Staff Organisation Plan of the names of the individuals who will respectively fill the positions described in the



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Staff Organisation Plan and provide details of their respective qualifications and work experience. The Contractor shall thereafter supply the Employer's Representative with similar details upon each further or other appointment being made.

- D. The Employer's Representative may notify the Contractor, at any time, that individuals filling positions described in the Staff Organisation Plan are Key Personnel. The Contractor shall procure (so far as within its power) that Key Personnel shall be employed on or in relation to the Works full time until the expiry of the Defects Liability Period. In the event that it becomes necessary to replace any or all Key Personnel the Contractor shall provide alternative personnel acceptable to the Employer's Representative acting in his sole discretion with such skills, experience and knowledge as to be capable of properly performing the role of the individuals replaced in achieving completion of the Works in accordance with the Contract. Such replacement shall take place within fourteen (14) Days of non-availability of the Key Personnel being replaced.

## 17.2 Appointment of Contractor's Representatives

- A. Without prejudice to the generality of Clause 17.1, from the commencement of the Works until completion of all the Contractor's obligations hereunder or such earlier time as the Employer's Representative may agree, the Contractor shall provide in particular:
1. a representative, who shall be resident in a location convenient to the Site, to give his whole time to the superintendence of the Works and to be in full charge thereof. Such representative shall be known as the Project Manager; and
  2. a representative, who shall be resident in a location convenient to the Site, to give his whole time to the assistance of the Project Manager in the performance of his duties. Such representative shall be known as the Deputy Project Manager; and
  3. on the Works at the Site, a sub-representative who shall give his whole time to the superintendence of the same. Such representative shall be known as the Construction Superintendent; and
  4. at each of his premises and those of any Sub-Contractor and Supplier where, and during such period as, parts of the Works are being designed and/or Executed and when so required by the Employer's Representative, sub-representatives to superintend such design and/or Execution; and
  5. a representative who shall be responsible for preparing or procuring the preparation of the Operation and Maintenance instruction manuals and parts lists, and as-built drawings of the Permanent Works required by the Contract Documents. Such representative shall be known as the Operations and Maintenance Supervisor. From the expiry of the period of one (1) year from the commencement of the works until the satisfactory completion of all the Contractor's obligations under the Contract the Operations and Maintenance Supervisor shall give his full time thereto. Furthermore, during the Defects Liability Period, and any extension thereof, the Operation and Maintenance Supervisor shall be located in Bangkok together with all support staff necessary to carry out



the Contractor's obligations during the Defects Liability Period under this Contract; and

6. Not used; and
7. a representative who shall be responsible, in accordance with the Contract Documents, for the construction co-ordination of the Execution and installation of the Equipment and each element with the others, and for the co-ordination of the Execution of the Works with the execution of Related Works, to ensure that the Works when complete will meet the Contract requirements. Such representative shall be known as the Construction Co-ordinator. From the commencement of the Works until the issue of the Taking-Over Certificate for the Whole of the Works the Construction Co-ordinator shall give his full time to this task; and
8. a representative who shall be responsible for and give his full time and attention to the management and effective operation of the Quality Assurance Plan. Such representative shall be known as the Quality Assurance Manager and shall not be otherwise engaged in the Execution of the Works; and
9. a representative, who shall be resident in a location convenient to the Site, who shall be responsible for the planning and management of all temporary diversions of roads, accesses, drainage systems, utilities and the co-ordination of these with the Works and the Related Works and the implementation and management of the Airside Zone rules and regulations. Such representative shall be known as the Temporary Facilities Co-ordinator. From the commencement of such obligations until the satisfactory completion thereof the Temporary Facilities Co-ordinator shall give his full time thereto.

### 17.3 Restrictions on Representatives

- A. The Project Manager, Deputy Project Manager, Construction Superintendent, the Operations and Maintenance Supervisor, Construction Co-ordinator, Quality Assurance Manager and the Temporary Facilities Co-ordinator and all the sub-representatives shall:
  1. be approved of in writing by the Employer's Representative (which approval may at any time be withdrawn without the Employer's Representative being required to state any reason therefor in which event the relevant personnel shall be replaced immediately by another representative authorised and approved as aforesaid); and
  2. not be replaced without the prior written approval of the Employer's Representative; and
  3. be empowered to receive and shall receive on behalf of the Contractor decisions, directions, orders and instructions given to him by the Employer's Representative; and
  4. be fluent in the English language; and
  5. be competent and authorised by the Contractor. Without in any way limiting the generality of the word "competent" where used in Clause



17.3, a representative or person shall not be regarded as competent unless he is qualified by appropriate professional qualifications and experience.

#### 17.4 English speaking persons

- A. The Contractor shall provide and shall, if so required by the Employer's Representative, procure that any Sub-Contractor and Supplier shall provide competent and authorised English speaking persons on all parts of the Works (including premises where manufacture is being undertaken) whose English shall be sufficiently fluent to allow them to discuss and explain the technical aspects of the part of Works in question. Such persons shall be approved by the Employer's Representative and must be present at any part of the Works where work is in progress, but need not be the person in charge of a part of the Works under paragraph (3) of Clause 17.2A. The English speaking person on any part of the Works shall also speak the language or languages of the Contractor's or Sub-Contractor's or Supplier's staff, as the case may be, on that part and shall speak such language or languages sufficiently fluently to allow him to discuss and explain the technical aspects of the part of the Works in question.

### 18. CONTRACTOR'S EMPLOYEES

#### 18.1 Contractor to provide skilled employee

- A. The Contractor and, where appropriate, any Sub-Contractor and Supplier shall provide and employ on the Site, or off-Site place of manufacture or storage, in connection with the Execution of the Works:
1. only such engineers and technical assistants as are skilled and experienced in their respective callings (which callings must be appropriate in the circumstances) and such engineers, managers, sub-representatives, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise; and
  2. only such engineers, technical assistants as are skilled and experienced in their respective callings (which callings must be appropriate in the circumstances) and such engineers, managers, sub-representatives, foremen and leading hands as are competent to give proper superintendence of the Execution of the Works; and
  3. such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely fulfilling of the Contractor's obligations under the Contract.

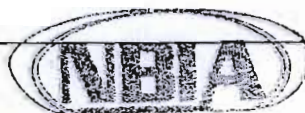
#### 18.2 Removal of Contractor's Employees

- A. The Employer's Representative may, without being required to state any reason, object to and require the Contractor to remove forthwith from the Site or off-Site place of manufacture or storage any person employed by the Contractor or any Sub-Contractor or Supplier in or about the Execution of the Works who, in the opinion of the Employer's Representative, misconducts himself, or is inappropriately qualified, or is incompetent or negligent in the proper performance of his duties, or whose presence on the Site or off-Site place of manufacture or storage is otherwise considered by the Employer's Representative in his absolute discretion to be undesirable, and such person shall not be again employed in connection with the Contract without the written permission of the



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Employer's Representative. Any person so removed shall be replaced as soon as possible by a competent substitute approved by the Employer's Representative.

### 18.3 Contractor not to remove Representative

- A. The Contractor shall not remove the Project Manager or any other members of his supervision team from the Works without the prior written approval of the Employer's Representative and if such approval is given the Contractor shall be responsible for replacing such person or persons forthwith with a person or persons of equivalent skills, qualifications and experience who shall have been previously approved by the Employer's Representative.

### 18.4 No extension of time

- A. The Contractor shall not be entitled to any claim for any extension of time or loss or expense whatsoever incurred by him in respect of any direction, objection, non-approval or withdrawal of approval by the Employer's Representative under Clauses 17 or 18.

## 19. SETTING-OUT

- A. The Contractor shall be responsible for the accurate and proper setting-out of the Works in relation to original points, lines and levels of reference given by the Employer's Representative in writing and for the correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.
- B. If, at any time during the progress of the Execution of the Works, any error shall appear or arise in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the Employer's Representative shall, at his own cost and with no entitlement to any extension of time, rectify such error to the satisfaction of the Employer's Representative.
- C. The Contractor shall submit to the Employer's Representative both the general and detailed methods of the complete setting-out of the various parts of the Works together with relevant calculations and setting-out dimensions thereby obtained. The Contractor shall keep up to date a plan showing the location of all permanent and temporary bench marks and coordinated marks with levels and coordinates and shall furnish to the Employer's Representative three (3) copies of the plan and each amendment thereof.
- D. The checking of any setting-out line or level by the Employer's Representative shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all benchmarks, sight-rails, pegs and other things used in setting-out the Works.

## 20. BOREHOLES AND EXPLORATORY EXCAVATION

- A. If, at any time during the Execution of the Works, the Employer's Representative requires the Contractor to make boreholes or to carry out exploratory excavation, such requirement shall be the subject of an instruction in accordance with Clause 56, unless an item or a Provisional Sum in respect of such work is included in the Bills of Quantities or the necessity for the same is, in the opinion of the Employer's Representative, reasonably to be inferred from the Contract Documents, or unless such boreholes or exploratory excavation are required for testing purposes in accordance with Clause 38.



## 21.1 General Obligations

- A. The Contractor shall throughout the Execution of the Works including the carrying out of any testing, commissioning, maintenance or remedying of any defects:
1. Comply with all safety and industrial health legislation including, without limitation, the rules and regulation of the National Safety Council of Thailand (NSCT) and the Announcement of the Ministry of Interior entitled "Working Safety";
  2. Take full responsibility for the adequacy, stability, safety and security of the Works, of all Equipment, Contractor's Plant, Temporary Works, operations on Site and methods of manufacture, installation, construction and transportation;
  3. Have full regard for the safety of all persons on or in the vicinity of the Site (including without limitation persons to whom access to the Site has been allowed by the Contractor pursuant to Clause 32), comply with all relevant safety regulations and insofar as the Contractor is in occupation or otherwise is using areas of the Site, keep the Site and the Works (so far as the same are not completed and occupied by the Employer) in an orderly state appropriate to the avoidance of injury to all persons;
  4. Provide and maintain all lights, guards, fences and warning signs and watchmen when and where necessary or required by the Employer's Representative or by laws or any relevant authority for the protection of the Works and for the safety and convenience of the public and all persons on or in the vicinity of the Site;
  5. Where any work would otherwise be carried out in darkness, ensure that all parts of the Site where work is being carried out are so lighted as to ensure the safety of all persons on or in the vicinity of the Site and of such work; and
  6. Take all reasonable steps to protect the environment on and off the Site and to avoid injury, nuisance or damage to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of the Execution of the Works.
  7. After obtaining any necessary approval or consent from any relevant authority, shall submit to the Employer's Representative in accordance with Clause 7 proposals showing the layout of pedestrian routes, lighting, signs and guarding for any road opening or traffic diversion which may be required in connection with the execution of the Works and which the Contractor intends to construct. No such road opening or traffic diversion shall be brought into operation or used unless the proposals submitted have been previously approved by the Employer's Representative and properly provided and implemented on the Site. Any approval given by the Employer's Representative to such proposals shall not relieve the Contractor of any obligations under the Contract or absolve the Contractor from any liability for or arising from such proposals or the implementation thereof.



8. Without derogating from the generality of the foregoing the Contractor shall consult with any relevant authority and shall take all reasonable and proper steps for protecting, securing, lighting and watching all places on or about the Works and the Site which may be dangerous to work people or any other person whomsoever. All lights provided by the Contractor shall be so placed or screened as not to interfere with any signal lights. The Contractor shall not in any way obscure or affect any lights, in use by any relevant authority, but in the event that the Contractor does so, the Contractor shall pay all costs associated with the re-siting, re-instating or provision of alternatives for any lights, obscured or affected.

- B. For the purposes of this Clause 21 only, "Site" shall include off-Site places of manufacture or storage and shall include any staging, storage and/or unloading areas provided to the Contractor by the Employer or others.
- C. The obligations and requirements for safety and industrial health under this Contract are entirely without prejudice to and do not derogate from the Contractor's statutory obligations with respect to safety and industrial health.

## 21.2 Employer's Responsibilities

- A. If, under Clause 32, the Employer shall cause Ancillary and/or Other Contractors to carry out work on the Site with their workmen he shall, in respect of such work require such contractors to:
1. have full regard to the safety of all persons entitled to be upon the Site; and
  2. keep the Site in an orderly state appropriate to the avoidance of danger to such persons.

## 22. CARE OF THE WORKS

### 22.1 Contractor to take full responsibility for care of the Works

- A. The Contractor shall, take full responsibility for the care of the Works or any part thereof, any work being manufactured or stored off-Site for inclusion in the Works or in the course of transportation to the Site, and for the care of Contractor's Plant, Temporary Works, Equipment and any other goods and materials whatsoever on the Site or delivered to or placed on the Site in connection with or for the purpose of the Execution of the Works from and including the date of commencement for the Execution of the Works notified pursuant to Clause 45 until the date of issue of the Taking-Over Certificate for the Whole of the Works (as certified by the Employer's Representative in accordance with Clause 51), when the responsibility for the said care shall pass to the Employer. Provided that;
1. if the Employer's Representative issues a Taking-Over Certificate in respect of any part of the Permanent Works, the Contractor shall cease to be responsible for the care of that part as from the date of issue of the relevant Taking-Over Certificate when the responsibility for the care of that part shall pass to the Employer; and



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2. the Contractor shall take full responsibility for the care of any outstanding Works (and Equipment, goods or materials for incorporation therein) which the Contractor shall have undertaken to finish during the Defects Liability Period until such outstanding Works have been completed pursuant to Clause 53 is complete; and
3. the Contractor shall continue to be responsible for the care of all things which are required to be retained on the Site during the Defects Liability Period, including Contractor's Plant, goods, materials and temporary buildings until the expiry of the Defects Liability Period and the completion of all outstanding obligations of the Contractor under the Contract; and
4. the Contractor shall take full responsibility for the care of the Works or any part thereof which require repair or remedy during the Guarantee Period (including as a result of endemic failure as certified under Clause 53.5), and for any part of the Works affected thereby, for the period that such Works are under repair or remedy by the Contractor.

## 22.2 Responsibility to Rectify Loss or Damage

- A. If any damage or loss happens to the Works or any part thereof, or to any work being manufactured or stored off-Site for inclusion in the Works or in the course of transportation to the Site, or to any Equipment or other goods and materials whatsoever on the Site or any off-Site places of manufacture or storage whilst the Contractor is responsible for the care thereof, from any cause whatsoever other than the risks defined in Clause 22.4, the Contractor shall at its own expense and with all possible speed rectify such loss or damage or at the option of the Employer shall pay or allow to the Employer the cost of rectifying such loss or damage in conformity with the provisions of the Contract and to the satisfaction of the Employer's Representative and shall, notwithstanding such loss or damage, proceed with the Execution of the Works in all respects in accordance with the Contract and the Employer's Representative's instructions. The Contractor shall also be liable for any loss or damage to the Works occasioned by the Contractor in the course of any operations carried out by it for the purpose of complying with its obligations under Clauses 53, 54 and 55.

## 22.3 Loss or Damage Due to Employer's Risks

- A. To the extent that any such loss or damage arises from any of the risks defined in Clause 22.4, or from such risk in conjunction with any other risk the Contractor shall, if instructed in writing by the Employer's Representative, rectify the loss or damage at the expense or proportionate expense of the Employer, to be valued and determined subject to Clause 60 by the Employer's Representative in accordance with Clause 57. In the case of loss or damage caused by a risk in combination with any other risk any such valuation shall take into account the proportional responsibility of the Contractor and the Employer.

## 22.4 Employer's Risks

- A. The Employer's Risks are:
  1. war, hostilities (whether war be declared or not), invasion, act of foreign enemies; and


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2. rebellion, revolution, insurrection, or military or usurped power, or civil war; and
3. ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; and
4. pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
5. riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Sub-Contractors and/ or Suppliers and arising from the Execution of the Works; and
6. loss or damage due to the use or occupation by the Employer of any part of the Permanent Works, except as may be provided for in the Contract; and
7. loss or damage to the extent that it is due to the design of the Works as prepared by the Employer; and
8. any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions.

## 22.5 Contractor's Risks

- A. Save as may be expressly provided in the Contract, the Contractor's risks are all risks other than the Employer's Risks.

## 23. INSURANCE OF WORKS

### 23.1 Project Insurance – Employer's Directed Insurances

- A. Without limiting the Contractor's obligations, responsibilities and liabilities under the Contract, the Contractor shall effect and maintain in force at its own expense the following insurances as issued by Dhipaya Insurance Pcl. which form part of the Employer's Integrated Insurances Program and which shall be for the benefit of, and shall name as insured parties, the Employer and its agents and representatives; the Contractor, Sub-contractors and Suppliers, of any tier, and any other such parties that the Employer may elect.
- B. The Employer's Integrated Insurance Program arranged by Dhipaya Insurance Pcl., the terms of which are referred to in **Appendix 7** hereto, provides the following Contract insurance coverage:-

### 23.2 Works and Liability Insurance

- A. "Construction All Risks" Insurance
1. Insurance covering strikes, riots and civil commotion and loss or damage to the Works for their full replacement value including any Equipment, unfixed materials or other things delivered to the Site for incorporation therein, on an "All Risks" basis, subject to standard exclusions and limits appropriate for a contract this nature, or from a cause occurring on the Site or caused by the Contractor in the course of any operation carried out



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Signature



by it for the purpose of complying with its obligations under this Contract or due to any act, omission or default of the Contractor.

2. This insurance will also provide cover:-

- i. from the commencement of loading of any Equipment, materials or other things within Thailand for transit to the Site; and
- ii. during the Defects Liability Period against any loss or damage for which the Contractor is liable under Clause 53 including, without limitation, any loss or damage which is caused by the Contractor in completing any outstanding work or complying with its obligations under Clause 53.

B. Contractors Plant and Equipment Insurance

1. Insurance for the full replacement value, against all loss or damage from whatsoever cause arising in respect of Contractor's Plant and equipment and other items brought onto or destined for the Site and for use in the Execution of the Works.

C. Marine Cargo Insurance

1. Marine Cargo Insurance on "All Risks" conditions known as Institute Cargo Clauses "A" 1/1/82 (as appropriate to the nature of the cargo) including war, strikes, riots and civil commotion and loss of or damage to all materials and/or equipment for the Works whilst in transit and/or shipment from outside Thailand until delivery to Site and whilst in storage anywhere in the world during such transit / shipment including return shipments.

D. Liability Insurance

1. Third Party Liability insurance covering the Employer, its employees and its agents and representatives, the Contractor and their respective employees, Sub-Contractors and Suppliers, and their personnel (in each case for their respective interests in relation to the Works) against liabilities to third parties.
2. This insurance includes coverage against liability for damage, loss or injury, which may occur to any property, or to any person (other than employees of the Contractor, Sub-Contractor or Supplier), by or arising out of the Execution of the Works or in carrying out the Contract.
3. The insurance policy contains the following clause:-
  - i. "The insurance afforded by this policy shall apply with respect to any liability or alleged liability of any one Insured to any other Insured as if separate policies had been issued to each insured.
  - ii. Any act or omission on the part of any insured hereunder shall not prejudice the interests of any other Insured under this policy".





- E. In so far as the Contractor is dissatisfied with the terms and conditions of the Project Insurance the Contractor may effect at his own cost such additional insurance, as he may consider necessary.

### 23.3 Contractor's Insurances

- A. Without limiting the Contractor's obligations, responsibilities and liabilities under this Contract, the Contractor shall effect and maintain in force at its own expense, the following insurances, in accordance with **Appendix 8**, which shall be for the benefit of and name as insured parties the Employer and its agents and representatives, the Contractor, Sub-Contractors and Suppliers, of any tier, and such other parties as the Employer may elect.
- B. Workmen's Compensation / Employers Liability Insurance
1. Insurance in respect of injury or illness to the Contractor's employees as required by the laws of the Kingdom of Thailand and of any other country applicable to those employees and, where employees may have an option to sue under common law, for Employer's Liability risks.
- C. Professional Indemnity Insurance
1. NOT USED.
  2. NOT USED
- D. Motor Insurance
1. Policies of motor insurance covering third party liability in respect of all mechanically propelled vehicles licenced for road use and used in connection with the Works by the Contractor.
- E. Aviation Insurance
1. Aviation, hull and liability insurance in respect of the use of any aircraft, helicopters and the like in connection with the execution of the Works, the amount and terms of such cover to be agreed with the Employer prior to the use of any such aircraft, helicopters and the like.
- F. Watercraft Insurance
1. Watercraft, hull and liability insurance in respect of the use of any watercraft and the like in connection with the execution of the Works, the amount and terms of such cover to be agreed with the Employer prior to the use of any such Watercraft and the like.
- G. Sub-Contractor and Supplier Required Insurances
1. The Contractor shall cause each Sub-Contractor and Supplier to maintain similar Insurances in respect of its plant and equipment, liability to its employees, motor vehicles, and materials. All such insurances shall comply with the requirements of this Clause 23.



- H. The following general requirements apply to all Insurance pursuant to Clauses 23.2 and 23.3.

#### 23.4 Employer Directed Insurances

- A. The Contractor shall provide the Employer and/or its agents and representatives with all such assistance, Construction Documents and other information as it may reasonably require to implement the insurances referred to in Clause 23.2.
- B. All such insurances as specified in Clause 23.2 shall be effected and maintained in accordance with the approved terms and conditions of the Employer's Integrated Insurance Programme as issued by the Lippaya Insurance Pcl.
- C. If the Contractor fails to effect and keep in force any of the insurance referred to in Clause 23.2 the Employer may effect or change and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and recover from the Contractor the cost of effecting such insurance.
- D. The Contractor shall ensure that prior to commencement of Works subcontracted to any particular Sub-Contractor or Supplier, the relevant Sub-Contractor or Supplier is supplied with a copy of the policies of insurance relating to the insurances required to be maintained by the Contractor pursuant to Clause 23.2 and that the relevant Sub-Contractor or Supplier executes a written acknowledgement on terms to be approved by the Employer that the Sub-Contractor or Supplier is aware of the terms of such insurance and will take no action, nor omit to take any action, which may jeopardise the validity, scope or enforceability of such insurances.
- E. The Employer shall not be obliged to compensate the Contractor for loss or damage to the Contractor's Plant, and/or other equipment or property of the Contractor to the extent that full and total compensation for such loss or damage is actually recovered by the Contractor from a claim under any insurance taken out by the Contractor.
- F. All policies of insurance naming more than one party, as an Insured, shall contain a waiver of subrogation clause applying to each insured. Such policies shall also contain a clause stating that the breach of a policy term, condition or warranty, express or implied, by one insured shall not prejudice the cover granted by the policy to any other insured who has not breached the term, condition or warranty.
- G. If any insurances required pursuant to Clause 23.2 lapse or are vitiated by any breach, misrepresentation, act or omission by the Contractor or any of its Sub-Contractors or Suppliers, the Contractor shall indemnify the Employer in respect of all costs, losses, expenses, liabilities and damages which arise or result from such vitiation.
- H. The Contractor shall comply with and shall cause its Sub-Contractors and Suppliers to comply with any claims or accident notification recording and investigation procedures required by the Employer in connection with the insurances referred to in Clause 23.2. The Contractor will assume full responsibility for the consequences of any failure by the Contractor or his Sub-Contractors or Suppliers to comply with the terms and conditions of the required procedures.



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- I. All costs and incidental expenses incurred (and any excesses and deductibles thereunder) in relation to claims under the policies referred to in Clause 23.2 shall be borne by the Contractor.
- J. The Employer's interests in the policies of insurance described in Clause 23.2 and/or any rights or benefits of the Employer arising thereunder shall, if the Employer so directs be assigned, mortgaged or otherwise disposed of as security for the Employer's obligations in relation to any finance provided for the Works, or to any agent on their behalf.
- K. Any payments by the Insurers under the policies referred to in Clause 23.2A, and 23.2C where the claim is in excess of US\$ 5,000,000 shall be paid in the first instance to the Employer or at the Employer's direction.

### 23.5 Contractors Insurance

- A. All insurance maintained by Contractor, by the terms of Clause 23.3 shall be primary to and not contributing with any insurance carried by the Employer, shall name the Employer and any other such persons as the Employer may specify in writing as additional insureds; shall include an insurer's waiver of subrogation clause and severability of interests clause in favor of all insured parties; and shall further provide that the insurance carrier furnish the Employer with written notice at least ninety (90) Days prior to the effective date of any material change, cancellation or non-renewal of the insurance.
- B. If any insurances required pursuant to Clause 23.3 lapse or are vitiated by any breach, misrepresentation, act or omission by the Contractor or any of its Sub-Contractors or Suppliers, the Contractor shall indemnify the Employer in respect of all costs, losses, expenses, liabilities and damages which arise or result from such lapse or vitiation.
- C. All costs and incidental expenses incurred (and any excesses and deductibles thereunder) in relation to claims under the policies referred to in Clauses 23.3 shall be borne by the Contractor.

## 24. DAMAGE TO PERSONS AND PROPERTY

### 24.1 Contractor to Indemnify Employer

- A. The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect of:

1. death of or injury to any person, or
2. loss of or damage to any property,

which may arise out of or in consequence of the Execution of the Works and the remedying of any defects therein (including in consequence of the defective design, materials or workmanship of the Contractor or the failure of the Works to meet in any or all respects the requirements of the Contract), and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to the exceptions defined in Clause 24.2.



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## 24.2 Exceptions

- A. The Contractor shall, except if and in so far as the Contract provides otherwise, indemnify and save harmless the Employer, its agents against all losses and claims in respect of injuries or damage to any person or material or physical damage to any property whatsoever which may arise out of or in consequence of the Execution of the Work and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto, as detailed in Clause 24.1, except any compensation or damages for or with respect to:-
1. The permanent use or occupation of land by the Works or any part thereof, which is not caused by the fault of the Contractor, his agents or his employee contributed.
  2. The right of the Employer to execute the Works or any part thereof on, over, under, in or through any land,
  3. Injuries or damages to persons or property solely resulting from any act or neglect of the Employer or his employees.

## 24.3 Indemnity by Employer

Not Used

## 24.4 Contribution

Not Used

## 25. ACCIDENT OR INJURY TO WORKMEN

### 25.1 Contractor to indemnify Employer

- A. The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect of or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any Sub-Contractor or Supplier, of any tier, other than in respect of death or injury resulting from any act or default of the Employer, his agents, Ancillary Contractors or Other Contractors not being employed by the Contractor or under his control. The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, other than those for which the Employer is liable as aforesaid, and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

### 25.2 Insurance Against Accident to Workmen

- A. The Contractor shall forthwith, and as a condition precedent to the commencement of any work under the Contract, take out at his own expense in the joint names of the Employer and the Contractor the insurances referred to in Clause 23.3B.
- B. The Contractor shall maintain the said policy or policies in full force and effect by payment of all premiums from time to time on the first Day on which the same ought to be paid until the issue of the Defects Liability Certificate or the expiry of any relevant Guarantee Period whichever is the later, and the Contractor shall produce to the Employer's Representative, upon request, documentary evidence





and receipts showing that the said policy or policies have been taken out and are being maintained.

### 25.3 Non-waiver of Employer's right to Indemnity

- A. Nothing in this Clause 25 shall be construed to take away or to waive or in any manner to modify the right of the Employer to be indemnified by the Contractor under Clause 25.1 in respect of all damages and compensation whatsoever which by reason of the Contractor's default or otherwise become payable by the Employer and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

### 25.4 Contractor to give notice of injury

- A. In the event of any workman or other person employed on the Works or in connection with the Contract, whether in the employ of the Contractor or a Sub-Contractor or Supplier, of any tier, suffering any personal injury and whether there be a claim for compensation or not, the Contractor shall, without delay, notify the Department of Labour in such form as the Department of Labour Protection and Welfare of the Ministry of Labour and Social Welfare may require and shall forward two copies of such notification to the Employer's Representative.

## 26. EVIDENCE AND TERMS OF INSURANCES

### 26.1 Contractor and Employer to provide evidence that insurances effected

- A. The Contractor shall provide evidence to the Employer's Representative prior to the start of Execution of the Works that the insurances required to be effected by the Contractor under the Contract have been effected. The Employer and the Contractor each shall, within eighty-four (84) Days of the commencement of the Works, provide copies of the insurance policies required to be effected by each of them to the other. The Contractor shall effect all insurances for which he is responsible with insurers and in terms approved by the Employer.

### 26.2 Adequacy of Insurances

- A. The Contractor shall notify the insurers of changes in the nature, extent or programme for the Execution of the Works and ensure the adequacy of the insurances at all times in accordance with the terms of the Contract and shall, when required, produce to the Employer the insurance policies in force and the receipts for payment of the current premiums.

### 26.3 Remedy on Failure to Insure

- A. If the Contractor fails to effect and keep in force any of the insurances required under the Contract, or fails to provide the copies of the policies within the period required by Clause 26.1, then and in any such case the Employer may effect and keep in force any such insurances and pay any premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Contractor, or recover the same as a debt due from the Contractor.

### 26.4 Compliance with Policy Conditions

- A. In the event that the Contractor fails to comply with conditions imposed by the insurance policies effected pursuant to the Contract, the Contractor shall indemnify the Employer against all losses and claims arising from such failure.



## 27. COMPLIANCE WITH STATUTES, REGULATIONS

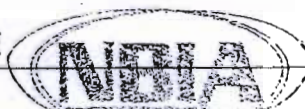
### 27.1 Statutory Requirements

- A. The Contractor shall conform in all respects, including by the giving of all notices, the procuring of all approvals and the paying of all fees, with the provisions of:

1. any law, Ordinance, or any regulation, or bye-law of any local or other duly constituted authority in relation to the Execution of the Works; and
2. the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works;

(all such requirements to be so complied with being referred to in these conditions as the "Statutory Requirements") and the Contractor shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such provisions. Provided always that the Contractor shall not in the compliance of his obligations herein submit for approval any drawing and/or Construction Document or offer for inspection any of the Works until such drawing and/or Construction Document has been approved pursuant to the provisions of Clause 7.2 or the Works inspected by the Employer's Representative. Notwithstanding the abovesaid, the Employer shall be responsible for obtaining the requisite approval for the overall layout and land use of the Project Site.

- B. If the Contractor or the Employer's Representative finds any divergence between the Statutory Requirements and the Contract Documents, he shall immediately give to the other written notice specifying the divergence. Except in the case where the divergence arises solely from the design, whether in whole or in part, of the design prepared by the Employer, the Contractor shall inform the Employer's Representative, in writing of the Contractor's proposed amendment for removing the divergence, and with the Employer's Representative's consent (which shall not be unreasonably delayed or withheld) the Contractor shall entirely at the Contractor's own cost complete the Execution of the Works in accordance with the amendment which shall be deemed to be part of the Contract. Provided that where the divergence in question is between the Statutory Requirements and the design prepared by the Employer then the Contractor shall, subject to Clauses 48 and 60, be entitled to receive such additional costs and such extension of time as may in all the circumstances be reasonable in the opinion of the Employer's Representative.
- C. If in any emergency compliance with Clause 27.1A requires the Contractor to supply materials or execute work before receiving the Employer's Representative's consent under Clause 27.1B, the Contractor shall supply such limited materials and execute such limited works as are reasonably necessary to secure immediate compliance with the Statutory Requirements.
- D. The Contractor shall forthwith inform the Employer's Representative of the emergency and of the steps that he is taking under Clause 27.1C.





**27.2 Fees, Charges and Works required by Statutory Authorities**

- A. The Contractor shall pay and indemnify the Employer against liability in respect of any fees or charges (including any rates or taxes) legally demandable under any written law, regulation or bye law of any local authority or of any statutory undertaker in respect of the Execution of the Works. No adjustment shall be made to the Contract Price in respect of the amount of any such fees or charges (including any rates or taxes) or in respect of the cost of carrying out any ancillary works reasonably required by any statutory undertaker, which the Contractor shall carry out at his own cost without any entitlement to an extension of time therefore, unless they are stated by way of a Provisional Sum in the Contract in which case Clause 64 shall apply.

**28. FOSSILS**

- A. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be deemed to be the absolute property of the Employer. The Contractor shall take all reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, acquaint the Employer's Representative of such discovery and carry out the Employer's Representative's instructions for dealing with the same. If, by reason of such instructions, the Contractor suffers delay and/or incurs costs then the Employer's Representative shall, after due consultation with the Contractor, determine:
1. any extension of time to which the Contractor is entitled under Clause 48; and
  2. the amount of such costs, which shall be added to the Contract Price;
- and shall notify the Contractor accordingly.

**29. COPYRIGHT, PATENT RIGHTS AND ROYALTIES****29.1 Intellectual Property to pass to Employer**

- A. The copyright and other intellectual property rights in all Contract Documents and all data prepared for the purposes of the Execution of the Works shall (save only in the case of the patent of patented specialist systems) become the property of and shall be assigned to the Employer for the purposes of the Project and for the operation and maintenance thereof, and any future alteration and/or extension thereto and the Contractor shall not use the same except for the proper performance of his obligations under the Contract. The Contractor shall grant or cause to be granted a non-exclusive licence to the Employer for the use of any patent rights in patented specialist systems. The Contractor warrants that there is no infringement of any intellectual property right, whether copyright; design right or otherwise in respect of the rights assigned to the Employer pursuant to this Clause 29.1.
- B. To the extent beneficial ownership of any such copyright or other intellectual property right is vested in anyone other than the Contractor, the Contractor shall use his best endeavours to procure that the beneficial owner thereof shall assign to the Employer such rights as aforesaid and shall, to the extent that such beneficial ownership is not attainable, grant or cause to be granted a non-





exclusive licence to the Employer for the use of any such patent rights, design, trademark, name or other protected rights for the purposes of the Project and for the operation and maintenance thereof and any future alteration and/or extension thereto.

## 29.2 Royalties

- A. Except where otherwise stated, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Execution of the Works.

## 29.3 Indemnity to Employer

- A. The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, registered design, trademark or name or other protected intellectual property rights related to or in any way connected with the Execution of the Works and in respect of any Contractor's Plant, materials, Equipment used for or in connection with or for incorporation in the Works and from and against all damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

## 29.4 Proprietary Software

- A. If the Contractor uses proprietary software for the purpose of storing or utilising records maintained in accordance with Clause 60.2B, the Contractor shall procure at its own expense the grant of a licence or sub-licence to use such software in favour of the Employer and shall pay such licence fee or other payment as the grantor of such licence may require provided that the use of such software under the licence may be restricted to use relating to the construction, reconstruction, completion, maintenance, reinstatement, extension, repair and operation of the Works or any part thereof.

## 29.5 Use of Software

- A. If any software is developed by the Contractor specifically for the Execution of the Works the property thereto shall vest in the Employer and the Contractor shall grant to the Employer a non-exclusive irrevocable and royalty-free licence to use, repair, copy, modify, enhance, adapt and translate in any form such software for its own use.
- B. If any Software is developed under the Contract or used by the Contractor for the purposes of storing or utilising records maintained in accordance with Clause 60.2B, over which the Contractor or a third party holds property or other rights, the Contractor shall permit or procure for the Employer (as the case may require) the right to use and apply that Software free of additional charge (together with any modifications, improvements and developments thereof) for the purpose of the design, manufacture, installation, reconstruction, testing, commissioning, completion, maintenance, reinstatement, extension, repair, modification or operation of the Works or any part thereof or for the purpose of any Dispute.
- C. The Contractor's permission referred to in Clause 29.5B shall be given, inter alia, to enable the Employer to disclose (under conditions of confidentiality satisfactory to the Contractor) programmes and documentation for a third party to undertake the performance of services for the Employer in respect of such programmes and documentation.
- D. The Employer reserves the right to use other Software on or in connection with the Project.





**30. INTERFERENCE WITH TRAFFIC AND ADJOINING PROPERTIES**

- A. All operations necessary for the Execution of the Works shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with:
1. the convenience of the public; or
  2. the access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Employer or of any other person.
- B. The Contractor shall save harmless and indemnify the Employer in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any breach by the Contractor of his obligations under this Clause 30.

**31. AVOIDANCE OF DAMAGE TO ROADS****31.1 Contractor to prevent damage to roads and bridges**

- A. The Contractor shall use every reasonable means to prevent any of the roads or bridges communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his Sub-Contractors or Suppliers, of any tier, and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of materials, Equipment, or any part thereof, Contractor's Plant or Temporary Works from and to the Site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such roads and bridges.

**31.2 Transport of Contractor's Plant or Temporary Works etc**

- A. Save insofar as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any road communicating with or on the routes to the Site to facilitate the movement of materials, Equipment, or any part thereof, Contractor's Plant or Temporary Works and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any such road or bridge caused by such movement, including such claims as may be made directly against the Employer, and shall negotiate and pay all claims arising solely out of such damage.

**31.3 Transport of Materials and Equipment**

- A. If, notwithstanding Clause 31.1, any damage occurs to any bridge or road communicating with or on the routes to the Site arising from the transport of materials, Equipment, or any part thereof, Contractor's Plant or Temporary Works, the Contractor shall notify the Employer's Representative with a copy to the Employer, as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. The Contractor shall negotiate the settlement of, and pay all sums due in respect of, such claim and shall indemnify the Employer in respect thereof and in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto.

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**31.4 Water-borne Traffic**

- A. Where the nature of the Execution of the Works is such as to require the use by the Contractor of water-borne transport, the foregoing provisions of this Clause 31 shall be construed as though "road" included a lock, dock, sea wall or other structure related to a waterway and "vehicle" included craft, and shall have effect accordingly.

**31.5 Provision and Maintenance of roads and access**

- A. The Contractor shall provide and maintain all roadways or access ways on the Site he may require and shall remove and/or reinstate at the Contractor's own cost the said roadways and access ways if so required by the Employer's Representative. The Contractor shall permit without charge the use by the Employer and any other contractors employed by the Employer of any roads or access ways provided by the Contractor, subject to such use not causing unreasonable damage or interference with the Contractor.

**32. CO-ORDINATION OF THE WORKS AND RELATED WORKS**

(See Additional Information in A.8) of Tender Documents Addendum No.2 of February 2003 AP3-TA-05)

**32.1 Related Works**

- A. The Contractor acknowledges that the Employer will have Related Works performed and that it is of paramount importance that in the preparation, co-ordination and submittal of the Construction Documents the Contractor ensures that they are fully responsive to the requirements of the Ancillary Contractors, Other Contractors and the Related Works. As such this will enable the Execution of the Works to be fully and completely co-ordinated with the Related Works in view of their concurrent and sequential nature. The Contractor acknowledges that the completion of Stages and Key Dates by their respective Key Dates is of the utmost importance to the successful co-ordination and integration of the Works with the Related Works and to the timely completion of the Project.
- B. Accordingly, the Contractor shall be deemed to be aware that the Project requires continuous and close co-ordination and co-operation amongst the Employer, Employer's Representative, Contractor, Ancillary Contractors and Other Contractors during the implementation of the Project.

**32.2 Co-ordination Meetings**

- A. Either the Employer's Representative or the Contractor may require the other to attend a co-ordination meeting. The business of each meeting shall be to review the anticipated arrangements for future work and to resolve any matters raised in accordance with this Clause 32. The Employer's Representative shall record the business of the meetings and provide copies of the record to those attending the meeting, the Contractor and to the Employer. The responsibility of the parties for any actions to be taken shall be included in such record and shall, if not agreed in accordance with the Contract, be decided by the Employer's Representative.

**32.3 Contractor's Co-ordination**

- A. The Contractor shall notify the Employer's Representative at the earliest opportunity of specific likely future events or circumstances, which may adversely affect the work, increase the Contract Price or delay the Execution of



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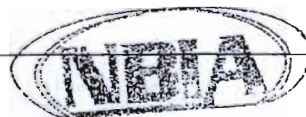
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the Works. The Employer's Representative may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Clause 56. The Contractor shall submit such estimate and/or proposal as soon as practicable. The Contractor's representative shall co-operate with the Employer's Representative in making and considering proposals to mitigate the effect of any such event or circumstances, and in carrying out instructions of the Employer's Representative.

- B. The Contractor, utilising the expertise to be expected of a contractor experienced in undertaking work of the size and complexity of the Works and using all reasonable endeavours, shall Execute the Works so as to co-ordinate the Works with the activities of the Related Works of Ancillary Contractors and/or Other Contractors and at all times and otherwise in accordance with the requirements and directions of the Employer's Representative and at no cost to the Employer, shall:
1. take all reasonable steps to ensure that the Works are co-ordinated and to the extent physically possible integrated within the drawings and Construction Documents and the Execution of the Works, including the work of Sub-Contractors and Suppliers, with the activities of Ancillary Contractors and/or Other Contractors employed by the Employer in connection with the design and execution of the Related Works and others who may be engaged on the Site (whether employed by the Employer or not) or who are on or carry out work on the Project Site, and in particular liaise, consult and co-operate with all authorised parties responsible for the Related Works including the preparation of joint co-ordinated programmes, method statements, co-ordination drawings and specifications;
  2. attend such co-ordination meetings called by the Employer's Representative to plan, review and determine co-ordinated activities for the management of interfaces between the Works and the Related Works;
  3. plan, programme, and perform the co-ordination, preparation and submittal of drawings and Construction Documents and the Execution of the Works so as to minimise any interference with or hindrance of the performance of the Related Works;
  4. provide promptly to the Employer's Representative all drawings and Construction Documents relating to the Execution of the Works which impact on the activities or Related Works of Ancillary Contractors and/or Other Contractors provided that such drawings and Construction Documents have been requested in writing from the Contractor by the Employer's Representative;
  5. request promptly from the Employer's Representative all Drawings, Specifications, other documents and information relating to the activities and Related Works of Ancillary Contractors and/or Other Contractors which impact on the Execution of the Works to the extent that the Contractor knows or ought reasonably to have known that such Drawings, Specification, other documents or information is or are available;
  6. allow reasonable access and, to the extent required by **Appendix 13** or otherwise, reasonable use of facilities to, and obtain the same from





Ancillary Contractors and/or Other Contractors and effectively integrate security, safety and similar matters;

7. analyse all documents and information made available to the Contractor by the Employer's Representative relating to the Related Works of Ancillary Contractors and/or Other Contractors ;
8. comply with the procedures in the Contract relating to co-ordination;
9. keep the Employer's Representative fully informed of all communication with Ancillary Contractors and/or Other Contractors relating to the co-ordination of the Works with the activities and Related Works of Ancillary Contractors and/or Other Contractors;
10. ensure that the full extent of the Works under the Contract and the works to be carried out by Ancillary Contractors and/or Other Contractors within the Works or in on under through and over the Site are co-ordinated and integrated in their manufacture, installation and construction documents. Such responsibility shall neither be reduced nor in any other way affected by virtue of similar responsibilities being placed on Ancillary Contractors and/or Other Contractors;
11. at all times refrain from carrying out any operation on Site in a manner which is likely to cause damage or inconvenience to the execution of the Related Works; where such damage or inconvenience is the unavoidable consequence of operations properly to be carried out on Site, the Contractor shall not carry out such operations without first giving reasonable advance notice in writing thereof to the Employer's Representative (with a copy to those responsible for carrying out the Related Works reasonably likely to be affected thereby) with a view to reaching an agreed procedure to prevent or minimise any such damage or inconvenience. In particular, at all times prevent the discharge of surface water from the Site into adjacent areas of the Project Site except where such discharge is approved in advance by the Employer's Representative;
12. without in any way derogating from the generality of Clause 22, at all times take all necessary steps to protect the Works from accidental damage caused by the Related Works;
13. at all times co-operate with the Employer, the Employer's Representative, Ancillary Contractors and Other Contractors who may be engaged on the Site for the Related Works so as to promote and foster a co-ordinated and integrated approach to the Execution of the Works and the Related Works;
14. take all reasonable steps to co-ordinate with and afford all reasonable access to Ancillary Contractors and/or Other Contractors and others who may be engaged on the Site (whether employed by the Employer or not) or who are on or carry out work on the Project Site;
15. comply with all his obligations as to interfacing the Works with the Related Works as are detailed in the Contract;
16. monitor all such steps aforesaid in connection with the co-ordination and integration of the Works with the Related Works and advise the



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Employer's Representative in writing as and when it becomes apparent that the co-ordination, preparation and submittal of drawings and Construction Documents or the Execution of the Works is likely to be the subject of delay and/or disruption and recommend reasonable proposals to reduce or prevent such delay and/or disruption;

- C. The Contractor shall, prior to submittal of any drawings and Construction Document, with the Ancillary Contractor and/or Other Contractor with whose Related Works there is an interface jointly state in writing that their co-ordination activities are complete and that their respective drawings and Construction Documents are fully integrated and co-ordinated and can be finalised without interference with each other's progress. A copy of this joint written statement shall be provided to the Employer's Representative seven (7) Days prior to submittal of the referred to drawings and Construction Documents. Unless and until copies of all relevant and necessary drawings, Construction Documents and co-ordination statements have been submitted to the Employer's Representative, the Employer's Representative shall be entitled to suspend any review or further review of the Contractor's, Ancillary Contractor's and/or the Other Contractor's drawings and/or Construction Document submissions. Such suspension shall not be grounds for the Contractor to claim nor be entitled to receive an extension of time or additional payments.

#### 32.4 Employer's Representative's Co-ordination

- A. Without prejudice to the Contractor's obligations under Clause 32.3, the Employer's Representative shall convene regular co-ordination meetings with the Contractor, Ancillary Contractors and/or Other Contractors for the purpose of co-ordinating the Contractor, Ancillary Contractors and/or Other Contractors engaged on the Site responsible for the Related Works in order to:
1. plan, review and determine co-ordinated activities for the management of interfaces between the Works and the Related Works, including those proposals of the Contractor submitted pursuant to Clause 14; and
  2. resolve conflicts in the order and sequence of the Works and Related Works in order to effect reasonable co-ordination and to the extent physically possible integration of the Execution of the Works with the execution of the Related Works; and
  3. advise the Contractor of further developments in respect of the design and execution of the Project including where appropriate details of Related Works; and
  4. co-ordinate the activities of the Contractor, Ancillary Contractors and/or relevant Other Contractors by issuing Drawings, Specifications and instructions pursuant to the other provisions of the Contract; and
  5. monitor and co-ordinate the construction activities of the Contractor, Ancillary Contractors and/or relevant Other Contractors by issuing, where necessary, relevant updated instructions pursuant to the other provisions of the Contract.
- B. In the event that the preparation, co-ordination and submittal of drawings and Construction Documents and the Execution of the Works and the execution of the Related Works are not being co-ordinated and integrated to the reasonable



satisfaction of the Employer's Representative, the Employer's Representative may issue such instructions as are necessary including, but not limited to:

1. suspending the progress of the preparation, co-ordination and submittal of drawings and Construction Documents, by the Contractor, or the Execution of the Works or any part thereof; and/or
  2. varying the Works including the removal of work from the Contract and its execution by others.
- C. For the avoidance of doubt, where the Employer's Representative determines that an instruction under this Clause 32.4B is required as a result of a breach by the Contractor of his obligations under this Clause 32, the Contractor shall not be entitled to any expenses or loss of profit in respect of any such instruction or to any extension of time in respect thereof and the cost to the Employer of such instruction including the cost of any such suspension, or removal and execution by others shall be deducted from the Contract Price.
- D. In the event that the preparation, co-ordination and submittal of drawings and Construction Documents and the Execution of the Works and the execution of the Related Works are unable to be co-ordinated and integrated in accordance with this Clause 32 as a result of circumstances beyond the control of the Contractor, the Contractor may request the Employer's Representative:
1. to issue within ten (10) Days of the Contractor's request such instructions as the Employer's Representative may consider necessary to enable the Contractor to comply with his obligations under this Clause 32 including but not limited to such instructions detailed in Clause 32.4B; and/or
  2. to procure the removal of the hindrance or impedance preventing the Contractor from complying with his obligations under this Clause 32 as soon as possible after the Contractor's request.
- E. Without prejudice to the generality of Clauses 48 and 60 if the Contractor considers that compliance with the instructions of the Employer's Representative under Clauses 32.4B and 32.4D may entitle him to additional payment in respect of the additional costs of compliance therewith and/or an extension of time in respect of delays occasioned thereby, it shall be a condition precedent to such entitlement that the Contractor shall prior to complying therewith have so notified the Employer's Representative within seven (7) Days of receipt of such instructions and provided the Employer's Representative with a detailed estimate of such additional costs and/or delays that the Contractor considers will occur or arise.
- F. Subject to the Contractor's compliance with Clause 32.4E and provided always that the instructions issued by the Employer's Representative pursuant to Clauses 32.4B and 32.4D do not arise from circumstances occasioned by the Contractor's default in complying with this Clause 32 the Contractor shall be entitled to receive:
1. such additional costs; and/or
  2. such extension of time;
- as may in all the circumstances be fair and reasonable.





- G. Any other contract, which depends for its execution on the Contract or upon which, the Contract is dependent for its own execution, shall be identified by the Employer's Representative as an "Ancillary Contract". The Ancillary Contracts, which depend for their execution on the Contract, are identified in **Appendix 10** hereto. The Contractor shall provide attendance on Ancillary Contracts in accordance with the Contract and as instructed by the Employer's Representative. The identity of the Ancillary Contractor for an Ancillary Contract may not be known before the execution of the Contract but this shall not be a ground for the Contractor to object to the subsequent appointment of an Ancillary Contractor.

### 32.5 Failure to Co-ordinate the Works

- A. The Contractor shall be deemed to have made adequate allowance in the Contract Price and in the Programme for compliance with his obligations under this Clause 32 and for any interference with the progress of the Execution of the Works caused by the Related Works and for all expenses arising in relation to provision of access and co-operation for the purposes of this Clause 32.
- B. The Contractor shall bear all proper costs associated with any alteration, amendment, Variation, or repair rendered necessary to the Execution of the Works or the work of any Ancillary Contractor and/or Other Contractor, and others (whether employed by the Employer or not) who are or may carry out work on the Project Site as a result of any failure on the Contractor's part to comply with the provisions of this Clause 32 including the cost of repair to any damage to the Works caused by the carrying out of the Related Works where such damage is a result of a breach by the Contractor of Clause 32.3B(12). Subject always to Clause 32.5H, if in the opinion of the Employer's Representative any cost is or is likely to be incurred as a result partially of a failure by the Contractor and partially as a result of a failure by others who may be engaged on Site (whether employed by the Employer or not) who are or may carry out work on the Project Site then in the event that the Contractor and such other party are unable to agree on the apportionment of such costs between them, the Employer's Representative may instruct the Contractor to make any alteration, amendment or Variation or carry out any repair he deems necessary and, notwithstanding the provisions of Clause 57 in valuing such alteration, amendment, Variation or repair, the Employer's Representative shall be entitled to make what he in his absolute discretion considers a fair reduction to reflect his assessment of the Contractor's responsibility for the necessity to make such alteration, amendment, Variation or repair as a result of the Contractor's failure to comply with the requirements of this Clause 32.
- C. Without limiting his obligations under this Clause 32 or under Clause 8, the Contractor shall exercise due care and diligence in the Execution of the Works where the Execution of the Works affects or is likely to affect the Related Works and shall bear all costs, expenses, damages and losses suffered by any party as a result of his failure to comply with his obligations hereunder.
- D. The Contractor shall indemnify and keep indemnified the Employer against all claims, proceedings, damages, costs, losses, charges and expenses of any nature whatsoever arising from the Contractor's failure to comply with his obligations under this Clause 32.
- E. The Contractor shall, in accordance with the requirements of the Employer's Representative, extend all reasonable assistance and co-operation to the Employer, Ancillary Contractors or any Other Contractor of the Employer and



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others who are or may carry out work on the Project Site in respect of the use of any Contractor's Plant on the Site or the provision of any other service of whatsoever nature.

- F. If, without the prior agreement of the Employer's Representative, the Contractor shall cause delay in the execution of the works of an Ancillary Contractor, the Contractor, without prejudice to the Contractor's liability in respect of liquidated damages if they become due but subject to Clause 32.4E, shall pay or the Employer's Representative may deduct from Interim Payment Certificates issued under Clause 68 such amount as the Employer's Representative shall have certified in respect of additional payments or costs to the Ancillary Contractor in respect of such delay.
- G. NOT USED
- H. The Contractor shall be fully responsible for the cost of all delays to the Works or any part where such delays have been occasioned to or in connection with Temporary Works by the defaults or omissions of any Ancillary Contractor and/or Other Contractor engaged on the Site (other than where engaged directly by the Employer) and shall not be entitled to any extension of time therefore. Such responsibility shall in no way be in derogation of the Contractor's other obligations under this Clause 32.
- I. The Contractor shall be liable for loss and expense incurred by the Employer which was in the reasonable contemplation of the parties at the date of the Letter of Acceptance to the extent arising from breach by the Contractor of his obligations under this Clause 32 including, without limitation, loss and expense arising from changes to drawings and Construction Documents previously signed off or deemed to be signed off by the Contractor pursuant to the procedures referred to in Clause 32.3B(8) where the changes result from the Contractor's failure to comply with the drawings and Construction Documents.

### 33. CONTRACTOR TO KEEP SITE CLEAR

- A. During the Execution of the Works the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any Contractor's Plant and surplus materials and clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.

### 34. ENGAGEMENT OF STAFF AND LABOUR

#### 34.1 Arrangements for Staff

- A. The Contractor shall, unless otherwise provided in the Contract, make his own arrangements in regard to the provision of such staff and labour, skilled and unskilled, as may be required for the Execution of the Works and shall use all diligence in arranging for a sufficient and suitable supply of such labour but all such arrangements shall be in accordance with general local usage and subject to such regulations as Government may from time to time require to be observed. The Contractor shall be responsible for their payment, housing, feeding and transport.

#### 34.2 Compliance with Employment Statutes

- A. In the employment of workmen for the Execution of the Works, the Contractor shall comply, and shall cause his Sub-Contractors and Suppliers, of all tiers, to



comply, with all requirements of all employment laws of the Kingdom of Thailand relating to the employment of workmen, or any subsequent modification or re-enactment thereof.

### 34.3 Employment of Thai Citizens

- A. The Contractor shall employ in the Execution of the Works only Thai citizens as workmen unless the Contractor can show, to the satisfaction of the Employer's Representative, that in any particular trade or skill required to complete the Execution of the Works in accordance with the Contract insufficient Thai citizens are available. In such cases the Contractor shall apply for and obtain the necessary passes for non-Thai citizen workmen from the Department of Immigration.

### 34.4 Technician Requirements

- A. The Contractor agrees that in the Execution of the Works, the Contractor shall employ professionally registered architects and/or engineers to Execute the Works. The Contractor shall employ technicians who have passed the technical standard test from the Department of Skill Development, Ministry of Labour and Social Welfare or have obtained a professional certificate or a high professional certificate or a technical training certificate or equivalent from an institution approved by the Office of Civil Service Commission for entering the government service, for not less than ten percent (10%) of each technical branch.
- B. The Contractor must submit an organization chart showing the name and level of technicians for each branch separately, including a certification that each have passed the standard test or hold a certificate as required. The documentary evidence shall be submitted to the Employer's Representative prior to the Execution of the Works and shall be available at all times for the Employer's Representative or Employer to inspect during the Execution of the Works.

### 34.5 Fair Wages

- A. Insofar as the Works are to be executed in Thailand, the Contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- B. The Contractor shall in respect of all his employees, whether in carrying out this Contract or otherwise, in every workshop or other place occupied or used by him for carrying out the Execution of the Works comply with the general conditions required by this Clause 34.
- C. The Contractor shall be responsible for the observance of this Clause 34 by all his Sub-Contractors and Suppliers, of any tier, employed in the carrying out of the Execution of the Works.
- D. In the event of default being made in the payment of any money in respect of wages of any person employed by the Contractor or any of its Sub-Contractors and Suppliers, of any tier, in and for carrying out of this Contract and if a claim therefore is filed in the office of the labour inspection official of the Ministry of Labour and Social Welfare and proof thereof is furnished, acknowledged and satisfactorily accepted by same, the Employer may, failing payment of the said money by the Contractor, make payment of such claim on behalf of the



Contractor to the said Minister or his representative and any sums so paid shall be recoverable by the Employer from the Contractor.

#### 34.6 Night or Sunday Work

Not Used

#### 34.7 Site security and Passes

- A. The Contractor shall be responsible for the security of the Site or, as the case may be, of so much of the Site as is in the Contractor's possession for the time being and from time to time. The Contractor shall take all measures necessary to ensure such security, including exercising control over all persons and vehicles which are employed or engaged on the Site or in connection with the Works or the Related Works comprising the Project, when entering the said areas and during the period that they remain on Site.
- B. Without prejudice to the generality of Clause 34.7A the Contractor shall arrange the issue of passes for the admission of all persons and vehicles to the Site or to any part thereof and may refuse admission to or remove from the Site any person or vehicle failing to show an appropriate pass on demand by any duly authorised person.
- C. If required by the Employer's Representative the Contractor shall submit a list identifying all persons to whom passes have been issued together with two photographs of each person and all entities to which a pass has been issued in respect of any vehicle and shall satisfy the Employer's Representative of the bona fides of any such person or entity.
- D. The Contractor shall comply with the security arrangements applicable to any other site within the Project.
- E. The Contractor shall not, without the written permission of the Employer's Representative, or otherwise in accordance with the Contract, allow access to the Site to any person unless the presence on Site of such person is necessary in connection with the Execution of the Works or with the discharge of the duties of any relevant authority.

#### 34.8 Returns of Labour and Contractor's Plant

- A. The Employer's Representative will record daily in the Employer's Representative's site diary information with regard to labour, Contractor's Plant, goods, materials, utilities, work carried out and instructions issued to the Contractor and all other facts that may affect the progress or quality of the Execution of the Works.
- B. The Contractor's Construction Superintendent or an approved assistant to the Construction Superintendent shall sign the site diary daily indicating his agreement to the information recorded. If the Construction Superintendent does not agree with any of the items recorded in the site diary he may draw reference to the points of disagreement in writing in the site diary.
- C. The Contractor shall, as and when called upon to do so by the Employer's Representative, or such other person as the Employer's Representative may direct, provide such information as the Employer's Representative considers necessary to enable him properly to keep and maintain his site diary, but in any event and



without prejudice to the generality of the foregoing, the Contractor shall deliver to the Employer's Representative by not later than 1.00.p.m. on each day a return in such form as the Employer's Representative may prescribe showing in detail the numbers of the several classes of labour on the Site and the Contractor's work areas that day together with the numbers of the several classes of labour so employed during the preceding twenty-four (24) hours who were not included in the return for the previous day together with such information concerning goods, materials, Contractor's Plant and other such matters as the Employer's Representative may require.

### 34.9 Sanitary Facilities

- A. The Contractor shall provide and maintain efficient and sanitary latrine accommodation for the use of all persons on the Site and shall keep the whole of the Site in a clean and sanitary condition and shall not litter or cause to be littered or cause or allow unsanitary conditions to develop in any other area on, in or adjacent to the Site or elsewhere in or adjacent to areas where the Contractor is working.

### 34.10 First Aid Facilities

- A. The Contractor shall provide and maintain on the Site an adequate and easily accessible first aid post for treatment in case of accidents or illness during the Execution of the Works and such first aid facilities as may be required in order to comply with all relevant Statutes, Ordinances or Laws, regulations and by-laws for the time being in force. The places where such facilities are located shall be prominently marked. A sufficient number of the Contractor's employees shall be fully qualified in first aid so that first aid attention is immediately available in case of accident at any time and any place. The names and designations of the employees so qualified shall be displayed, in both the English and the Thai language, in a prominent position on Site. Any order from the Employer's Representative as to extensions to or attentions of such first aid facilities shall be promptly carried out.

## 35. ENVIRONMENTAL MANAGEMENT PLAN

### 35.1 Contractor to submit Environmental Management Plan

- A. The Contractor shall within twenty one (21) Days after the date of the Letter of Acceptance submit to the Employer's Representative an outline of the Contractor's Environmental Management Plan. The outline of the Environmental Management Plan shall comply with all legal duties and obligations regarding protection of the environment in accordance with Thai laws regarding the environment, the National Environmental Committee, the Office of Environmental Policy and Planning and the Ministry of Science, Technology and Environment. Within twenty-eight (28) Days of such submittal the Contractor shall submit for approval its detailed Environmental Management Plan which shall take proper account of all comments made by the Employer's Representative on the said outline and thereafter the Contractor shall amend or supplement the Environmental Management Plan as may reasonably be required by the Employer's Representative. The submission and approval by the Employer's Representative of such plan shall not relieve the Contractor of any of his obligations under the Contract.



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**35.2 Contractor to adhere to Environmental Management Plan**

- A. Without limiting his obligations under the Contract, the Contractor shall adhere to the principles and procedures contained in the approved Environmental Management Plan and any amendment or supplement thereof.

**35.3 Contractor to appoint Manager and other personnel**

- A. The Contractor shall appoint a suitably qualified and experienced person to act as manager of the Environmental Management Plan and shall from time to time provide such other personnel and resources as may be required to ensure the effective operation of the Environmental Management Plan.

**35.4 Contractor to provide access**

- A. The Contractor shall provide all access, assistance and facilities to enable the Employer's Representative to verify the implementation of the Environmental Management Plan.

**36. CONTRACTOR'S HEALTH AND SAFETY PLAN****36.1 Contractor to establish a Health and Safety Plan**

- A. The Contractor shall establish a Health and Safety Plan to ensure that all construction activities required to facilitate Execution of the Works are carried out in a hygienic and safe manner, consistent with proven good practice, and comply with all laws, regulations, codes of practice and other things relevant to health and safety which may from time to time apply to the Works.
- B. The Contractor shall throughout the Execution of the Works take full responsibility for the Health and Safety Plan and the adequacy, stability and safety of the Works (except for any part for which the Employer has responsibility pursuant to Clause 21.2) and the Contractor's Plant, having full regard for the safety of all persons on or in the vicinity of the Site, and providing and maintaining all necessary lights, guards, fences, warning signs and storage areas.

**36.2 Contractor to submit a Health and Safety Plan**

- A. Within twenty-one (21) Days of the date of the Letter of Acceptance, the Contractor shall submit to the Employer's Representative an outline of the Health and Safety Plan. Within twenty-eight (28) Days of such submittal the Contractor shall submit for approval its detailed Health and Safety Plan which shall take proper account of all comments made by the Employer's Representative and any and all submissions to the Employer's Representative of supplemental parts of the Health and Safety Plan shall be made as appropriate or upon the request of the Employer's Representative but in any event not less than twenty eight (28) Days before commencement of any work which is the subject of any such submission. The submission and approval by the Employer's Representative of the Health and Safety Plan and any supplement thereto shall not relieve the Contractor of any of his obligations under the Contract.

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### 36.3 Health and Safety Plan in accordance with the requirements of the Employer's Representative

- A. The form and content of the initial submission of the Health and Safety Plan and of all supplemental parts thereof shall be in accordance with the requirements prescribed by the Employer's Representative.

### 36.4 Contractor to adhere to the Health and Safety Plan

- A. Upon the Employer's Representative notifying his approval to the Health and Safety Plan, or any supplemental part thereof, and without limiting his obligations under the Contract, the Contractor shall adhere to the principles and procedures contained in such document.
- B. The Contractor shall adhere to the Health and Safety Plan and shall ensure, as far as practically possible, that all sub-contracts of all tiers require that contracting parties each have a copy of the Health and Safety Plan and comply with its provisions.

### 36.5 Appointment of Safety Manager and other personnel

- A. The Contractor shall appoint a suitably qualified and experienced person, competent in the English language, as safety officer to act as manager of the Health and Safety Plan and be responsible for all health and safety matters related to the Works. The Contractor shall, from time to time, provide such other personnel and resources as may be required to ensure effective operation of the Health and Safety Plan. The said health and safety officer shall submit regular health and safety reports to the Employer's Representative in accordance with the requirements of the Employer's Representative.

### 36.6 Revisions to Health and Safety Plan

- A. If at any time:-
1. the Health and Safety Plan is, in the Employer's Representative's opinion, insufficient or requires revision or modification to ensure the security of the Works and the health and safety of all workmen upon and visitors to the Site; or
  2. the level of accidents on any part of the Site exceeds any level laid down in Government proposals for safety,
    - i. the Employer's Representative may instruct the Contractor to revise the Health and Safety Plan and the Contractor shall within fourteen (14) Days submit the revised plan to the Employer's Representative for review and approval.
- B. The Contractor shall, from time to time and as necessary or required by the Employer's Representative, produce supplements to the Health and Safety Plan such that it is at all times a detailed, comprehensive and contemporaneous statement by the Contractor of its site safety and industrial health obligations, responsibilities, policies and procedures (under the laws of Thailand or as stated in this Clause 36 or elsewhere in the Contract) relating to work on Site. Any and all submissions to the Employer's Representative of supplements to the Health and Safety Plan shall be made in accordance with Clause 7.



- C. Any omissions, inconsistencies and errors in the Health and Safety Plan or the Employer's Representative's acceptance or rejection of the Health and Safety Plan and/or supplements thereto shall be without prejudice to the Contractor's obligations with respect to site safety and industrial health and shall not excuse any failure by the Contractor to adopt proper and recognised safety practices throughout the Execution of the Works.

### 36.7 Contractor to provide access

- A. The Contractor shall provide all access, assistance and facilities to enable the Employer's Representative to carry out surveillance visits both on and off the Site to verify that the Health and Safety Plan is being implemented.

## 36A. CONTRACTOR'S SECURITY PLAN

### 36A.1 Contractor to submit a Security Plan

- A. Within twenty one (21) Days of the date of the Letter of Acceptance, the Contractor shall submit to the Employer's Representative an outline of the Security Plan for ensuring security in connection with the Contractor's activities at the Site and, in so far as the Contractor's activities are carried out on or affect the Project Site, the Project Site and including, but without limitation, all camps and residential quarters used by the Contractor. Within twenty-eight (28) Days of such submittal the Contractor shall submit for approval its detailed Security Plan which shall take proper account of all comments made by the Employer's Representative and any and all submissions to the Employer's Representative of supplemental parts of the Security Plan shall be made as appropriate or upon the request of the Employer's Representative. To the extent the Contractor wishes to perform any activities before the approval of the detailed Security Plan, as aforesaid, the Contractor shall prepare and obtain the Employer's Representative's approval to a provisional Security Plan. The submission and approval by the Employer's Representative of the Security Plan and any supplement thereto shall not relieve the Contractor of any of his obligations under the Contract.

### 36A.2 Security Plan in accordance with the requirements of the Employer's Representative

- A. The form and content of the initial submission of the Security Plan and of all supplemental parts thereof shall be in accordance with the requirements prescribed by the Employer's Representative.

### 36A.3 Contractor to adhere to the Security Plan

- A. Upon the Employer's Representative notifying his approval to the Security Plan, or any supplemental part thereof, and without limiting his obligations under the Contract, the Contractor shall adhere to the principles and procedures contained in such document.
- B. The Contractor shall adhere to the Security Plan and shall ensure, as far as practically possible, that all sub-contracts of all tiers require that contracting parties each have a copy of the Security Plan and comply with its provisions.

### 36A.4 Contractor to provide access

- A. The Contractor shall provide all access, assistance and facilities to enable the Employer's Representative to carry out surveillance visits both on and off the Site to verify that the Security Plan is being implemented.



**37. DELIVERY TO SITE AND CLEARANCE OF SITE ON COMPLETION****37.1 Delivery to Site**

- A. The Contractor shall, in accordance with the Contract Documents, be responsible for the delivery to the Site and proper storage of all materials, Equipment, or part thereof, and Contractor's Plant required for the purposes of the Contract and for or in connection with the Execution of the Works and for making all arrangements in connection therewith and for the reception thereof at the Site.

**37.2 Shipping and use of Government of Thailand Carriers and Freight Forwarders**

- A. Unless otherwise authorized in writing by the Employer's Representative hereunder, the Contractor shall ensure that all importation of materials, Equipment, or part thereof, and Contractor's Plant required for the purpose of this Contract and for or in connection with the Execution of the Works shall be arranged, handled and co-ordinated by the Thailand Government freight forwarders, as may be appointed by the Government of Thailand from time to time, but which for the time being, and until further notice is provided to the Contractor by the Employer's Representative to the contrary, shall be (name of the Government of Thailand carriers), or their accredited nominees or affiliated companies with prior approval, utilising only:
1. Bills of Lading of the (name of the Government of Thailand carriers), or their respective affiliated companies; or
  2. Airway Bills of (name of the Government of Thailand carriers), or its affiliated airlines.
- B. The Contractor shall advise the Employer's Representative and (name of the Government of Thailand carriers), as the case may be or their nominees or affiliated companies, or any additional or replacement freight forwarder as may be appointed by the Government of Thailand from time to time, of the necessary shipping and packing details and requirements not less than three (3) months before the cargo is ready for loading at the port of shipment. In the event that (name of the Government of Thailand carriers), or their nominees or affiliated companies, or any additional or replacement freight forwarder as may be appointed by the Government of Thailand from time to time, advise the Contractor in writing that they are unable to handle the required transportation, the Contractor may apply to the Employer's Representative for his consent to utilise other carriers and freight forwarders, which consent shall not be unreasonably withheld. The Contractor shall not be entitled to any extension of time or additional payment in respect of the inability of (name of the Government of Thailand carriers), or their nominees or affiliated companies, or any additional or replacement freight forwarder as may be appointed by the Government of Thailand from time to time, to handle any of the required transportation. Notwithstanding any of the foregoing, the Contractor shall be responsible for all costs incurred in shipment of materials, Equipment, or part thereof, or Contractor's Plant to the Site including, but without limitation, freight costs, loading and unloading costs, fares, and all other associated costs which may be levied at ports. The Contractor's entitlement to any payment from the Employer pursuant to Clause 68 in respect of any materials, Equipment, or part thereof, or Contractor's Plant which are the subject of this Clause shall be conditional upon the Contractor proving to the satisfaction of the Employer's Representative that he has complied with the provisions of this Clause.





**37.3 Packing**

- A. All materials, Equipment and Contractor's Plant shall be properly packed and prepared for export suitable for the applicable method of shipment and to withstand exposure to the elements and rough handling during ocean, air or land shipment. Such packing must be sufficient to ensure safe arrival at the Site intact and undamaged, and fully cover such hazards as, but not limited to the generality of this obligation, tropical weather conditions, humidity, extreme temperature, the ingress of water and/or possible corrosion due to salt air or open storage. All packing cases provided, except for sea freight containers, shall be considered as non-returnable and become the property of the Employer. Disposal of packing materials from the Site shall, subject to direction and requirements of the Employer's Representative, be the responsibility of the Contractor.

**37.4 Marking**

- A. The Contractor shall be responsible for assuring that all materials, Equipment and Contractor's Plant to be furnished under this Contract and their shipping containers are properly marked and consigned to the Project.

**37.5 Packing List**

- A. A packing list itemizing the contents of each case shall be enclosed in each package. A copy of the packing list, together with dispatch details shall be provided forthwith upon dispatch to the Employer's Representative. The Contractor shall provide all attendance, handling and inland transport up to and including off-loading into the appropriate Site storage area.

**37.6 Contractor and Employer's Representative to agree contents.**

- A. Upon delivery to the Site the Contractor and the Employer's Representative shall, if so required by the Employer's Representative, check the contents of each package against the relevant packing list and agree any discrepancies arising in writing. In the event of a failure to so agree these for the purposes of the Contract including payment and subject only to the parties' rights under Clause 76, the Employer's Representative determination shall prevail.

**37.7 Importation**

- A. The Contractor shall be responsible to obtain any export license or other governmental authorization necessary for the export of materials, Equipment or Contractor's Plant from the country of origin and any import license, approval and permits for importation into Thailand.

**37.8 Customs**

- A. The Contractor shall be responsible for customs clearance in Thailand in respect of materials, Equipment and Contractor's Plant.

**37.9 Documents**

- A. The Contractor shall have available, but not be limited to, the following documents required for customs clearance in respect of materials, Equipment or Contractor's Plant:
1. Ocean bills of lading or, as the case may be, airways bill.
  2. Commercial invoices



3. Packing lists
  4. Insurance policy certificate.
  5. Certificate of origin
  6. Inspection certificate
- B. The ocean bills of lading and commercial invoices shall be consigned for delivery to the Employer. The ocean bills of lading must be a full set of "clean on board" bills of lading.

### 37.10 Clearance of Site on Completion

- A. Upon the issue of any Taking-Over Certificate, the Contractor shall clear away and remove from that part of the Site to which such Taking-Over Certificate relates all Contractor's Plant, surplus material, rubbish and Temporary Works of every kind, and leave such part of the Site and Works clean and in a workmanlike condition to the satisfaction of the Employer's Representative. Provided that the Contractor shall be entitled to retain on Site, at such location as may be directed by the Employer's Representative, until the end of the Defects Liability Period, such materials, Contractor's Plant and Temporary Works as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period.

## 38. QUALITY OF MATERIALS, EQUIPMENT AND WORKMANSHIP

### 38.1 Materials, Equipment and Workmanship to be in accordance with Contract Documents

- A. All materials and the Equipment to be supplied and all work to be undertaken under the Contract shall be designed, manufactured, Executed, tested, commissioned, operated and maintained so as to comply with the requirements of and descriptions and in the manner set out in the Contract Documents for the Execution of the Works or, where not so set out or shown, to meet the requirements of the Contract and to the satisfaction of the Employer's Representative, and all the Works on the Site shall be Executed in accordance with such instructions and directions as the Employer's Representative may give and to his satisfaction and so that the Contractor meets in every respect his obligations under the Contract.
- B. All materials, Equipment, and workmanship shall be:
1. of the respective kinds described in the Contract and in accordance with the Employer's Representative's instructions and directions, and each item thereof shall both on its own and as part of the Works meet the requirements of the Contract; and
  2. subjected from time to time to such tests as the Employer's Representative may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.
- C. The Contractor shall provide such assistance, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and



testing any materials, Equipment, or any part thereof, and shall supply samples of materials, before incorporation in the Works, for testing as may be selected and required by the Employer's Representative.

### 38.2 Cost of Samples

- A. All samples shall be supplied by the Contractor at his own cost if the supply thereof is normally required for examining, measuring and testing any materials, Equipment, or any part thereof, or is clearly intended by or provided for in the Contract or should reasonably have been anticipated by the Contractor as likely to be required.

### 38.3 Cost of Tests

- A. The cost of making any test shall be borne by the Contractor if such test is:
1. clearly intended by or provided for in the Contract; or
  2. normally required for examining, measuring and testing any materials, Equipment or any part thereof; or
  3. should reasonably have been anticipated by the Contractor as likely to be required;

and the Contractor shall not be entitled to any extension of time for the making of any such test.

### 38.4 Cost of Tests not Provided for

- A. If any test required by the Employer's Representative which :
1. is not so intended by or provided for; or
  2. is not so normally required; or
  3. ought not so reasonably have been anticipated by the Contractor; or
  4. (though so intended or normally required or reasonably to have been anticipated) is required by the Employer's Representative to be carried out at any place other than the Site or the place of manufacture, fabrication or preparation of the materials, Equipment, or part thereof tested (unless such other place is specified in the Contract); or
  5. is expressed in the Contract to be payable as a remeasurement item or is allowed for under a Provisional Sum;

and shows the materials, Equipment, or part thereof, or workmanship not to be in accordance with the Contract and to the satisfaction of the Employer's Representative, then the cost of such test shall be borne by the Contractor, and the Contractor shall not be entitled to any extension of time for the making of such test, but in any other case Clause 38.5 shall apply.

### 38.5 Employer's Representative's Determination where Tests not Provided for

- A. Where, pursuant to Clause 38.4, this Clause 38.5 applies, the Employer's Representative shall, after due consultation with the Contractor, determine:



1. any extension of time to which the Contractor is entitled under Clause 48; and
  2. the amount of such costs, which shall be added to the Contract Price;
- and shall notify the Contractor accordingly.

### 39. QUALITY ASSURANCE PLAN

#### 39.1 Contractor to Submit Quality Assurance Plan

- A. The Contractor shall in accordance with the Contract Documents and in a form and content acceptable to the Employer's Representative:
  1. within twenty one (21) Days after the date of the Letter of Acceptance, submit to the Employer's Representative an outline of the Contractor's Quality Assurance Plan for the Execution of the whole of the Works; and
  2. within twenty-eight (28) Days of the submittal referred to in Clause 39.1A.(1), submit to the Employer's Representative for his approval the Contractor's detailed Quality Assurance Plan in respect of any design works to be performed for the Works which shall take proper account of all comments made by the Employer's Representative on the said outline Quality Assurance Plan and thereafter the Contractor shall amend or supplement the Quality Assurance Plan as may reasonably be required by the Employer's Representative or otherwise required by the Contract Documents.
  3. at least twenty-eight (28) Days prior to the commencement of the Execution of any part of the Works, submit to the Employer's Representative for his approval the Contractor's detailed Quality Assurance Plan in respect of that part of the Works which shall take proper account of all comments made by the Employer's Representative on the said outline Quality Assurance Plan. The Contractor shall not be entitled to commence the Execution of any part of the Works until the detailed Quality Assurance Plan for the Execution of that part of the Works has been approved by the Employer's Representative and thereafter the Contractor shall amend and supplement such Quality Assurance Plan for the Execution of any part of the Works as may be reasonably required by the Employer's Representative.
- B. For the avoidance of any doubt, but without limiting the generality of this Clause 39.1 and the Contract Documents, each and every Quality Assurance Plan submitted by the Contractor pursuant to this Clause 39.1 shall conform to the requirements of the International Standards Organisation standards known as ISO9001, ISO9002 and ISO9003.
- C. If the Employer's Representative does not provide his approval or otherwise to any detailed Quality Assurance Plan as required by this Clause 39.1 within twenty-one (21) Days of the submission thereof by the Contractor, the Employer's Representative shall be deemed to have given his approval thereto. The approval by the Employer's Representative of any Quality Assurance Plan shall not relieve the Contractor of any of his obligations under the Contract. The Employer's Representative may, at his sole discretion, reject any of the Works which in his opinion have not been designed and Executed in accordance with the





Quality Assurance Plan and the Contractor shall re-design and re-Execute at his own cost and without any entitlement to any extension of time all such parts of the Works so rejected.

### 39.2 Contractor to Adhere to Quality Assurance Plan

- A. Without limiting his obligations under any other provisions of the Contract, the Contractor shall adhere to the principles and procedures contained in the approved Quality Assurance Plans submitted and approved in accordance with Clause 39.1 and any amendments or supplements thereto.

### 39.3 Role of Quality Assurance Manager and other personnel

- A. In addition to the Quality Assurance Manager, the Contractor shall from time to time provide such other personnel and resources as may be required to ensure the effective operation of the Quality Assurance Plan. The Quality Assurance Manager shall in particular, without limiting his obligations, carry out audits of the application of the Quality Assurance Plan.

### 39.4 Verification of Implementation

- A. The Contractor shall at his own cost provide all access, assistance and facilities to enable the Employer's Representative to verify the implementation of the Quality Assurance Plan.

## 40. INSPECTION AND TESTING

### 40.1 Inspection of Operations

- A. The Employer's Representative, and any person authorised by him, shall at all reasonable times have access to the Site and to all workshops and places where materials, Equipment or any other part of the Works are being designed, manufactured, fabricated or prepared for the Works, and the Contractor shall afford every facility for and every assistance in obtaining the right to such access.

### 40.2 Inspection and Testing during manufacture

- A. The Employer's Representative shall be entitled, during design, manufacture, fabrication or preparation to inspect, examine, test and witness the testing of the materials, Equipment, any other part of the Works and workmanship and check the progress of design and manufacture of the materials and all Equipment and other parts of the Works to be supplied under the Contract. If the materials, Equipment or any other part of the Works are being designed, manufactured, fabricated or prepared in workshops or places other than those of the Contractor, the Contractor shall obtain permission for the Employer's Representative to carry out such inspection and testing in those workshops or places.
- B. Neither failure on the part of the Employer's Representative to discover or reject defective work or any materials, Equipment or any other work furnished by the Contractor, nor payment or partial or entire use of any materials, Equipment or any works by the Employer, shall be construed to be an acceptance of any such materials, Equipment, or works which is not directly in accordance with the Contract.

### 40.3 Dates for Inspection and Testing

- A. The Employer's Representative will determine the time and place for the testing of any work and Equipment after consultation with the Contractor. The



Employer's Representative shall, unless otherwise specified in the Contract Documents, give the Contractor not less than twenty-four (24) hours notice of his intention to carry out the inspection or to attend the tests. If the Employer's Representative does not attend on the date determined, the Contractor may, unless otherwise instructed by the Employer's Representative, proceed with the tests, which shall be deemed to have been made in the presence of the Employer's Representative. The Contractor shall forthwith forward to the Employer's Representative duly certified copies of the test readings. If the Employer's Representative has not attended the tests, he shall accept the said readings as accurate.

#### 40.4 Rejection

- A. If, at the time and place determined in accordance with Clause 40.3, the materials, Equipment or any other part of the Works are not ready for inspection or testing or if, as a result of the inspection or testing referred to in this Clause 40, the Employer's Representative determines that the materials, Equipment or any part of the Works are defective or otherwise not in accordance with the Contract, he may reject the same and shall notify the Contractor thereof immediately. The notice shall state the Employer's Representative's reasons for the rejection. The Contractor shall then promptly make good the defect or ensure that rejected materials, Equipment or part of the Works comply with the Contract. If the Employer's Representative so requests, the tests of rejected materials, Equipment or part of the Works shall be made or repeated under the same terms and conditions. All costs incurred by the Employer by the repetition of the tests shall, after due consultation with the Contractor, be determined by the Employer's Representative and shall be recoverable from the Contractor by the Employer and may be deducted from any monies due or to become due to the Contractor or may be recovered as a debt and the Employer's Representative shall notify the Contractor accordingly.

#### 40.5 Inspection by Assistants

- A. The Employer's Representative may appoint an assistant to carry out any inspection and testing of materials, Equipment or any other part of the Works. Any such appointment shall be effected in accordance with Clause 2.5 and the person so appointed shall be considered as an assistant of the Employer's Representative. Notice of such appointment (not being less than seven (7) Days) shall be given by the Employer's Representative to the Contractor.

#### 40.6 Test Certificates from Suppliers and Manufacturers

- A. The Contractor shall obtain from a Supplier or manufacturer of any materials, Equipment, or any other part of the Works, a certificate affirming that such materials, Equipment, or other part of the Works conform with the requirements of the Contract and have passed any test prescribed thereunder or pursuant thereto. The Contractor shall, at no expense to the Employer, procure and furnish to the Employer's Representative such certificate as is approved by the Employer's Representative. Until he has done so he shall not deliver such materials, Equipment, or other part of the Works to the Site or incorporate it into the Works.

#### 40.7 Certificate of Testing

- A. Where materials, Equipment and any other part of the Works have passed the tests referred to in this Clause 40, the Employer's Representative shall furnish to the Contractor a certificate or endorse the Contractor's test certificate to that effect. Such certificate shall only have the effect of recording the performance of



the materials, Equipment, or other part of the Works at the test and, as appropriate, its condition but shall not relieve the Contractor of any of his obligations under the Contract.

#### 40.8 Permission to Deliver

- A. The Contractor shall apply in writing to the Employer's Representative for permission to deliver any Equipment, or Contractor's Plant to the Site. No Equipment, or Contractor's Plant may be delivered to the Site without the Employer's Representative's written permission. The Contractor shall be responsible for the reception on Site of the Equipment and Contractor's Plant.

### 41. COMMISSIONING TESTS

#### 41.1 Notice of tests and test reports

- A. The Contractor shall give to the Employer's Representative twenty-eight (28) Days notice in writing (or such other period of notice as may be specified in the Contract Documents) of the date after which he will be ready to make the Commissioning Tests. Unless otherwise agreed or required in the Contract Documents, the tests shall commence on such day or days as the Employer's Representative shall notify the Contractor in writing being within seven (7) Days prior to the date specified in the Contractor's notice. The Contractor shall provide test reports to the Employer's Representative as set out in the Contract Documents.

#### 41.2 Time for tests

- A. If the Employer's Representative fails to appoint a time within a reasonable period after the Contractor's notice in accordance with Clause 41.1 or to attend at any time or place duly appointed for making the said tests, the Contractor shall be entitled to proceed in his absence but he shall inform the Employer's Representative that he has so proceeded and shall supply him with duly certified copies of the results of such tests.

#### 41.3 Delayed tests

- A. If, in the opinion of the Employer's Representative, the Contractor unduly delays in giving notice to commence the Commissioning Tests as required under Clause 41.1 he may, by notice in writing, call upon the Contractor to make such tests within twenty-one (21) Days from the receipt of the said notice, and the Contractor shall make the said tests on such days within the said twenty-one (21) Days as the Contractor may decide and of which he shall have given at least twenty-four (24) hours notice in writing to the Employer's Representative. If the Contractor fails to make such tests within the time aforesaid, the Employer's Representative may himself proceed to make the tests. All tests so made by the Employer's Representative shall be at the risk and expense of the Contractor save that, if the Contractor shall establish that the tests were not being unduly delayed, any additional costs of carrying out such tests by the Employer's Representative earlier than required by Clause 41.1, and the cost of any tests to the extent that they are rendered abortive by reason of being carried out prematurely, shall be certified by the Employer's Representative if and to the extent he considers them fair and reasonable and the sum so certified borne by the Employer.



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the materials, Equipment, or other part of the Works at the test and, as appropriate, its condition but shall not relieve the Contractor of any of his obligations under the Contract.

#### 40.8 Permission to Deliver

- A. The Contractor shall apply in writing to the Employer's Representative for permission to deliver any Equipment, or Contractor's Plant to the Site. No Equipment, or Contractor's Plant may be delivered to the Site without the Employer's Representative's written permission. The Contractor shall be responsible for the reception on Site of the Equipment and Contractor's Plant.

### 41. COMMISSIONING TESTS

#### 41.1 Notice of tests and test reports

- A. The Contractor shall give to the Employer's Representative twenty-eight (28) Days notice in writing (or such other period of notice as may be specified in the Contract Documents) of the date after which he will be ready to make the Commissioning Tests. Unless otherwise agreed or required in the Contract Documents, the tests shall commence on such day or days as the Employer's Representative shall notify the Contractor in writing being within seven (7) Days prior to the date specified in the Contractor's notice. The Contractor shall provide test reports to the Employer's Representative as set out in the Contract Documents.

#### 41.2 Time for tests

- A. If the Employer's Representative fails to appoint a time within a reasonable period after the Contractor's notice in accordance with Clause 41.1 or to attend at any time or place duly appointed for making the said tests, the Contractor shall be entitled to proceed in his absence but he shall inform the Employer's Representative that he has so proceeded and shall supply him with duly certified copies of the results of such tests.

#### 41.3 Delayed tests

- A. If, in the opinion of the Employer's Representative, the Contractor unduly delays in giving notice to commence the Commissioning Tests as required under Clause 41.1 he may, by notice in writing, call upon the Contractor to make such tests within twenty-one (21) Days from the receipt of the said notice, and the Contractor shall make the said tests on such days within the said twenty-one (21) Days as the Contractor may decide and of which he shall have given at least twenty-four (24) hours notice in writing to the Employer's Representative. If the Contractor fails to make such tests within the time aforesaid, the Employer's Representative may himself proceed to make the tests. All tests so made by the Employer's Representative shall be at the risk and expense of the Contractor save that, if the Contractor shall establish that the tests were not being unduly delayed, any additional costs of carrying out such tests by the Employer's Representative earlier than required by Clause 41.1, and the cost of any tests to the extent that they are rendered abortive by reason of being carried out prematurely, shall be certified by the Employer's Representative if and to the extent he considers them fair and reasonable and the sum so certified borne by the Employer.





Works which, in the opinion of the Employer's Representative, are not in accordance with the Contract; and/or

2. the substitution with proper and suitable materials, Equipment or any other part of the Works; or
3. the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefore, of any work which, in respect of materials or workmanship or design by the Contractor, is not, in the opinion of the Employer's Representative, in accordance with the Contract.
4. in relation to Equipment, goods or materials being manufactured or prepared off-Site, that any of such Equipment, goods or materials which are, in the opinion of the Employer's Representative, not in accordance with the Contract shall not be delivered to the Site until he is satisfied that they are in accordance with the Contract.

- B. The Contractor shall bear the expense of uncovering, breaking up and removal from the Site of any Equipment, goods, materials or work not in accordance with the Contract and the Contractor shall also bear the expense of reinstating and making good all consequential damage to the Works.

#### 44. SUSPENSION

##### 44.1 Suspension of Work

- A. The Contractor shall, on the written instructions of the Employer's Representative:
1. suspend progress of the Execution of the Works or any part thereof; or
  2. suspend delivery of materials, Equipment, or any other part of the Works or Contractor's Plant which is ready for delivery to the Site at the time for delivery indicated in the Programme, or if no time is indicated, at the time appropriate for it to be delivered; or
  3. suspend the incorporation of materials, or the erection of Equipment or any other part of the Works which has been delivered to the Site;

for such time and in such manner as the Employer's Representative may in his absolute discretion consider necessary and shall, during such suspension, properly protect and secure the Works or such part thereof and shall properly protect and secure all materials and Equipment affected at the Contractor's works or elsewhere or at the Site, as the case may be, against any deterioration, loss or damage. If such materials and Equipment is at the premises of a Sub-Contractor or Supplier, of any tier, then the Contractor shall procure that such Sub-Contractor or Supplier, of any tier, similarly protects such materials and Equipment against such deterioration, loss or damage.

- B. Unless such suspension is:

1. otherwise provided for in the Contract; or





Works which, in the opinion of the Employer's Representative, are not in accordance with the Contract; and/or

2. the substitution with proper and suitable materials, Equipment or any other part of the Works; or
3. the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefore, of any work which, in respect of materials or workmanship or design by the Contractor, is not, in the opinion of the Employer's Representative, in accordance with the Contract.
4. in relation to Equipment, goods or materials being manufactured or prepared off-Site, that any of such Equipment, goods or materials which are, in the opinion of the Employer's Representative, not in accordance with the Contract shall not be delivered to the Site until he is satisfied that they are in accordance with the Contract.

- B. The Contractor shall bear the expense of uncovering, breaking up and removal from the Site of any Equipment, goods, materials or work not in accordance with the Contract and the Contractor shall also bear the expense of reinstating and making good all consequential damage to the Works.

#### 44. SUSPENSION

##### 44.1 Suspension of Work

- A. The Contractor shall, on the written instructions of the Employer's Representative:
1. suspend progress of the Execution of the Works or any part thereof; or
  2. suspend delivery of materials, Equipment, or any other part of the Works or Contractor's Plant which is ready for delivery to the Site at the time for delivery indicated in the Programme, or if no time is indicated, at the time appropriate for it to be delivered; or
  3. suspend the incorporation of materials, or the erection of Equipment or any other part of the Works which has been delivered to the Site;

for such time and in such manner as the Employer's Representative may in his absolute discretion consider necessary and shall, during such suspension, properly protect and secure the Works or such part thereof and shall properly protect and secure all materials and Equipment affected at the Contractor's works or elsewhere or at the Site, as the case may be, against any deterioration, loss or damage. If such materials and Equipment is at the premises of a Sub-Contractor or Supplier, of any tier, then the Contractor shall procure that such Sub-Contractor or Supplier, of any tier, similarly protects such materials and Equipment against such deterioration, loss or damage.

- B. Unless such suspension is:

1. otherwise provided for in the Contract; or





2. necessary by reason of some default of or breach of Contract by the Contractor, including without limitation, any failure by the Contractor to liaise with, co-ordinate or share access with any third party (including the Employer and its workmen) or by reason of some such default or breach reasonably anticipated by the Employer's Representative; or
3. necessary by reason of climatic conditions on the Site; or
4. necessary for the proper Execution of or for the safety of the Works or any part thereof (save to the extent that such necessity arises from any act or default by the Employer's Representative or the Employer or from any of the risks defined in Clause 22.4),

then Clause 44.2 shall apply.

#### 44.2 Employer's Representative's Determination following Suspension

- A. Where, and to the extent that, pursuant to Clause 44.1, this Clause 44.2 applies the Employer's Representative shall, upon the written application of the Contractor, and after due consultation with the Contractor, determine:
  1. any extension of time to which the Contractor is entitled under Clause 48; and
  2. the amount which shall be added to the Contract Price in respect of the cost reasonably incurred by the Contractor by reason of such suspension including the additional cost reasonably incurred by the Contractor in protecting, securing and insuring the Works, or part thereof, and in following the Employer's Representative's instructions under Clause 44.1 and in resumption of the work;

and shall notify the Contractor accordingly.

- B. Provided that the Contractor shall not be entitled to recover any such cost or claim any such extension of time unless within twenty-eight (28) Days after receipt of the instruction to suspend progress of the Works or any part thereof or delivery, the Contractor gives to the Employer's Representative notice in writing of the Contractor's intention to make such claim together with an estimate of the likely daily cost and the likely delay.

#### 44.3 Suspension lasting more than 90 Days

- A. If the progress of the Execution of the Works or any part thereof or delivery is suspended on the written instructions of the Employer's Representative and if permission to resume work or delivery is not given by the Employer's Representative within a period of ninety (90) Days from the date of suspension then, unless such suspension is within paragraph (1), (2), (3) or (4) of Clause 44.1B, the Contractor may give notice to the Employer's Representative requiring permission, within twenty-eight (28) Days from the receipt thereof, to proceed with the Execution of the Works or that part thereof in regard to which progress is suspended, or with the relevant delivery. If, within the said time, such permission is not granted, the Contractor may, but is not bound to, elect to treat the suspension, where it affects part only of the Works, as an omission of such part under Clause 56 by giving a further notice to the Employer's Representative to that effect, or, where it affects the whole of the Works, treat the suspension as an



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event of default by the Employer and terminate his employment under the Contract in accordance with the provisions of Clause 78.

#### 44.4 Resumption of Work

- A. After receipt of permission or an order to proceed, the Contractor shall, after due notice to the Employer's Representative, examine the Works and the Equipment affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works, or part thereof, that may have occurred during the suspension and the cost properly incurred by the Contractor in so doing which would not have been incurred but for the suspension shall, unless such suspension is within paragraph (1), (2), (3) or (4) of Clause 44.1B, be determined by the Employer's Representative after due consultation with the Contractor and shall be added to the Contract Price.
- B. The Contractor shall not be entitled to payment for costs incurred in making good any deterioration, defect or loss caused or contributed to by defective workmanship or materials or by the Contractor's failure to take the measures specified in Clause 44.1.

#### 45. COMMENCEMENT OF WORKS

- A. The Contractor shall commence the Execution of the Works as soon as is reasonably possible after the receipt by him of a notice to this effect from the Employer's Representative, which notice shall be issued within the time stated in **Appendix 1** after the date of the execution of the Contract Agreement. Thereafter, the Contractor shall proceed with the Execution of the Works with due diligence and without delay.
- B. Provided that no work under this Contract shall be commenced unless and until the insurance policies under Clauses 23 and 25.2 and the Performance Bond under Clause 10 shall have been deposited with the Employer.

#### 46. POSSESSION OF SITE AND ACCESS

##### 46.1 Possession and Access to Site

- A. The Contract may prescribe:
  1. the Works Areas of which the Contractor is intended to be given possession from time to time;
  2. the periods during which possession of such Works Areas are intended to be made available to the Contractor and the Works Area Hand-Over Dates;
  3. the order in which the Works shall be executed;
  4. the availability and nature of the access which is to be provided by the Employer;
  5. the availability and nature of the access which the Contractor is to provide to Ancillary Contractors, Other Contractors and others;
  6. the use which the Contractor may make of such Works Areas.



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- B. The Employer shall give to the Contractor on the date for commencement of the Works possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the Execution of the Works in accordance with the Programme and shall from time to time, as the Execution of the Works proceed, give to the Contractor access of such further parts of the Site as may be required to enable the Contractor to proceed with the Execution of the Works with due despatch in accordance with the Programme.
- C. Provided always that:
1. the Employer shall not in any event be obliged to give to the Contractor possession of a Works Area or any part thereof or access thereto earlier or for a longer period than is prescribed pursuant to Clause 46.1A and
  2. the Employer may, on or at any time after the date of commencement of the Works, give the Contractor possession of any or all of the Works Areas, or of any part thereof, before the date, prescribed pursuant to Clause 46.1A for such possession to be given to the Contractor.

#### 46.2 Failure to Give Possession

- A. Subject to Clause 60, if the Employer's Representative is of the opinion that the Contractor has been involved in additional expenditure by reason of the progress of the Works or any part thereof having been materially affected by the failure of the Employer to give possession of or access to the Site in accordance with this Clause 46 then the Employer's Representative shall as soon as reasonably practicable determine such sum in respect of the Cost incurred as the Employer's Representative considers fair in all the circumstances and notify the Contractor in writing of such determination.

#### 46.3 Contractor Hand-Over of Work Areas

- A. In the event that a Works Area Hand-Over Date is prescribed pursuant to Clause 46.1A for the release by the Contractor of a Works Area:
1. the Contractor shall relinquish possession of and occupation of the relevant Works Area on the Works Area Hand-Over Date unless the Employer's Representative shall have deferred the Works Area Handover Date by prior notice in writing. Such a notice shall not in any event constitute a Variation; and
  2. the Contractor shall, subject to any express provision of the Contract or written instruction of the Employer's Representative to the contrary, clear away and remove from the relevant Works Area before the Works Area Hand-Over Date all Contractor's Plant, goods and materials, temporary buildings and all rubbish of any kind whatsoever. If the Contractor should fail to do so, the Employer may exercise the powers set out in Clause 61.8.

#### 46.4 No exclusive possession

- A. Save to the extent that the Contract expressly provides to the contrary, the Contractor shall not be entitled to exclusive possession of or uninterrupted access to any part of the Site and shall co-ordinate his activities with others on or in the vicinity of the Site as described in Clause 32 and elsewhere in the Contract.



**46.5 Wayleaves and Facilities**

- A. The Contractor shall bear all costs and charges for special or temporary wayleaves required by him in connection with access to the Site. The Contractor shall also provide at his own cost any additional facilities outside the Site required by him for the purposes of the Execution of the Works.

**47. DATE FOR SUBSTANTIAL COMPLETION**

- A. The whole of the Works shall be Substantially Completed by the Date for Substantial Completion.
- B. The Contractor shall achieve each of the Key Dates on or before the specified Key Date relating thereto.

**48. EXTENSION TO DATE FOR SUBSTANTIAL COMPLETION****48.1 Reasons for delay and extension of time**

- A. The Contractor shall give written notice to the Employer's Representative:
1. as soon as he can foresee or ought reasonably to have foreseen a circumstance occurring which is liable to cause a delay to Substantial Completion of the Works or a delay to completion of any Key Date; or
  2. should he have been unable to foresee such a circumstance, then as soon as he becomes aware or ought reasonably to have become aware of the commencement of a circumstance which has caused or is liable to cause delay to Substantial Completion of the Works or a delay to completion of any Key Date;
  3. and shall state in any such notice the circumstance, the likelihood and probable extent of the delay and specify whether the Contractor considers he is or may become entitled to an extension of time in respect of the effects of such circumstance; if so, the Contractor shall cite the provision of Clause 48.3 which he considers to be applicable.

**48.2 Contractor to mitigate delays and give particulars**

- A. If the Contractor wishes to maintain his right to pursue a claim for an extension of time specified in a notice given under Clause 48.1, the Contractor shall:
1. use and continue to use all reasonable endeavours to avoid or reduce the effect of the circumstances referred to in such notice on Substantial Completion of the Works or on completion of any Key Date; and
  2. as soon as reasonably practicable, submit by further written notice to the Employer's Representative:
    - i. full and detailed particulars of the cause and actual extent of the delay to Substantial Completion of the Works or to completion of any Key Date; or
    - ii. where a circumstance has a continuing effect or where the Contractor is at any time unable to determine whether the effect of a circumstance will actually cause delay to Substantial

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Completion of the Works or to completion of any Key Date, a statement to that effect with reasons and interim written particulars (including details of the likely consequences of the circumstance on the progress of the Execution of the Works and an estimate of the likelihood of and likely extent of the delay); the Contractor shall thereafter submit to the Employer's Representative further interim written particulars at intervals of not more than fourteen (14) Days until the actual delay caused (if any) is ascertainable, when he shall thereafter within fourteen (14) Days submit to the Employer's Representative full and detailed particulars of the cause and actual extent of the delay; and

- iii. for approval, details of the documents the Contractor proposes to support such claim; and
- iv. for approval, details of the measures the Contractor has adopted or proposes to adopt to avoid or reduce the effects of such circumstance upon Substantial Completion of the Works or upon completion of any Key Date.

### 48.3 Relevant Events

A. If the circumstance notified by the Contractor under Clause 48.1 is:

- 1. directions given by the Employer's Representative consequential upon dispute with neighbouring owners unless such instruction was reasonably necessitated as a result of the Contractor's failure to comply with his obligations under the Contract; or
- 2. the Contractor not being given possession of or access to the Site or any part thereof in accordance with Clause 46; or
- 3. Employer's Representative's instructions issued under (and subject to) Clause 28 provided that such instructions are not issued due to any default or breach of Contract by the Contractor; or
- 4. the provision of facilities, access or services to the Employer or third parties in excess of the obligations of the Contractor under Clause 32 pursuant to an instruction of the Employer's Representative; or
- 5. an Employer's Risk; or
- 6. a Variation ordered under Clause 56 other than pursuant to Clause 56.3 or otherwise where such Variation is ordered as a consequence of any default or breach of Contract by the Contractor; or
- 7. a suspension of the Execution of the Works ordered by the Employer's Representative under Clause 44 save where and to the extent that such order is given by reason of any of the circumstances set out in Clauses 44.1B(1) to (4) (inclusive); or
- 8. the performance of any test pursuant to Clause 38.1 which test shows the Works or any of them so tested to be in accordance with the Contract, or the performance of any test under Clause 41.3 where the Contractor



shows that such test was carried out earlier than required under Clause 41.1; or

9. the Contractor not having received in due time necessary instructions, Drawings, Specifications, or other information expressly to be provided by the Employer's Representative under the Contract for which the Contractor has specifically applied in writing provided that such application was made on a date which having regard to the Date for Substantial Completion was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same; or
10. subject always to proper compliance by the Contractor with his obligations under Clause 32, and subject in particular to Clause 32.5(H), the execution of work not forming part of this Contract by the Employer or by public or private utilities, statutory authorities, and others (whether employed by the Employer or not) on the Site or the Project Site; or
11. compliance with the Employer's Representative's instructions in regard to the opening up for inspection of any work pursuant to Clause 42.2, unless the inspection showed that work, materials or goods were not in accordance with the Contract or unless such instruction was reasonably necessitated as a result of the Contractor's failure to comply with his obligations under Clause 42.1; or
12. compliance with the Employer's Representative's instructions under Clause 32.4B and Clause 32.4D each subject to compliance with Clause 32.4F;
13. any breach, act of prevention or improper interference by the Employer, the Employer's Representative or their respective agents (including delegates and assistants);

then unless and except to the extent that such circumstances are due to any act, omission, neglect, default or breach of the Contractor or any Sub-Contractor or Supplier, of any tier, or any of their agents, the Employer's Representative shall as soon as he is able to estimate the length of the delay consider whether the Contractor is fairly entitled to an extension of time for the Substantial Completion of the Works or for the completion of any Key Date. In determining any such entitlement the Employer's Representative shall be entitled to take into account the omission of any part or parts of the Works, and any Acceleration Measures adopted pursuant to Clause 49. For the avoidance of doubt the Employer's Representative may and shall so act regardless of whether such delays have occurred and/or have been caused by the relevant events, as described in Clause 48.3A(1-13) above, which have occurred before or after the Date for Substantial Completion of the Works.

- B. Notwithstanding the powers of the Employer's Representative under the provisions of this Clause 48 to decide whether the Contractor is fairly entitled to an extension of time, the Contractor shall not in any circumstances be entitled to an extension of time if and to the extent that the relevant delay is caused directly or indirectly by the default of the Contractor or by an event which is not expressly described in Clause 48.3A. Without prejudice to the generality of the foregoing, the Contractor shall not be entitled to an extension of time if the cause of the delay is:



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1. the failure of a Designated Sub-Contractor or Supplier to commence or to carry out work in due time including in particular, but not so as to restrict the generality of the foregoing, a failure to provide any goods or materials by any delivery dates stipulated in the relevant sub-contract, or
2. a suspension occasioned by the circumstances described in Clauses 44.1B (1) to (4)
3. non-availability or shortage of Contractor's Plant, labour, utility services, equipment, goods or materials, or
4. inclement weather conditions adversely affecting the progress of the Works or
5. interference by reason of the provision of facilities, access or services to the Employer or third parties in accordance with the Contractor's obligations under Clause 32.

#### 48.4 Employer's Representative to determine extension

- A. If in accordance with Clause 48.2 the Employer's Representative considers that the Contractor is using and will continue to use its best endeavours to make good any delay, and that the Contractor may fairly be entitled to an extension of any of the Key Dates, the Employer's Representative shall within twenty-eight (28) Days, or such further time as may be reasonable in the circumstances, of:

1. receipt of final full and detailed particulars of the cause and actual effect of any delaying factor, or
2. where an event has a continuing effect or where the Employer's Representative anticipates a significant delay before the actual effect of an event becomes ascertainable and the Employer's Representative considers that an interim extension of time should be granted, receipt of such particulars as in the Employer's Representative's opinion are sufficient for him to determine such an interim extension of time,

determine, grant and notify in writing to the Contractor such extension. The Employer's Representative in determining any extension shall take into account all the circumstances known to him at that time, including in particular but without limitation the effect of any omission of work or substantial decrease in the quantity of any item of work.

- B. Provided that:

1. the Employer's Representative may at any time following notification of an event under Clause 48.1 determine and notify the Contractor in writing as to whether or not the said event constitutes a potential ground upon which an extension of time might be granted in accordance with Clause 48.3A and the foregoing provisions of this Clause 48.4A;

- C. If the Employer's Representative decides that the Contractor is not entitled to an extension, the Employer's Representative shall as soon as reasonably practicable notify the Contractor in writing accordingly.



**48.5 Contractor to exercise all reasonable endeavours to reduce delay**

- A. The Contractor shall not be entitled to an extension of time in respect of any cause of delay nor for any period of delay which by the exercise of all reasonable endeavours could be avoided or reduced (to the extent that such could have been reduced). The onus of proving that the Contractor has exercised all reasonable endeavours, and that despite such endeavours, the delay could not be avoided or reduced, shall in all cases rest with the Contractor in this respect.

**48.6 Extension of time to a Key Date**

- A. The Contractor shall not be entitled to an extension of time by reason of any delay to any activity in the carrying out of the Works unless in the opinion of the Employer's Representative such delay results in or may be expected to result in a delay to substantial completion of the Works or achievement of a Key Date.
- B. Whether or not the Contractor fails to achieve any Key Date by reason of any delay shall not of itself be material to the issue of the Contractor's entitlement to an extension of time.
- C. Any extension to a Key Date shall not of itself entitle the Contractor to an extension to any other Key Date or for Substantial Completion of the Works as a whole.

**48.7 Employer's Representative to determine Overall Extension of Time**

- A. The Employer's Representative shall, within twenty eight (28) Days of the issue of the Taking-Over Certificate of the Whole of the Works or, in the event of the division of the Works into Stages, of the Taking-Over Certificate of the last Stage, review and finally determine and certify the overall extension of time (if any) and the overall period of suspension of liquidated damages (if any) to which he considers the Contractor is entitled in respect of the Works or any Stage. Such final review shall not result in a decrease in any extension of time already granted by the Employer's Representative under Clause 48.4 or in any period of suspension of liquidated damages determined under Clause 50.4.
- B. Any extension of time granted by the Employer's Representative to the Contractor shall, except as provided elsewhere in the Contract, be deemed to be in full compensation and satisfaction for any loss or injury sustained or sustainable by the Contractor in respect of any matter or thing in connection with which such extension shall have been granted and every extension shall exonerate the Contractor from any claim or demand on the part of the Employer for the delay during the period of such extension but not for any delay continued beyond such period.
- C. It shall be a condition precedent to the Contractor being granted extensions of time under this Clause 48 that the Contractor complies strictly with the terms of Clauses 48.1 and 48.2.

**48.8 Employer's Representative may grant extension**

- A. The Employer's Representative shall be entitled to grant an extension of time at any time, whether prospective or retrospective, whether interim or in full and whether or not the Contractor shall have made any claim for an extension of time and the Employer's Representative shall not be bound by or limited to the grounds (if any) in the Contractor's claim. The Employer's Representative shall



notify the Contractor and the Employer in writing of any extensions of time granted pursuant to this Clause 48.8A.

**B. Notwithstanding anything to the contrary in these Conditions of Contract:**

1. The Contractor's entitlement to an extension of time shall be reduced proportionally to the extent that any act, omission or neglect of the Contractor or its Sub-Contractors and/or Suppliers may have contributed to the delay or impediment;
2. it shall be a condition precedent to the Contractor's entitlement to an extension of time that he shall have used his best endeavours to adjust the order and sequence in which it is proposed to execute the Works in such a manner as to avoid or reduce the effects of the delay or impediment (to the extent that the delay or impediment could have been so avoided or reduced without having an adverse impact on Related Works contractors);
3. The Contractor shall not be entitled to an extension of time unless the ground for such an extension of time is expressly provided for in this Clause 48.

## **49. RATE OF PROGRESS AND ACCELERATION**

### **49.1 Rate of Progress**

- A. If for any reason which does not entitle the Contractor to an extension of time, the rate of progress of the Execution of the Works is at any time, in the opinion of the Employer's Representative, too slow to ensure substantial completion of the Works or achievement of any Key Date by the relevant Key Date the Employer's Representative may so notify the Contractor in writing. The Contractor shall thereupon, subject to the consent of the Employer's Representative, take such steps as are necessary or in default of taking such steps, shall take such steps as the Employer's Representative may reasonably instruct in writing, to expedite progress so as to obtain Substantial Completion of the Works or achievement of any Key Date by the relevant Key Date. The Contractor shall not be entitled to any additional payment for taking such steps.
- B. Notwithstanding the provisions of Clause 49.1A and subject to compliance with any enactment, regulation or bye-law, the Employer's Representative shall be empowered to instruct the Contractor to carry out the Works or any part thereof during any hours of the day where the Employer's Representative considers it necessary owing to the default, negligence, omission or slow progress of the Contractor.
- C. The Contractor shall not be entitled to any additional payment for complying with any instruction given in accordance with Clauses 49.1A and B.
- D. If steps taken by the Contractor pursuant to this Clause 49 involve the Employer in additional supervision costs, such costs shall after due consultation with the Contractor, be determined by the Employer's Representative and shall be recoverable from the Contractor by the Employer and may be deducted by the Employer from any monies due or which become due to the Contractor and the Employer's Representative shall notify the Contractor accordingly with a copy to the Employer. If as a result of any notice given by the Employer's Representative



under this Clause 49 the Contractor shall seek the Employer's Representative's permission to do any work on Site at night or on General Holidays such permission shall not be unreasonably refused.

## 49.2 Acceleration

A. Where the Employer's Representative considers that the Contractor by adopting measures (referred to in this Clause 49.2 as Acceleration Measures) would be able to Substantially Complete the Works or complete any Key Date earlier than the expiry of the Date for Substantial Completion or the relevant Key Date as the case may be or would be able to eliminate or significantly reduce any extension of time to which he would otherwise be entitled pursuant to Clause 48, the Employer's Representative may in writing request the Contractor to provide estimates of:

1. the price of adopting Acceleration Measures; and
2. any saving in time which could be made by adoption of the Acceleration Measures,

and details of any other terms and conditions sought by the Contractor in consideration of agreeing to adopt Acceleration Measures (which estimates, details, terms and conditions are jointly referred to in this Clause 49.2 as the Acceleration Proposals). The Contractor shall use his best endeavours to prepare Acceleration Proposals, which would enable the Works to be accelerated in the most economical manner practicable.

B. The Contractor shall deliver the Acceleration Proposals to the Employer's Representative within fourteen (14) Days of the Employer's Representative's request made under Clause 49.2A.

C. Within fourteen (14) Days of receipt of the Acceleration Proposals, the Employer's Representative shall notify the Contractor in writing that the Acceleration Proposals are agreed, disagreed or that the Employer's Representative wishes to discuss them with the Contractor. If the Acceleration Proposals are agreed and the Employer's Representative thereafter instructs the Contractor to implement the Acceleration Measures:

1. the Contractor will do so at the time agreed in the Acceleration Proposals; and
2. the Contractor shall be paid in respect of such Acceleration Measures in accordance with the terms of such agreement.

D. If:

1. the Contractor shall not have submitted Acceleration Proposals as required under Clause 49.2B; or
2. the Employer's Representative and Contractor cannot reach agreement in relation to the Acceleration Proposals within fourteen (14) Days of the Employer's Representative's notice to discuss under Clause 49.2C; or
3. the Acceleration Proposals have been disagreed under Clause 49.2C,



the Employer's Representative shall be entitled to instruct the Contractor to adopt the Acceleration Measures in any event, with such additions or amendments thereto as the Employer's Representative shall require. If so directed by the Employer's Representative the Contractor shall proceed to implement the proposed Acceleration Measures in accordance with the Employer's Representative's instructions.

- E. Subject to the terms of any agreement made between the Employer's Representative and Contractor under Clause 49.2C, if by adopting the Acceleration Measures, the Contractor reduces, but does not eliminate, delays to the Substantial Completion of the Works, or to the achieving of any Key Date for which he would have been entitled to a greater extension of time under Clause 48 than that actually required because the Acceleration Measures were adopted, then the Contractor shall, in any event, be granted, subject to Clause 48, an extension of time for the residual delay.
- F. In the event that the Employer's Representative issues an instruction pursuant to Clause 49.2D:
1. the Contractor shall prepare and submit to the Employer's Representative all such information and documents relating to the implementation of the Acceleration Measures as the Employer's Representative may reasonably require in writing; and
  2. the Employer's Representative shall as soon as reasonably practicable determine any adjustment to any Date for Substantial Completion or to any Key Date or any extension of time granted as he considers fair in all the circumstances and shall so notify the Contractor in writing; and
  3. the Employer's Representative shall determine the sums which shall be added to the Contract Price (cost reasonably and properly incurred as evidenced by contemporary records, vouchers and the like plus reasonable profit) for performance of the Acceleration Measures instructed.
- G. If the Employer's Representative and the Contractor cannot reach agreement under Clause 49.2C and the Employer's Representative does not instruct the Contractor to adopt the Acceleration Measures, the Contractor shall have no claim for additional remuneration or extension of time arising out of or in connection with any of the proposals made or any failure to reach agreement pursuant to this Clause 49.2.

## 50. LIQUIDATED DAMAGES FOR DELAY

### 50.1 Liquidated damages and general damages

- A. The obligations to achieve any Stage and to substantially complete the Works and any Stage by the relevant Key Dates are separate obligations of the Contractor.
- B. **Appendix 11** attributes to Key Dates a sum which represents or is less than the Employer's genuine pre-estimate (at a daily or other periodic rate) of the damages likely to be suffered by the Employer if the Works are not substantially complete or any Stage is not achieved by the relevant Key Date. The sum shall constitute liquidated damages.



- C. For the avoidance of doubt, the aforesaid damage takes no account of sums referred to in Clause 32.5F payable by the Employer to Ancillary Contractors which sums shall be recoverable from the Contractor in addition to any liquidated damages payable under this Clause 50.
- D. The Contractor accepts that the liquidated damages have been estimated on the basis of damages likely to be suffered as a result of failure to meet any relevant Key Date irrespective of and independently from any damages, which are likely to be suffered as a result of failure to meet any other Key Date. Accordingly, liquidated damages attributed to separate Key Dates may run concurrently and liquidated damages are likely to be suffered concurrently with general damages for failure to meet Key Dates to which no liquidated damages are attributed.
- E. In respect of Key Dates to which liquidated damages are attributed, if the Contractor does not achieve any Stage or substantially complete the Works by the relevant Key Date the Contractor shall pay or allow to the Employer liquidated damages calculated using the rates referred to in Clause 50.1B as reduced by any certificate issued pursuant to Clause 50.2A until the date when the Stage is achieved or the Works are substantially completed.

## 50.2 Reduction of Liquidated damages

- A. If a Taking-Over Certificate is issued for any relevant part, the Employer's Representative shall review any affected rate as follows:-
1. subject to Clause 50.2A(2) if, in the Employer's Representative's opinion, a lower rate than the affected rate might reasonably have been established at the date of the Letter of Acceptance, having reference to the basis of calculation used in the pre-estimate of the affected rate, had it then been known that a Taking-Over Certificate would be issued
    - i. for the relevant part; and
    - ii. for any other relevant part the subject of a previous Taking-Over Certificate at the stage in the progress of the Works when each such certificate was issued, then the affected rate shall be reduced to that lower rate;
  2. if, in the Employer's Representative's opinion, at the date of the review, the circumstances at that date so dictate, the affected rate shall be reduced to such lower rate than that established pursuant to clause 50.2A(1) as may, in the Employer's Representative's opinion, be fair and reasonable; and
  3. the affected rate may be reduced to nil.
- B. If, following a review pursuant to Clause 50.2A any affected rate is reduced, the Employer's Representative shall issue a certificate identifying the reduced rate.
- C. Any reduced rate certified pursuant to clause 50.2B shall apply as from the Date of Substantial Completion or the date of achievement identified in the Taking-Over Certificate for the relevant part.





- D. Any reduced rate certified by the Employer's Representative shall be binding on the Contractor unless and until revised by the Employer's Representative or by the Employer or by an arbitrator pursuant to Clause 76.
- E. In this clause 50.2:-
1. "relevant part" means a part of the Works or a part of a Stage; and
  2. "affected rate" means a rate of liquidated damages identified in **Appendix 1** and/or **Appendix 11**, as reduced by any previous certificate pursuant to Clause 50.2B, applicable to any Stage or the Works which, in the Employer's Representative's opinion, may be affected as a consequence of the issue of a Taking-Over Certificate for the relevant part.

### 50.3 General Damages

- A. In respect of Key Dates to which no liquidated damages are attributed, the damages to be paid or allowed by the Contractor to the Employer for failing to achieve any Stage or to substantially complete the Works by the relevant Key Date shall be general damages, as certified by the Employer's Representative, to compensate the Employer for the consequences of that failure.
- B. The amount of general damages which the Employer shall be paid or allowed following certification pursuant to Clause 50.3A shall be such sum as the Employer's Representative shall certify as his bona fide estimate of the amount of the loss and expense which the Employer has suffered or will suffer in the future as a result of the Contractor's failure to achieve any Stage or substantially complete the Works by the relevant Key Date. The Employer's Representative may, from time to time, revise his estimate of the loss and expense, which has been suffered and will be suffered by the Employer. The Employer's Representative shall, upon request from the Contractor, give to the Contractor in writing reasonable details of the quantification of the estimate certified. Estimates made by the Employer's Representative shall be binding on the Contractor unless and until revised by the Employer's Representative, the Employer or by an arbitrator pursuant to Clause 76 provided that in any reference to any arbitration proceedings the onus of proof as to the amount of the estimate shall be on the Employer.
- C. The total amount of liquidated damages for delay in respect of the Works and any Stage shall be limited in aggregate to the sum identified as such limit in Appendix 1 and/or Appendix 11.

### 50.4 Employer may recover Liquidated damages and general damages

- A. The Employer may:-
1. deduct and retain the amount of any liquidated damages and any general damages becoming due pursuant to this Clause 50 from any sum due or which becomes due to the Contractor; or
  2. require the Contractor to pay such amount to the Employer forthwith
- provided that if upon any subsequent review the Employer's Representative:-



3. grants a relevant extension or further extension of time or issues a suspension notice pursuant to Clause 50.5A(3) the Employer shall no longer be entitled to liquidated damages or general damages in respect of the period of such extension or suspension;
4. issues a certificate pursuant to Clause 50.2B reducing the rate of the liquidated damages, the Employer shall no longer be entitled to liquidated damages at the previous rate for any period after the date on which the reduced rate became applicable; or
5. issues a certificate pursuant to Clause 50.3A reducing a previous estimate of general damages, the Employer shall no longer be entitled to the excess over the reduced estimate for any period after the reduction became applicable; and

any sum in respect of any of the said periods in excess of the Employer's entitlement which may already have been recovered pursuant to this Clause 50 shall be reimbursed forthwith to the Contractor from the date on which the sum was recovered from the Contractor.

#### 50.5 Further delay to the Execution of the Works

- A. Without prejudice to Clause 48, if an event as described in Clause 48.3 should occur after liquidated damages or general damages have become payable in respect of the Works or any Stage:-
  1. the Contractor shall as soon as reasonably practicable so notify the Employer's Representative and shall provide such particulars and details of the type described in clause 48.2 as may be requested;
  2. the Contractor shall use and continue to use his best endeavours to avoid or reduce delay to the Works or any Stage other than any further delay resulting from the said event as to which the Contractor shall use his reasonable endeavours;
  3. if, in the Employer's Representative's opinion, the event has resulted in further delay to the Works or any Stage, the Employer's Representative shall so notify the Contractor and the Employer's entitlement to liquidated damages or general damages in respect of the Works or the Stage shall be suspended for the period from commencement of the further delay (the date of which shall be assessed by the Employer's Representative and stated in the said notice) until the further delay has either come to an end or, as the case may be, should have come to an end had the Contractor used his reasonable endeavours (the date of which shall be assessed by the Employer's Representative and stated in a notice to be issued to the Contractor as soon as reasonably practicable thereafter);
  4. any such suspension shall not invalidate any entitlement to liquidated damages and general damages before the period of further delay started to run or after it ceases; and
  5. the Employer's Representative may take the steps described in Clause 50.5A(3) notwithstanding the absence of any or any timely notification from the Contractor pursuant to clause 50.5A(1).



**50.6 Contractor not relieved of any obligation or liability**

- A. The payment of any liquidated damages and any general damages pursuant to this Clause 50 shall not relieve the Contractor of any obligation or liability save in relation to damages in respect of delay in achieving any Stage or substantially completing the Works.

**50.7 Supervisory Expenses**

- A. In case it is necessary for the Employer to retain the services of the Employer's Representative for such default; for every day or part of a day which shall elapse between the time for completion prescribed in the Contract or extended time allowed, as the case may be and the date of certified completion of the Works, the Contractor shall also pay for all expenses for the supervision services. The actual cost will be based on a calculated rate per day that the Employer pays to the Employer's Representative.

**51. TAKING-OVER CERTIFICATE****51.1 Taking-Over Certificate**

- A. When the construction and testing elements of the Works have been completed sufficient to enable the Employer thereafter to have full beneficial use of the Works, and the Contractor has provided all spare parts, consumables and tools as are required by the Contract to be provided before the commencement of the Defects Liability Period and has complied with his obligations under Clause 7.2E (such state of completion and compliance with such matters to be referred to as Substantial Completion), the Contractor may give a notice to that effect to the Employer's Representative accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Employer's Representative to issue a Taking-Over Certificate in respect of the Works. The Employer's Representative shall, within twenty-one (21) Days of the date of delivery of such notice, either issue to the Contractor a Taking-Over Certificate, stating the date on which, in his opinion, the Works were Substantially Completed in accordance with the Contract, or issue a Taking-Over Certificate pursuant to Clause 51.6A(4), or give instructions in writing to the Contractor specifying all the work which, in the Employer's Representative's opinion, is required to be done by the Contractor before the issue of such Certificate. The Employer's Representative shall also notify the Contractor of any defects in the Works affecting Substantial Completion that may appear after such instructions and before completion of the Works specified therein. The Contractor shall be entitled to receive such Taking-Over Certificate within twenty-one (21) Days of completion, to the satisfaction of the Employer's Representative, of the Works so specified and remedying any defects so notified. Provided that the Employer's Representative shall not be obliged to issue a Taking-Over Certificate for any part of the Works before the Date for Substantial Completion.

**51.2 Substantial Completion of Parts**

- A. If any part of the Permanent Works has been Substantially Completed, the Employer's Representative may in his discretion issue a Taking-Over Certificate in respect of that part of the Permanent Works before Substantial Completion of the whole of the Works and, upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete with due expedition any



outstanding work and to remedy any defects in that part of the Permanent Works during the Defects Liability Period.

### 51.3 Surfaces Requiring Reinstatement

- A. A Taking-Over Certificate given in respect of any part of the Permanent Works before Substantial Completion of the whole of the Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Taking-Over Certificate shall expressly so state.

### 51.4 Taking-Over Certificate for the Whole of the Works

- A. Upon Substantial Completion of the final part of the Permanent Works to be completed and subject to the receipt of any necessary undertakings of the type described in Clause 51.1 the Employer's Representative shall issue a Taking-Over Certificate for the Whole of the Works.

### 51.5 Works to be Performed after Taking Over

- A. For the purposes of the Contract "Substantial Completion" shall exclude the completion of any outstanding works and/or defect rectification works to be Executed in accordance with Clause 53 of the Contract and under the Defects Liability Period.

### 51.6 Consequences of failure to pass Commissioning Tests

- A. If the Works or any part thereof shall fail to pass any Commissioning Test required under Clause 41.5 the Employer's Representative shall be entitled:
1. to order further repetitions of the Commissioning Tests under the conditions of Clause 41.5; and/or
  2. to reject, and require the immediate replacement of, any item of the Works or any part thereof in accordance with Clause 43 if the results of the tests show that the item of the Works or the part is not strictly in accordance with the Contract including any performance guarantees or the tolerances specified in the Contract; and/or
  3. to use the Works or any part thereof so affected, pursuant to Clause 51.7;
  4. to issue a Taking-Over Certificate, if the Employer's Representative so wishes, subject to such reduction of the Contract Price as may be agreed by the Employer's Representative and the Contractor or, failing agreement, as may be determined by arbitration. Pending such arbitration, the Employer's Representative shall make a reasonable assessment of the amount by which the Contract Price should be reduced and such amount shall be recoverable by the Employer from the Contractor who may without prejudice to any other method of recovery thereupon deduct the same from any sums due or becoming due to the Contractor.

### 51.7 Use before Taking Over

- A. If for any reason, the Taking-Over Certificate for the Whole of the Works has not been issued by the Date for Substantial Completion, the Employer shall be at liberty to use the Works or any part thereof in respect of which a Taking-Over Certificate has not been issued if and so long as the Works or the part so used as aforesaid shall be certified by the Employer's Representative as being reasonably



capable of being used provided that the Contractor shall be afforded the earliest possible opportunity of taking such steps as may be necessary to permit the issue of the Taking-Over Certificate. The taking into use of the Works or any part shall not affect the Employer's rights or the Contractor's obligations with respect to such works under the Contract and in particular, but without limitation, the provisions of Clauses 23, 24, 41 and Clauses 51.1, and 51.6 shall continue to apply to the part of the Works while being so used by the Employer provided that the Employer shall take all reasonable necessary measures to avoid any loss or damage to the part, by reason of his use thereof.

## **51.8 Provisions where part of the Works Taken into Use**

- A. Without prejudice to the generality of Clause 51.7 in respect of any Works taken into use under Clause 51.7 (the "Taken into Use Works") any Liquidated Damages for delay in Substantial Completion of the remainder of the Works shall, from the date of such taking into use until the date of Substantial Completion of the Taken into Use Works as certified in a Taking-Over Certificate therefore, or until the date of rejection of the Taken into Use Works pursuant to Clause 51.6A(2), whichever occurs earlier, be suspended as to that proportion which the Employer's Representative determines the value of the Taken into Use Works to bear to the value of the whole of the Works. Provided that upon any rejection as aforesaid the suspension of such damages shall cease and the Employer shall be entitled, with respect only to the period following such rejection, to levy the full amount of damages as would have been otherwise applicable but for the provisions of this Clause 51.8.

## **52. PERFORMANCE TESTS**

### **52.1 Time for Performance Tests**

- A. Performance Tests included in the Contract shall be carried out as soon as is reasonably practicable and within a reasonable time after the Works, or the part of the Works to which such tests relate, have been taken-over by the Employer.

### **52.2 Procedures for Performance Tests**

- A. Performance Tests shall be carried out by the Employer or the Employer's Representative on his behalf under the supervision of the Contractor and in accordance with the procedures and under the operating conditions specified in the Contract Documents and in accordance with such other instructions as the Contractor may give in the course of carrying out such tests.

### **52.3 Cessation of Performance Tests**

- A. The Employer, or the Employer's Representative on his behalf, or the Contractor shall be entitled to order the cessation of any Performance Test if damage to the Works or personal injury are likely to result from continuation.

### **52.4 Adjustments and Modifications**

- A. If the Works or any part thereof fails to pass any Performance Test (or repetition thereof) or if any Performance Test is stopped before its completion, such test shall, subject to Clause 52.5, be repeated as soon as practicable thereafter. The Employer shall permit the Contractor to make adjustments and modifications to any part of the Works before the repetition of any Performance Test and shall, if required by the Contractor, shut down any part of the Works for such purpose and re-start it after the adjustments and modifications have been made. All such



adjustments and modifications shall be made by the Contractor with all reasonable speed and at his own expense. The Contractor shall, if so required by the Employer's Representative, submit to the Employer's Representative for his approval details of the adjustments and modifications, which he proposes to make.

## 52.5 Postponement of Adjustments and Modifications

- A. If the Works or any part thereof fails to pass any Performance Test (or repetition thereof) and the Contractor in consequence proposes to make any adjustments or modifications thereto, the Employer's Representative may notify the Contractor that the Employer requires the carrying out of such adjustments or modifications to be postponed. In such event the Contractor shall remain liable to carry out the adjustments or modifications and a successful Performance Test within a reasonable time of being notified to do so by the Employer's Representative. If however the Employer's Representative fails to give any such notice within one year of the date of Taking Over of the Works or part thereof, the Contractor shall be relieved of any such obligation and the Works or part thereof shall be deemed to have passed such Performance Test.

## 52.6 Time for Completion of Performance Tests

- A. Where the Contract provides that the Performance Tests (or repetition thereof) shall be completed within a specified time the Employer shall be entitled to use the Works as he thinks fit from the expiry of such time.

## 52.7 Evaluation of Results of Performance Tests

- A. The results of Performance Tests shall be compiled and evaluated jointly by the Employer, or the Employer's Representative on his behalf, and the Contractor in the manner detailed in the Contract Documents. Any necessary adjustments to the results to take account of any previous use of the Works by the Employer, the measuring tolerances and any differences between the operating conditions under which the Performance Tests were conducted and those detailed in the Specification or performance test schedule shall be made in accordance with the provisions of the Specification or, if the Specification contains no such provisions, then in such manner as is fair and reasonable.

## 52.8 Consequences of Failure to Pass Performance Tests

- A. If the Works or any part thereof fails to pass the Performance Tests (or any repetition thereof) within the period specified in the Contract or, if no period is specified, within a reasonable time:
1. where liquidated damages for failure to achieve any guaranteed performances have been specified in the Contract and the results are within the stipulated acceptance limits the Contractor shall pay or allow to the Employer the liquidated damages so specified. Upon payment or allowance of such liquidated damages by the Contractor the Employer shall accept the Works.
  2. where such damages have been so specified but the results are outside the stipulated acceptance limits, or where liquidated damages have not been so specified, the Employer shall be entitled to accept the Works or the Section subject to such reasonable reduction in the Contract Price as may



be agreed by the Employer and the Contractor or, in default of agreement, as may be determined by arbitration under Clause 76.

3. where such failure of the Works or the part thereof would deprive the Employer of substantially the whole of the benefit thereof the Employer shall be entitled to reject the Works or the part thereof and to proceed in accordance with Clause 71.

### 53. DEFECTS LIABILITY

#### 53.1 Defects Liability Period

- A. In these Conditions of Contract the expression "Defects Liability Period" shall mean with respect to the Works the period commencing upon the date such works are Substantially Complete as certified in the Taking-Over Certificate with respect thereto and ending on the expiry of the relevant period relating thereto set out in Appendix 1, to be calculated from the date of Substantial Completion of the whole of the Works as certified in the Taking-Over Certificate for the Whole of the Works and in relation to the Defects Liability Period the expression "the Works" shall be construed accordingly.

#### 53.2 Completion of Outstanding Work and Remedying Defects

- A. To the intent that the Works shall, at or as soon as practicable after the expiration of the Defects Liability Period, be delivered to the Employer in the condition required by the Contract and to the satisfaction of the Employer's Representative, the Contractor shall:
  1. complete the work, if any, outstanding on the date stated in any Taking-Over Certificate within ninety (90) Days after such date; and
  2. execute all such redesign work of amendment, reconstruction, and, as necessary, remedy defects, omissions, shrinkages or other faults as the Employer's Representative may, during the Defects Liability Period or within fourteen (14) Days after its expiration, as a result of an inspection made by or on behalf of the Employer's Representative prior to its expiration, instruct the Contractor to execute.

#### 53.3 Cost of Remedying Defects

- A. All work referred to in Clause 53.2A(2) shall be executed by the Contractor at his own cost if the necessity thereof is, in the opinion of the Employer's Representative, due to any default or failure on the part of the Contractor to comply with his obligations under the Contract.

#### 53.4 Contractor's Failure to Carry Out Instructions

- A. In case of default on the part of the Contractor in carrying out an instruction pursuant to Clause 53.2A(2) within ninety (90) Days of receipt of same, the Employer may:
  1. carry out the redesign and/or work himself or by others at the Contractor's risk and cost, provided that he does so in a reasonable manner. The costs properly incurred by the Employer in redesign, work of amendment, and reconstruction necessary to remedy the defect,



omission, shrinkage or other faults shall be deducted from the Contract Price; or

2. require the Contractor to allow the Employer a reasonable reduction in the Contract Price to be agreed or fixed by conciliation or arbitration under Clause 76, which sum, pending arbitration as aforesaid, shall be fixed by the Employer's Representative and represent a debt due from the Contractor to the Employer; or
3. if the defect, omission, shrinkage or other fault is such that the Employer has been deprived of substantially the whole of the benefit of the Works or a part thereof, he may without prejudice to any other right or remedy terminate the Contract in respect of such parts of the Works as cannot be put to the intended use. The Employer shall, without prejudice to any other right or remedy, be entitled to recover all sums paid in respect of such parts of the Works together with the cost of dismantling the same, clearing the Site and returning Contractor's Plant to the Contractor, subject to Clause 61.

### 53.5 Endemic Failures

- A. Notwithstanding any other provisions of the Contract (including this Clause 53) if, during the course of Execution of the Works or in the ten (10) year period immediately following the date of Substantial Completion of the Works as certified in the Taking-Over Certificate for the Whole of the Works, the Employer's Representative forms the opinion that, because of the nature and frequency of the failures of any part of the Works, including, but not limited to, any component or sub-assembly thereof, such part can properly be said to have failed endemically he may so certify by notice in writing to the Contractor to that effect.
- B. Should the Works or any part thereof be certified under Clause 53.5A to be the subject of an endemic failure then the Contractor shall as soon as reasonably practicable renew or alter or replace (including as necessary any redesigning of design contained within drawings and/or Construction Documents prepared by the Contractor) all such Works or parts thereof throughout the Works so as to avoid any subsequent defect therein. Save where and to the extent that the endemic failure is attributable to the design prepared by the Employer and contained within the Drawings and Specifications, the costs of such renewal, repair, alteration or replacement (including any redesign) shall be borne by the Contractor together with the cost of any work ancillary thereto. Before commencing any renewal, alteration or replacement the Contractor shall submit to the Employer's Representative for his approval, with a copy to the Employer, his proposals for such renewal, alteration or replacement.
- C. The renewals, repairs, alterations or replacements (including redesign of the Contractor's drawings and Construction Documents) shall be carried out and completed to the satisfaction of the Employer's Representative and so that the Works will meet the Contractor's obligations under the Contract, in particular, but without limiting the generality of the foregoing, under Clause 8. Save where and to the extent that the endemic failure is attributable to the design contained within the Specifications and Drawings, prepared by the Employer, the provisions of this Clause 53 shall apply to all such renewals, repairs, alterations and replacements as though the Works or part thereof in question, together with any other part of



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and procedures contained in the approved Operations and Maintenance Plan and Training Plan, and any approved amendments or supplements thereto.

### 54.3 Contractor's Warranties

A. The Contractor represents and warrants that:

1. the numbers, qualifications and levels of experience specified by the Contractor in his Training Plan shall be such as is required to provide the Employer with Trainees in sufficient numbers and of sufficient qualifications and experience properly to operate and maintain the Works in accordance with the Contract Documents and the Operation and Maintenance Manuals.

### 54.4 Employer responsible to provide Trainees

Not Used

### 54A PROVISION FOR OPERATION AND MAINTENANCE SERVICES AFTER TAKING-OVER OF THE WORKS

- A. During the progress of the Works the Employer may find it desirous to have operation and maintenance services provided for the Works.
- B. As such the Employer reserves the right to request the Contractor to enter into negotiations with the Employer to provide a proposal for the operation and maintenance services.
- C. The services to be provided shall to commence upon the issuing of the Taking-Over Certificate for the Whole of the Works, and for duration to be determined by the Employer and agreed upon during the negotiations with the Contractor.
- D. Said negotiations shall commence no later than three hundred and sixty five (365) Days prior to the date for Substantial Completion of the Works.

### 54B AIRSIDE/LANDSIDE ZONE RULES AND REGULATIONS

#### 54B.1 Contractor to establish and provide Airside Zone Rules and Regulations

- A. Within twenty one (21) Days of the Commencement Date, the Contractor shall submit to the Employer's Representative an outline of the Contractor's Rules and Regulations for occupying and working in the Airside Zone (**Appendix 13**). The outline Rules and Regulations shall describe the procedures for the operation and maintenance of Airside Zone security, health and safety, environment management, housekeeping and general maintenance of the Airside Zone for which the Contractor is responsible. Within twenty eight (28) Days of such submittal, the Contractor shall submit for approval the Contractor's detailed Rules and Regulations, which shall take proper account of all comments made by the Employer's Representative on the said outline, and thereafter the Contractor shall amend or supplement the Rules and Regulations as may be required by the Employer's Representative. The submission and approval by the Employer's Representative of such Rules and Regulations shall not relieve the Contractor of any of the Contractor's obligations under the Contract.
- B. The Contractor shall throughout the Execution of the Contractor's Works take full responsibility for the Airside Zone Rules and Regulations and remain



responsible for the adequacy and content thereof and the application of such Rules and Regulations within the Airside Zone.

#### **54B.2 Airside Zone Rules and Regulations in accordance with requirements of Employer's Representative**

- A. The form and content of the outline submission, the detailed submission and of all supplemental parts thereof of the Airside Zone Rules and Regulations shall be in accordance with the requirements prescribed by the Employer's Representative.

#### **54B.3 Contractor to adhere to the Airside Zone Rules and Regulations**

- A. Upon the Employer's Representative notifying his approval to the Airside Zone Rules and Regulations, or any supplemental part thereof, and without limiting the Contractor's obligations under the Contract, the Contractor shall adhere to the principles and procedures contained in such document.
- B. The Contractor shall adhere to the Airside Zone Rules and Regulations and shall ensure, as far as practically possible, that the Employer and Employer's agents and representatives, all Ancillary and Related Works Contractors and any other such parties that the Employer may elect, when entering the Airside Zone, comply with the provisions of the Airside Zone Rules and Regulations. The Employer's Representative shall issue copies of the approved Airside Zone Rules and Regulations to each subsequent Ancillary and/or Related Works Contractor prior to the Ancillary and/or Related Works Contractor commencing any works within the Airside Zone.

#### **54B.4 Appointment of Airside Zone Temporary Facilities Co-ordinator and other personnel**

- A. The Contractor shall appoint a suitably qualified and experienced person, competent in the English language, as the Airside Zone Temporary Facilities Co-ordinator, to act as the administrator of the Airside Zone Rules and Regulations, on behalf of the Contractor, and be responsible for all relevant matters related to the administration and operation of the Airside Zone Rules and Regulations. The Contractor shall, from time to time, provide such other personnel and resources as may be required to ensure effective operation of the Airside Zone Rules and Regulations. The Contractor shall submit weekly reports, regarding the Airside Zone to the Employer's Representative, the contents of which having previously been agreed between the Employer's Representative and the Contractor.

#### **54B.5 Revisions to Airside Zone Rules and Regulations**

- A. If at any time the Rules and Regulations are, in the Employer's Representative's opinion, insufficient or require revision or modification to ensure the unhindered progress of the Project, the Employer's Representative may instruct the Contractor to revise the Rules and Regulations and the Contractor shall within fourteen (14) Days submit the revised Rules and Regulations to the Employer's Representative for review and approval.
- B. The Contractor shall, from time to time and as necessary or required by the Employer's Representative, produce supplements to the Rules and Regulations such that it is at all times a detailed, comprehensive and contemporaneous statement by the Contractor of its Airside Zone security, health and safety, environment management, housekeeping and general maintenance obligations and responsibilities, relating to the Airside Zone. Any and all submissions to the



Employer's Representative of supplements to the Airside Zone Rules and Regulations shall be made in accordance with Clause 7.

- C. Any omissions, inconsistencies and errors in the Rules and Regulations or the Employer's Representative's acceptance or rejection of the Rules and Regulations and/or supplements thereto shall be without prejudice to the Contractor's obligations with respect to security, health and safety, environment management, housekeeping and general maintenance obligations and responsibilities, relating to the Airside Zone and shall not excuse any failure by the Contractor to adopt proper and recognised procedures and practices throughout the Airside Zone during the Execution of the Contractor's Works.

#### 54B.6 Contractor to provide access to Airside Zone

- A. The Contractor shall provide all access, assistance and facilities to enable the Employer's Representative to carry out surveillance visits within the Airside Zone to verify that the Rules and Regulations are being implemented.

### 55 CONTRACTOR TO SEARCH

- A. The Contractor shall if and in the time and manner required by the Employer's Representative in writing carry out such searches, tests or trials as may be necessary to determine the cause of any defect, imperfection or fault. Unless such defect, imperfection or other fault is one for which the Contractor is liable under the Contract, the Employer's Representative shall, after due consultation with the Contractor, determine the amount in respect of the costs of such search incurred by the Contractor, which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer. If such defect, imperfection or other fault is one for which the Contractor is liable, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case remedy such defect, imperfection or other fault at his own cost in accordance with the provisions of Clause 53.

### 56 VARIATIONS

#### 56.1 Definition of Variation

- A. The term Variation means:
1. a change in the requirements of the Contract which makes necessary the alteration or modification of the design, quality or quantity of the Works as described by or referred to in the Contract (otherwise than such as may be reasonably necessary for the purposes of rectification of defective design, materials, Equipment, or workmanship due to the default of the Contractor). Such alteration or modification shall include:
    - i. the addition, omission or substitution of any design or any part of the Works; and
    - ii. the alteration of the kind or standard of any of the design, materials, Equipment to be used in the Works; and
    - iii. the removal from the site of any work executed or materials or goods brought thereon by the Contractor for the purposes of the Works other than work, materials, Equipment which are not in accordance with the Contract.



## 56.2 Employer's Representative's right to instruct Variations

- A. The Employer's Representative may issue instructions effecting a Variation. No Variation instructed by the Employer's Representative shall vitiate this Contract or relieve the Contractor from any of his other liabilities or obligations under the Contract, but the value of all such Variations shall be taken into account by the Employer's Representative in determining revisions to the Contract Price in accordance with Clause 57 save as herein provided and provided in particular that where the issue of an instruction to vary the Works is necessitated by some default or breach of Contract by the Contractor or those for whom he is responsible, any additional cost attributable to such default shall be borne by the Contractor. The Contractor shall make no Variation without an instruction in writing from the Employer's Representative.

## 56.3 Variation to ensure Contractor's compliance

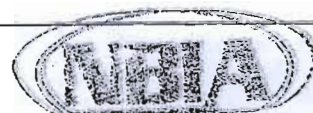
- A. The Employer's Representative may, in his absolute discretion instruct a Variation (including an instruction to omit work) in circumstances where, in the opinion of the Employer's Representative the Contractor will fail to meet any of his obligations under the Contract. The Contractor shall not be entitled to any extension of time or payment in respect of or in connection with any such instruction. Any instruction under this Clause 56.3 shall be without prejudice to any other rights or remedies, which the Employer may have.

## 56.4 Contractor's Proposed Variations

- A. The Contractor may propose in writing to the Employer's Representative any modifications to the Works or to any part thereof which in the Contractor's opinion will improve the appearance or quality of the Works, the economy of the design or construction, the bringing forward of the Date for Substantial Completion of the Works or the efficiency of or economy in use of the completed Works. The Employer's Representative at his sole discretion may approve or reject the Contractor's proposed modifications and failure by the Employer's Representative to respond within fourteen (14) Days of the Contractor's proposal shall be deemed to be a rejection. If approved by the Employer's Representative an instruction requiring a Variation shall be issued in accordance with this Clause 56. The application of this Clause 56.4 shall in no way permit the Contractor to suspend or delay his performance of the Works or any part thereof pending the Employer's review of the Contractor's proposals.

## 56.5 Omitted Work

- A. The Employer may procure that any part of the Works omitted as a Variation to the Works pursuant to an instruction under Clause 56.1 be carried out by another contractor provided always that if the effect of the omission of such part of the Works would be to reduce an extension of time to which the Contractor would otherwise have been entitled had no such Variation been ordered, the Employer's Representative shall take the effect of such omission into account and, subject to the provisions of Clause 48, grant such extension of time (if any) so as to put the Contractor in no better and no worse position than if the said Variation had not been ordered.



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**56.6 Compliance with Clause 27 not a Variation**

- A. An instruction of the Employer's Representative requiring the Contractor to comply with his obligations under Clause 27 or arising from a breach or apprehended breach by the Contractor of his obligations under Clause 27, shall not under any circumstances constitute a Variation for the purposes of this Clause 56.

**56.7 Contractor's Estimate**

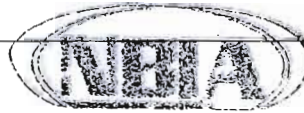
- A. The Employer's Representative may by notice in writing at the time of issuing a Variation require the Contractor to estimate the additional sums to which he considers he will be entitled under the Contract in respect of such Variation and any extension of time for Substantial Completion of the Works or for any Key Date to which he properly considers he will be entitled or, as the case may be, the savings in cost or reduction of time envisaged in respect of the Variation providing all necessary documentation and supporting calculations in writing. If so requested, the Contractor shall within fourteen (14) Days (or such greater period as the Employer's Representative may fix) submit a proper and detailed estimate to the Employer's Representative of the said sums and extensions of time, or savings in cost or reductions in time as the case may be and shall not in the meantime proceed with the Variation. If the Employer's Representative shall subsequently require the Contractor to proceed with the Variation he shall so notify the Contractor in writing in which event the Contractor shall not be entitled to any further adjustment to the Contract Price or extension of time in respect of such Variation beyond that set forth in the Contractor's estimate other than, in respect of the extension of time only, in respect of matters which occur and could not properly have been foreseen between the estimate and the notice in writing requiring the Contractor to proceed with the Variation. The Contractor shall have no claim to payment or extension of time in respect of any cost of and time spent preparing any estimate under this Clause 56.7

**56.8 Failure to Give Contractor's Estimate**

- A. In the event that the Contractor fails to give an estimate within the period required by Clause 56.7 and to provide all necessary documentation and supporting calculations or the Employer's Representative considers that such estimate is not a proper or an accurate estimate, then the Employer's Representative may fix such additional sums (or savings as the case may be) and period (if any) as he considers appropriate and subject only to Clause 76 instruct the Contractor to proceed forthwith with the Variation and until any contrary decision under Clause 76 the Employer's Representative's estimate shall be treated as though it was the estimate of the Contractor required by Clause 56.7.

**56.9 Employer's Representative's Right to Proceed**

- A. Notwithstanding the provisions of Clauses 56.7 and 56.8 the Employer's Representative may instruct the Contractor at any time, whether before or after receipt of the Contractor's estimate under Clause 56.7 to comply with the relevant Variation forthwith.



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**56.10 Variations affecting Contractor's obligations**

- A. If, in the opinion of the Contractor, any Variation issued pursuant to this Clause 56 is likely to prevent or prejudice the Contractor from or in fulfilling any of his obligations under the Contract in respect of the design and Execution of the Works, either directly or indirectly, he shall notify the Employer's Representative thereof in writing as soon as practicable after receipt of the Variation therefore from the Employer's Representative, giving a full statement of his reasons, and the Employer's Representative shall decide forthwith whether or not the same shall be carried out. The Employer's Representative may confirm his instructions in writing and may modify the said obligations to such an extent as he considers may be justified. The Employer's Representative shall not be obliged to modify the said obligations if in his opinion the Contractor will be in breach of his obligations hereunder unless such Variation is made.

**57 VALUATION OF VARIATIONS****57.1 Ascertainment by Employer's Representative**

- A. The value of Variations shall save where the Contractor is instructed to proceed on the basis of an estimate pursuant to Clause 56.7 or 56.8, be ascertained as appropriate by the Employer's Representative after consultation with the Contractor in accordance with the following principles:
1. where the varied work is similar in character to and Executed under similar conditions to work set out in the Contract Documents, such work shall be valued at the applicable rates and prices in the Contract Documents.
  2. where the varied work is not of a similar character to or not Executed under similar conditions to work set out in the Contract Documents then the Employer's Representative shall establish a new rate for such work based upon the rates or price set out in the Contract Documents insofar as may be reasonable making such allowances thereto by way of addition or deduction as may be necessary to take account of any dissimilarity in the character of the work or the conditions under which the work is Executed.
  3. where work is omitted, the rates and prices in the Contract Documents shall be used to value the work omitted provided that if part only of an item of work is omitted then the Employer's Representative shall establish a new rate or price by which to value the omitted work which shall be fair and reasonable.
  4. where the varied work cannot be properly valued in accordance with the provisions of Clauses 57.1A(1), (2) or (3) the Employer's Representative shall establish a new rate or price for such work which shall be fair and reasonable.
- and following such a decision the Employer's Representative shall make, pursuant to Clause 57.1A, revisions (if any and if appropriate) to the Contract Price and shall notify the Contractor accordingly.



**57.2 Contractor to Maintain Records**

- A. The Contractor shall maintain all proper records relating to any Variation instructed and in addition the Employer's Representative shall be entitled within fourteen (14) Days after issuing a Variation to instruct the Contractor as to any records that the Employer's Representative requires him to maintain. The Contractor shall maintain such records at his own expense and submit them to the Employer's Representative as directed.

**57.3 Daywork**

- A. The Employer's Representative may, if in his opinion it is necessary or desirable, order in writing that any additional or substituted work shall be Executed on a daywork basis. The Contractor shall then Execute the work on a daywork basis under the conditions and valued at the rates set out in the Daywork Schedule. No variation of the unit rate or price above shall be considered for items in the Daywork Schedule, notwithstanding the quantity of work performed.
- B. The Contractor shall furnish to the Employer's Representative such receipts or other vouchers as may be necessary to prove the amounts paid and before ordering materials shall submit to the Employer's Representative quotations for the same for his approval.
- C. In respect of all work Executed on a daywork basis the Contractor shall during the continuance of such work deliver each day to the Employer's Representative an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement also in duplicate showing the description and quantity of all materials and Contractor's Plant used thereon or therefore other than Contractor's Plant which is included in the percentage addition in accordance with the Daywork Schedule. One copy of each list and statement will if correct or when agreed be signed by the Employer's Representative and returned to the Contractor.
- D. At the end of each Month the Contractor shall deliver to the Employer's Representative a priced statement of the labour, materials and Contractor's Plant, except as aforesaid used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Employer's Representative shall consider that for any reason the sending of such list or statement by the Contractor in accordance with the foregoing provision was impracticable he shall nevertheless be entitled to authorise payment for such work either as daywork, on being satisfied as to the time employed, and the labour, materials and Contractor's Plant used on such work, or at such value therefore as he shall consider fair and reasonable.

**58 NOT USED**



## 59 DISTURBANCE TO THE PROGRESS OF THE WORKS

- A. If the Employer's Representative is of the opinion that the Contractor has been or is likely to be involved in expenditure for which the Contractor would not be reimbursed by a payment made under any provision in the Contract by reason of the progress of the Execution of the Works or any part thereof having been materially affected by:
1. the Contractor not having received in due time necessary instructions, orders, directions, decisions, Drawings, Specifications, details or levels from the Employer's Representative for which the Contractor specifically applied in writing on a date which, having regard to the Key Date for Substantial Completion of the Works or achievement of any Stage, was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for the Contractor to receive the same, or
  2. any Variation ordered in accordance with Clause 56, or
  3. the uncovering or opening up for inspection of any work in accordance with Clause 42 except where such uncovering or opening up is at the expense of the Contractor, or
  4. the inspection or Testing of Equipment, goods, materials or workmanship not clearly intended or provided for by the Contract but directed by the Employer's Representative in accordance with Clause 40 unless the inspection or Test showed that the Equipment, work, goods, materials or workmanship were not in accordance with the Contract, or
  5. delay caused by any Ancillary Contractor, Other Contractor or any company not being a utility undertaking engaged by the Employer in supplying goods or materials or in executing work directly connected with but not forming part of the Works, save to the extent that such delay was caused or contributed to by some default on the part of the Contractor (including without limitation any failure by the Contractor to comply with its obligations under Clause 32 or by the Contractor complying with its obligations under Clause 32, or
  6. late delivery of goods or materials by the Employer,
  7. a failure by the Employer to give possession of or access to the site in accordance with Clause 46.

then, subject to Clause 60, the Employer's Representative shall as soon as reasonably practicable determine such sum in respect of the Cost incurred as the Employer's Representative considers fair in all the circumstances and notify the Contractor in writing of such determination.

## 60 PROCEDURE FOR CLAIMS

### 60.1 Notice of Claims

- A. Notwithstanding any other provision of the Contract, if the Contractor considers that he may have grounds to claim any additional payment whether pursuant to any Clause of these Conditions of Contract (including, but without limitation in respect of any Variation,) or otherwise, he shall, in addition to compliance with





any other procedure or obligation in relation thereto, give notice to the Employer's Representative, with a copy to the Employer, within twenty-eight (28) Days after the event giving rise to the claim has first arisen.

## 60.2 Contemporary Records

- A. Upon the happening of the event referred to in Clause 60.1, the Contractor shall maintain such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make. Without any admission as to liability or quantum on the part of the Employer, the Employer's Representative shall, on receipt of a notice under Clause 60.1, inspect such contemporary records and may instruct the Contractor to maintain any further contemporary records as are reasonable and may be material to the claim of which notice has been given. The Contractor shall permit the Employer's Representative to inspect all records maintained pursuant to this Clause 60.2 and shall supply him with copies thereof as and when the Employer's Representative so instructs.
- B. To the extent that the records of the Contractor are to be created and/or maintained on a computer or other electronic storage device, the Contractor shall agree (agreement not to be unreasonably withheld) with the Employer's Representative a procedure for back-up and storage at other locations of copies of the records and shall adhere, and shall cause his Sub-Contractors and Suppliers, of any tier, to adhere, to the agreed procedures and to demonstrate compliance with the agreed procedure as and when requested by the Employer's Representative.

## 60.3 Substantiation of Claims

- A. Within twenty eight (28) Days, or such other reasonable time as may be agreed by the Employer's Representative, of giving notice under Clause 60.1, the Contractor shall send to the Employer's Representative an account giving detailed particulars of the amount claimed and the grounds upon which the claim is based. Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Employer's Representative may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to the Employer's Representative, the Contractor shall send a final account within twenty eight (28) Days of the end of the effects resulting from the event. The Contractor shall, if required by the Employer's Representative so to do, copy to the Employer all accounts sent to the Employer's Representative pursuant to this Clause 60.3.

## 60.4 Failure to Comply

- A. It shall be a condition precedent to the Contractor's right to be paid for any Variation or to make any claim for additional payment, whether under or in any way in relation to the Contract or otherwise, that he shall have complied fully and strictly with all of the provisions of this Clause 60 in respect of such Variation or such claim for additional payment which he shall seek to make. In the event of the Contractor failing so to comply, the Employer shall not be bound to make any payment to the Contractor in respect of such Variation or such claim for additional payment and the Contractor shall be conclusively deemed to have waived right to payment in respect of the Variation and the claim or claims the subject of the non-compliance.



**60.5 Payment of Claims**

- A. The Contractor shall be entitled to have included in any interim payment certified by the Employer's Representative pursuant to Clause 68 such amount in respect of any claim (including for any Variation) as the Employer's Representative, after due consultation with the Contractor, may consider due to the Contractor provided that the Contractor has supplied sufficient particulars to enable the Employer's Representative to determine the amount due. If such particulars are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment in respect of such part of the claim as such particulars may substantiate to the satisfaction of the Employer's Representative. The Employer's Representative shall notify the Contractor of any determination made under this Clause 60.5, with a copy to the Employer.

**60.6 Monthly Particulars**

- A. In addition to his obligations under Clauses 60.1, 60.2 and 60.3 hereof, the Contractor shall send to the Employer's Representative by the seventh Day of every Month an account giving as full and detailed particulars as is possible, of all claims for any additional payment to which the Contractor may consider himself entitled, including all Variations ordered by the Employer's Representative which he has executed during the preceding Month. In the event of the Contractor failing to comply with this Clause 60.6, the Employer shall not be bound to make any payment to the Contractor in respect of any claim or claims the subject of the non-compliance and the Contractor shall conclusively be deemed to have waived such claim.

**61 CONTRACTOR'S PLANT AND TEMPORARY WORKS****61.1 Vesting of Certain Contractor's Plant**

- A. All Contractor's Plant and Temporary Works owned by the Contractor or Sub-Contractors or Suppliers or by any company in which the Contractor or any Sub-Contractor or Supplier has a controlling interest shall, when brought on to the Site (or in the case of hire purchase on the Site on its becoming the property of the Contractor, Sub-Contractor or Supplier) immediately become the property of the Employer. The Contractor shall not bring onto the Site, or use in connection with the Works at any place whatsoever, any item of Contractor's Plant or Temporary Works unless he shall have executed, or procured the execution of, and produced to the Employer's Representative such deeds or documents in favour of the Employer as the Employer's Representative may reasonably require to ensure that the Employer may, in the event of termination of the Contract or the employment of the Contractor thereunder, secure unrestricted use by it, or any other contractor employed by it, of such Contractor's Plant or Temporary Works until completion of the Execution of the Works.

**61.2 Conditions of Hire of Certain Contractor's Plant**

- A. With a view to securing, in the event of termination under Clause 71, the continued availability, for the purpose of Executing the Works, of any hired Contractor's Plant, the Contractor shall not bring on to the Site any hired Contractor's Plant unless there is an agreement for the hire thereof (not being a hire purchase agreement) which contains a provision that the owner thereof will, on request in writing made by the Employer within seven (7) Days after the date on which any termination has become effective, and on the Employer undertaking



to pay all hire charges in respect thereof from such date, hire such Contractor's Plant to the Employer on the same terms in all respects as the same was hired to the Contractor save that the Employer shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of Executing the Works under the terms of the said Clause 71.

### 61.3 Costs for the Purpose of Clause 71

- A. In the event of the Employer entering into any agreement for the hire of Contractor's Plant pursuant to Clause 61.2, all sums properly paid by the Employer under the provisions of any such agreement and all costs incurred by him (including stamp duties) in entering into such agreement shall be deemed, for the purpose of Clause 71, to be part of the cost of Executing the Works.

### 61.4 Contractor's Certificate as to Hiring Provisions

- A. The Contractor shall upon request made by the Employer's Representative at any time in relation to any item of hired Contractor's Plant forthwith notify to the Employer's Representative in writing the name and address of the owner thereof and shall certify that the agreement for the hire thereof contains a provision in accordance with the requirements of Clause 61.2. The Contractor shall, upon request made by the Employer's Representative produce a copy of such agreement for hire and the Employer shall not be bound to make any payment to the Contractor in respect of such hired Contractor's Plant in the event the Contractor fails to comply with such request. The Contractor shall also upon request as aforesaid give a like notification (but without certification) in regard to any Contractor's Plant held under an agreement of hire purchase thereof.

### 61.5 Hire Purchase Payments by Employer

- A. The Employer shall in order to avoid seizure by the owner of any Contractor's Plant held under an agreement of hire purchase thereof be entitled to pay to such owner the amount of any overdue installment or other sum payable under any agreement for hire purchase and in the event of his doing so any amount so paid by him shall be a debt due from the Contractor to the Employer and may be deducted by the Employer from any monies due or that may become due to the Contractor under the Contract or may be recovered by the Employer from the Contractor in law.

### 61.6 Contractor's Plant and Temporary Works

- A. No Contractor's Plant or Temporary Works shall be removed from the Site without the written consent of the Employer's Representative, which consent shall not be unreasonably withheld where the same is no longer immediately required for the purpose of Execution of the Works. The Employer will permit the Contractor the exclusive use of all such Contractor's Plant or Temporary Works in and for the Execution of the Works until the happening of any event, which gives the Employer the right to exclude the Contractor from the Site and proceed with the Execution of the Works.

### 61.7 Employer not Liable for Damage

- A. The Employer shall not at any time be liable, save as mentioned in Clauses 22 and 74, for the loss of or damage to any of the said Contractor's Plant or Temporary Works.



### 61.8 Revesting and Removal of Contractor's Plant

- A. Upon removal of any such Contractor's Plant and Temporary Works which have become the property of the Employer under Clause 61.1 with the Employer's Representative's consent, as aforesaid, the property therein shall be deemed to re-vest in the Contractor and upon Substantial Completion of the Works the property in the remainder of such Contractor's Plant and Temporary Works and materials as aforesaid shall, subject to the provisions of Clause 71.1, re-vest in the Contractor who shall remove the same. If the Contractor shall fail to remove any Contractor's Plant or Temporary Works as aforesaid within such reasonable time after Substantial Completion of the Works as may be allowed by the Employer's Representative then the Employer may:

1. sell any such Contractor's Plant and Temporary Works; or
2. return any hired Contractor's Plant at the Contractor's expense to the person, firm or company from whom such Contractor's Plant was hired by the Contractor;

and after deducting from any proceeds of sale the cost, charges and expenses of and in connection with such sale and in connection with such return as aforesaid shall, subject to any right of set-off, pay the balance (if any) to the Contractor but to the extent that the proceeds of any sale are insufficient to meet all such costs, charges and expenses the excess shall be a debt due from the Contractor to the Employer and shall be deductible or recoverable by the Employer accordingly as aforesaid.

### 61.9 Payment of Port Dues

- A. The Contractor shall pay any port dues including (but not by way of limitation) wharfage dues, storage, charges, quay rent, craneage, shipping dues, pilotage fees, anchorage, berthage and mooring fees, quarantine dues, loading portorage and overtime fees for Contractor's Plant for use directly in connection with the Execution of the Works brought into and despatched from the Kingdom of Thailand by the Contractor (or on his behalf).

### 61.10 Importation by Agent

- A. In the case of Contractor's Plant imported on the Contractor's behalf by importing agents and the like, both the shipping documents and the invoices of the original suppliers or manufacturers must indicate clearly that the consignment is for the Contractor's account.

### 61.11 Landing Charges

- A. The Contractor shall pay all charges and other expenses in connection with the landing and shipment of all Contractor's Plant, Equipment, materials and other things of whatsoever nature brought into or despatched from the Kingdom of Thailand for the purposes of the Contract.

## 61.12 Customs Clearance

- A. The Contractor shall make his own arrangements in obtaining clearance through Customs of such Contractor's Plant, Equipment, materials and other things. However, if so required, the Employer's Representative's assistance may be sought.



**61.13 Re-export of Contractor's Plant**

- A. In respect of any Contractor's Plant which the Contractor imports for the purpose of the Execution of the Works, the Employer's Representative shall, subject to Clause 61.8, assist the Contractor if so requested and to the extent he is able to do so in procuring any necessary consents to the re-export of such Contractor's Plant by the Contractor upon the removal thereof as aforesaid.

**61.14 Incorporation of Clause in Sub-Contracts**

- A. The Contractor shall, where entering into any sub-contract or supply contract for the Execution of any part of the Works, incorporate in such sub-contract or supply contract (by reference or otherwise) the provisions of this Clause 61 in relation to Contractor's Plant, Temporary Works, Equipment, or materials brought on to the Site by the Sub-Contractor or Supplier.

**61.15 Approval not Implied**

- A. The operation of this Clause 61 shall not be deemed to imply any approval by the Employer's Representative of the Contractor's Plant, Temporary Works, Equipment, or materials or other matters referred to therein nor shall it prevent Employer's Representative's right to order the removal of any such Contractor's Plant, Temporary Works, Equipment, or materials at any time.

**62 VESTING OF MATERIALS AND EQUIPMENT****62.1 Equipment and materials supplied by the Contractor**

- A. All Equipment and materials to be supplied by the Contractor for incorporation in the Works shall become the property of the Employer at whichever is the earlier of the following times:

1. upon delivery to the Site
2. when the Contractor becomes entitled to have the value of such Equipment or materials included in an Interim Payment Certificate

and shall not be removed from the Site without a written instruction or the prior written consent of the Employer's Representative.

- B. Equipment and materials shall only re-vest in the Contractor to the extent that they may be agreed by the Employer's Representative in writing to be surplus to requirement upon or prior to Substantial Completion of the Works.
- C. The operation of this Clause 62.1 shall not be deemed to imply any approval by the Employer's Representative of such Equipment or materials or prevent the right of the Employer's Representative to order the removal of any Equipment or materials at any time.

**62.2 Marking of Equipment and materials**

- A. Where the property in any of the Equipment or any materials passes to the Employer prior to the delivery thereof to the Site the Contractor shall, to the satisfaction of the Employer's Representative, set the same aside and mark the same as the property of the Employer. In the event of the Contractor failing so to



set aside and mark the items as aforesaid the Employer's Representative shall be entitled to exclude from the calculation of monies otherwise due in any Interim Payment Certificate to which the Contractor may be entitled his assessment of the value of such items as previously included in any Interim Payment Certificate. The Contractor shall procure that the Employer's Representative at any time upon reasonable notice may inspect any Equipment or materials which have become the property of the Employer and shall grant to the Employer's Representative or procure the grant of access to the Contractor's premises for such purpose or any other premises where such Equipment or materials may be located.

### 62.3 Inclusion within Interim Payment Certificates

- A. Equipment or materials in which property has passed to the Employer shall be in the care and possession of the Contractor solely for the purposes of the Contract and shall not be within the ownership or disposition of the Contractor. Any Interim Payment Certificate issued by the Employer's Representative shall be without prejudice to the exercise of any power of the Employer's Representative contained in the Contract to order the removal of any Equipment or materials which are not in accordance with the Contract. Following such rejection the Employer's Representative shall be entitled to reduce any Interim or Final Payment Certificate to which the Contractor may be entitled by the amount of his assessment of the value of such items previously included in an Interim Payment Certificate. Upon the issue of such Interim Payment Certificate or, if no value had previously been included in an Interim Payment Certificate upon the order for removal, the property in the items ordered to be removed shall revert to the Contractor.

### 62.4 Exclusion of Lien

- A. Neither the Contractor, a Sub-Contractor or Supplier (whether designated or otherwise) nor any other person shall have a lien on or other property interest in Equipment or materials which have vested in the Employer under this Clause 62 for any sum due or accepted due to the Contractor, Sub-Contractor, Supplier or other person and the Contractor shall take such steps as may reasonably be necessary to ensure that the title of the Employer and the exclusion of such lien and other property interest are brought to the express notice of Sub-Contractors, Suppliers and other persons dealing with or transporting any such Equipment or materials.

### 62.5 Delivery of Equipment and materials upon Termination

- A. Upon termination of the employment of the Contractor or termination of the performance of the whole or any part of the Works before Substantial Completion of the Works the Contractor shall deliver to the Employer any Equipment or materials the property in which has vested in the Employer by virtue of this Clause 62 and if he shall fail to do so the Employer may enter any premises of the Contractor any Sub-Contractor or Supplier (whether designated or otherwise) or other person or any off-site place of manufacture or source of Equipment or materials (and the Contractor hereby grants to the Employer the necessary license so to do and undertakes to procure the same right for the Employer from all Sub-Contractors and Suppliers and other persons as the case may be) and seize such Equipment or materials and recover the expense involved in so doing from the Contractor.



**63 LUMP SUM WORKS AND REMEASURED WORKS****63.1 Work included in the Contract Price**

- A. The work included in the Contract Price shall be the Lump Sum Works and the Remeasured Works and shall include the work for which Provisional Sums are provided.

**63.2 Lump Sum works**

- A. The Lump Sum works shall not be subject to adjustment or rectification should the actual quantities of work and the materials or Equipment supplied differ from any estimates used by the Contractor in the calculation of the Lump Sum Works and which may be set out in the Price Breakdown. No statements as to quantities of work, which may be included in the Price Breakdown, shall form part of the Contract.

**63.3 Rates and Prices are Fully Inclusive**

- A. Unless otherwise expressly stated the Contract Price and the rates and prices in the Price Breakdown and Bills of Quantities for Remeasured Works shall be inclusive of all work, whether temporary or permanent, material and expenditure to Execute the Works including the matters referred to in Clause 5.2C and all liabilities, responsibilities and obligations of the Contractor.

**63.4 Estimate of Quantities**

- A. The quantities set out in the Bills of Quantities for Remeasured Works are estimated quantities only and are not to be taken as the actual quantities of the Remeasured Works to be Executed by the Contractor in the Performance of the Contractor's obligations under the Contract. The Employer's Representative shall, in accordance with Clause 63.6, ascertain and determine by measurement the value of the Remeasured Works Executed under the Contract (including Remeasured Works instructed pursuant to Clause 56).

**63.5 Correction of Errors**

- A. Any error or description in the Bills of Quantities for Remeasured Works or Price Breakdown or omission therefrom shall not vitiate the Contract nor release the Contractor from Executing the Works, or any part thereof in accordance with the requirements of the Contract nor from any of the Contractor's obligations under the Contract. Any such error or omission shall be corrected by the Employer's Representative and the value of the work actually carried out shall be ascertained in accordance with Clause 57. Provided always that there shall be no rectification of errors, omissions or incorrect estimates in the descriptions, rates and prices inserted by the Contractor in the Bills of Quantities for Remeasured Works or the Price Breakdown.

**63.6 Method of Measurement**

- A. Measurement under this Clause 63 shall be carried out in accordance with the following rules:
1. The rate set out in the Bills of Quantities for Remeasured Works shall be treated as inclusive of all work, material and expenditure whether permanent or temporary which will either be indispensably necessary in any event to complete the Remeasured Works as described, or



contingently so necessary or to be inferred from the Contract Documents or otherwise described in the Contract taken as a whole.

2. Subject always to Clause 63.6A(1) and unless otherwise stipulated in or to be inferred from the Bills of Quantities for Remeasured Works the method of calculating the actual quantity of work done shall be as defined in the Method of Measurement.
3. Measurement will be carried out by the Employer's representative who shall measure the work from Drawings except in those cases where in the Employer's representative's opinion physical measurement is necessary and subsequent measurement will not be practicable. When the Employer's Representative requires any part of the Works to be physically measured the Employer's Representative shall give to the Contractor the opportunity of being present at the time of such measurement and of taking such measurements as the Employer's Representative may require. Should the Contractor fail to attend, or neglect or omit to send such representative, at such time after receipt of reasonable written notice from the Employer's Representative, the quantities measured by the Employer's Representative, provided they have been communicated, in writing, within fourteen (14) Days of the date of such physical measurement taking place shall be final and binding as between the Employer and the Contractor. In cases where the Contractor has been present any such quantities communicated, in writing at any time by the Employer's representative to the Contractor shall be similarly binding unless the Contractor, within fourteen(14) Days of receipt of the same shall send details with sufficient explanations of any differences in the quantities claimed by the Contractor to the Employer's Representative.

### 63.7 Adjustment of Rates

- A. Notwithstanding any provision in the contract to the contrary, the rate set opposite any item of work described in the Bills of Quantities for Remeasured Works shall not be increased or decreased or in any way adjusted by reason of the actual Executed quantities of work described in such item being greater or less than the estimated quantities stated in the Bills of Quantities for Remeasured Works and the same shall be the case whether or not the increase or decrease in the actual quantity of such work Executed is the result of a Variation or otherwise.

### 63.8 Remeasurement

- A. Upon remeasurement of the items of work described in the Bills of Quantities for Remeasured Works the value of the Works actually Executed in accordance with each item ascertained in accordance with the rates set opposite such items plus the value of Works Executed and valued in accordance with Clause 72 shall be substituted for the Provisional Value set against the respective item in the said Bill and the Contract Price shall be adjusted accordingly.

### 63.9 Value of omitted or substituted work

- A. Where any item of work described in the Bills of Quantities for Remeasured Works is as a result of a Variation instructed under Clause 56 or otherwise omitted and/or substituted by varied work not of a similar character and/or Executed under conditions not similar to work described in the Bills of Quantities for Remeasured Works, the value of the work omitted or for which the varied



work is in substitution shall be ascertained by the Employer's Representative using the rates in the Bills of Quantities for Remeasured Works and an adjustment made to the Contract Price accordingly and in such event the maximum amount to which the Contractor shall be entitled under Clause 63.6 for the Execution of the Remeasured Works shall be reduced by an amount equal to the value of the work omitted for which the varied work is in substitution ascertained by the Employer's Representative in accordance with this Clause 63.6.

#### 63.10 Breakdown of Lump Sum Items

- A. For the purposes of statements submitted in accordance with Clause 68.1, the Contractor shall submit to the Employer's Representative, within twenty one (21) Days after the date of issue of the Letter of Acceptance, a breakdown for each of the lump sum items contained in the Tender. Such breakdowns shall be subject to the approval of the Employer's Representative.

### 64 PROVISIONAL SUMS

#### 64.1 Definition of "Provisional Sum"

- A. "Provisional Sum" means a sum included and so designated in the Contract for the Execution of any part of the Works or for the supply of materials, Equipment or services, or for contingencies, which sum may be used, in whole or in part, or not at all, on the instructions of the Employer's Representative. The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Employer's Representative shall determine in accordance with this Clause 64. The Employer's Representative shall notify the Contractor of any determination made under this Clause 64, with a copy to the Employer.

#### 64.2 Use of Provisional Sums

- A. In respect of every Provisional Sum the Employer's Representative shall have power to order either or both (or neither) of the following:
1. work to be Executed or materials, Equipment or services to be supplied by the Contractor the value of such work to be Executed or materials, Equipment or services supplied being determined in accordance with Clause 57 and set off against the relevant Provisional Sum; and
  2. work to be Executed or materials, Equipment or services to be supplied by a Designated Sub-Contractor or Designated Supplier in accordance with Clause 65.

provided that, in each case the Contractor's profit and attendance in respect of such expenditure against Provisional Sums shall be limited to the percentage set out in **Appendix 1**. The Contractor shall not be entitled to any extension of time for the Execution of works instructed pursuant to this Clause 64.

#### 64.3 Production of Vouchers

- A. The Contractor shall produce to the Employer's Representative all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums.



**65. DESIGNATED SUB-CONTRACTORS AND SUPPLIERS****65.1 Use of Designated Sub-Contractors and Suppliers**

- A. Upon receipt of an instruction to enter into a sub-contract with a Designated Sub-Contractor or Designated Supplier pursuant to Clause 64, the Contractor shall, subject to Clause 65.3, forthwith enter into a sub-contract with the Designated Sub-Contractor or Designated Supplier identified in the instruction on the form identified in the instruction, which shall be based upon the form appearing in **Appendix 9** with such amendments as may be identified in the instruction, and the Contractor shall not thereafter amend or waive any of the terms of the sub-contract without prior consent, of the Employer, nor shall the Contractor accept any repudiation or otherwise terminate the sub-contract or terminate or suspend the Designated Sub-Contractor's or Designated Supplier's employment thereunder without prior consent, of the Employer. The Contractor shall procure that the Designated Sub-Contractor or Designated Supplier shall provide to the Employer and to the Contractor all bonds, warranties and guarantees required by the sub-contract and, without prejudice to any other right or remedy of the Employer, the Employer shall be entitled to withhold from interim payments due to the Contractor an amount equivalent to the value of the sub-contract until all the bonds, warranties and guarantees have been provided.

**65.2 Contractor Responsible for Designated Sub-Contractors and Suppliers**

- A. The Contractor shall be fully responsible for the work, materials, Equipment or services of any Designated Sub-Contractor and Designated Supplier and shall have the same liabilities and obligations in the same manner as if the work had been carried out by the Contractor or the Contractor had supplied the materials, Equipment or services. The Employer shall in no circumstances be liable to the Contractor nor suffer any loss or damage for the default of any Designated Sub-Contractor or Designated Supplier.

**65.3 Contractor's Objection**

- A. Provided always that the Contractor shall not be required by the Employer or the Employer's Representative or be deemed to be under any obligation to employ any Designated Sub-Contractor or Designated Supplier to whom the Contractor shall make in writing within fourteen (14) Days of the Employer's Representative's instruction under Clause 65.1 a reasonable objection on the grounds of a reasonable belief that such Designated Sub-Contractor or Designated Supplier is of insufficient financial standing to perform the works or supply the materials, Equipment or services required of it or who shall decline to enter into a sub-contract with the Contractor containing provisions :
1. That in respect of the work, materials, Equipment or services the subject of the sub-contract the Designated Sub-Contractor or Designated Supplier will undertake towards the Contractor the like obligations and liabilities as are imposed upon the Contractor towards the Employer by the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith or arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities, and



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A. The Contractor shall break down the sums due to the Designated Sub-Contractor and/or Designated Supplier if the extent of the work, materials, Equipment or services is known in sufficient detail to enable the same to be so broken down at the date of the Letter of Acceptance. However should the Bills of Quantities, Specifications or other documents forming part of the Contract so provide, it shall be the subject of a Provisional Sum.

A. Before issuing under Clause 68 any certificate which includes any payment in respect of work Executed or materials, Equipment or services supplied by any Designated Sub-Contractor or Designated Supplier the Employer's Representative shall be entitled to demand from the Contractor reasonable proof that all payments (less retention) included in previous certificates in respect of the work or materials, Equipment or services of such Designated Sub-contractor or Designated Supplier have been paid or discharged by the Contractor. In default thereof unless the Contractor shall:

1. inform the Employer's Representative in writing that he has reasonable cause for withholding or refusing to make such payment, and
2. demonstrate such reasonable cause to the Employer's Representative's satisfaction, and
3. produce to the Employer's Representative reasonable proof that he has so informed such Designated Sub-Contractor or Designated Supplier in writing,

the Employer shall be entitled to pay to such Designated Sub-Contractor or Designated Supplier direct upon the certificate of the Employer's Representative all payments (less retention) which the Contractor has failed to make to such Designated Sub-Contractor or Designated Supplier and to deduct by way of set-off the amount so paid by the Employer from any sums due or which become due from the Employer to the Contractor. The exercise of this power shall not create privity of contract as between the Employer and the Designated Sub-Contractor or Designated Supplier. Provided always that where the Employer's Representative has certified and the Employer has paid direct as aforesaid the Employer's Representative shall in issuing any further certificate in favour of the



Contractor deduct from the amount thereof the amount so paid direct as aforesaid but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the Contract.

## 65.6 Termination of Designated Sub-Contractors and Designated Suppliers

- A. The Contractor shall not terminate the employment of a Designated Sub-Contractor or a Designated Supplier or terminate or permit to be terminated any contract under a Designated Sub-Contract or Designated Supply Contract without the Employer's Representative's written consent thereto such consent not to be unreasonably withheld. In the event that the Employer's Representative gives his consent and a termination occurs the Employer shall be entitled but not obliged to designate an alternative Designated Sub-Contractor or, as the case may be, Designated Supplier to be employed pursuant to Clause 65.1 and shall give notice of his intention in this regard to the Contractor within fourteen (14) Days of receiving a copy of the notice of termination to the Designated Sub-Contractor or Designated Supplier. No consent or redesignation under this Clause shall give rise to a claim by the Contractor or relieve him from any obligations under the Contract.

## 66. ADVANCE PAYMENT

### 66.1 Advance Payment

- A. Within twenty-eight (28) Days of the delivery by the Contractor to the Employer's Representative of acceptable Advance Payment Bond(s) in accordance with Clause 10.2 and provided that all conditions in the notice to commence the Works issued pursuant to Clause 45 have been fulfilled then the Employer agrees to make an Advance Payment to the Contractor for the amounts as stated in **Appendix 1**. The payments to be made to the Contractor pursuant to this Clause 66.1 shall be in Thai Baht and Japanese Yen.
- B. The Contractor agrees to the following conditions concerning the use and recovery by the Employer of the Advance Payment:
1. The Contractor shall use the Advance Payment only to cover expenses incurred by him in the Execution of the Works under the Contract. Should the Contractor put the Advance Payment money or any part thereof to any other use, the Employer may immediately recover the whole amount of the advance, either directly from the Contractor or by cashing the Advance Payment Bond from the bank issuing the same.
  2. Whenever requested by the Employer to do so, the Contractor shall, within fourteen (14) Days from the receipt of such request, produce proof of how much of the Advance Payment money has been spent and that such expenditure was in accordance with the conditions of Clause 66.1B (1). Should the Contractor fail to produce such proof within fourteen (14) Days as aforesaid, the Employer may immediately recover the Advance Payment money either directly from the Contractor or by cashing the Advance Payment Bond(s) from the bank issuing the same.
  3. Any money payable by the Contractor to the Employer, as debts or under any obligation arising out of the Contract, shall be deducted from Interim Payment Certificates due to the Contractor before any deduction is made in respect of recovery of the Advance Payment as described in Clause 66.2 hereof.



4. Should the Contractor not Execute the Works in accordance with the terms of the Contract or any of the conditions attached thereto, the Contractor agrees to the deduction from all the money due to him under this Contract by the Employer for recovery of all the Advance Payment money or any outstanding amount thereof but subject to the provisions of condition B(3) of this Clause 66.1. Should the Contract be terminated and upon such termination the outstanding amount of Advance Payment money exceed the amount then due to the Contractor after all other deductions have been made, the Contractor shall pay such excess to the Employer within seven (7) Days from the date of receipt of a written order, from the Employer, for him so to do.

- C. The amount of the Advance Payment Bonds may be reduced, on a quarterly basis, commencing at the eighth (8th) Interim Payment Certificate, to the amount of Advance Payment money that still remains outstanding on certification of such payment.

## 66.2 Repayment of Advance Payment

- A. Recovery, by the Employer, of the Advance Payment shall be made by way of deduction from Interim Payment Certificates. The deductions so made shall be a sum equivalent to ten (10) percent of the net amount certified in Thai Baht and ten (10) percent of the net amount certified in Japanese Yen for payment, in respect of each monthly progress payment. Such deductions shall commence at the fourth (4th) monthly progress payment and shall cease when the Advance Payment has been recovered in full. Should, at the time of the Final Payment Certificate any balance remain outstanding, it will be deducted, in full from the Final Payment Certificate. Should such outstanding balance exceed the amount of the Final Payment Certificate, the Contractor shall pay such excess to the Employer within seven (7) days from the date of receipt of a written order from the Employer for him so to do.

## 66.3 Return of Advance Payment Bond

- A. The Advance Payment Bond(s) shall be returned to the Contractor within twenty-eight (28) Days of repayment of the whole of the Advance Payment.

## 67. INTERIM PAYMENT SCHEDULES

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## 68. PAYMENT STATEMENTS

### 68.1 Monthly Statements

- A. The Contractor shall submit to the Employer's Representative at the end of each Month a statement showing the estimated total value up to the end of the Month of:
1. the Works Executed ; and
  2. any other amounts due and payable in accordance with the provisions of the Contract.



**68.2 Submittals**

- A. The values mentioned in Clause 68.1 shall not be binding on the Employer or the Contractor.
- B. The Contractor shall furnish to the Employer's Representative such vouchers or returns as to values and other documents as the Employer's Representative may require for the proper checking of the Contractor's statements.
- C. The Contractor's statement shall be prepared on printed forms supplied by and at the expense of the Contractor and the style and format of such forms shall be, as the Employer's Representative shall direct.

**68.3 Interim Payment Certificates**

- A. Within twenty one (21) Days following receipt, by the Employer's Representative, of the Contractor's application, fully in accordance with Clause 68.1 and Clause 68.2, the Employer's Representative shall value and certify in an Interim Payment Certificate the sum which in the opinion of the Employer's Representative, is due to the Contractor in respect of the items contained in the Contractor's statement under Clause 68.1 and within forty five (45) Days after the issuance of such Interim Payment Certificate the Employer shall pay to the Contractor the sum certified after deducting:
  - 1. Previous payments on account; and
  - 2. a retention of the percentage named in **Appendix 1** of the sum of the above items until the amount retained shall reach the limit of the Retention money named therein; and
  - 3. sums due to the Employer from the Contractor in the repayment of the Advance Payment in accordance with Clause 66 (re advance payment)
  - 4. any other sum deductible by the Employer under the Contract.

**68.4 Correction of Certificates**

- A. The Employer's Representative shall have the power to omit from any Interim Payment Certificate the value of any work executed, Equipment or materials or services rendered with which the Employer's Representative may for the time being be dissatisfied and for that purpose or for any reason which to the Employer's Representative may seem proper may by any Interim Payment Certificate delete, correct or modify any sum or statement of fact previously certified by the Employer's Representative.

**68.5 Statements of Final Account**

- A. Not later than three (3) Months after the date of Substantial Completion of the Works as certified in the Taking-Over Certificate for the Whole of the Works the Contractor shall submit to the Employer's Representative, an interim statement of the final account and not later than three (3) Months after the date of issue of the Defects Liability Certificate, the Contractor shall submit to the Employer's Representative a statement of final account, which latter statement shall include the value in accordance with the Contract of all Works properly Executed in respect of which the Contractor seeks payment together with all further sums which the Contractor considers to be due to the Contractor under the Contract up to the date of Substantial Completion of the Works or the Defects Liability





Certificate as the case may be and identifying any part of the final account payable to any Designated Sub-Contractor and/or Supplier. Each of the interim statement of final account and the statement of the final account shall be accompanied by such supporting documentation as is reasonably necessary to demonstrate in detail the value in accordance with the Contract of the Works properly Executed and to substantiate the further sums as aforesaid. Within three months after receipt of this statement of final account and of all information reasonably required for its verification, but in no circumstances earlier than the date of issue of the Defects Liability Certificate, the Employer's Representative shall issue a Final Payment Certificate. The said Final Payment Certificate shall state the Final Contract Sum, which shall include the value performed in accordance with the Contract of all works properly Executed and the Final Payment Certificate shall identify any part of the Final Contract Sum due to any Designated Sub-Contractor and/or Supplier. From this sum there shall be deducted all amounts previously certified by the Employer's Representative and all amounts which, in the Employer's Representative's opinion, are due to the Employer pursuant to, or as a result of breach of, the Contract and the said Final Payment Certificate shall state the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.

#### 68.6 Final Payment

- A. The balance of any payment shall be paid, by the Employer, to the Contractor and the balance of any over payment shall be paid by the Contractor to the Employer, in either case outstanding payments shall be made within forty five (45) Days of the date of the Final Payment Certificate.

#### 68.7 Release of Retention

- A. Upon the issue by the Employer's Representative of the Taking Over Certificate for the Whole of the Works, one half of the Retention money shall be certified by the Employer's Representative for payment to the Contractor.
- B. The other half of the Retention money shall be certified by the Employer's Representative for payment to the Contractor upon issue of the Defects Liability Certificate.
- C. Provided that if at the date specified in Clause 68.7B there shall remain to be carried out by the Contractor any outstanding works, the Employer shall be entitled to withhold payment until the completion of such works of so much of the balance of Retention Money as shall, in the opinion of the Employer's Representative represent the cost of the work remaining to be Executed.
- D. Notwithstanding the foregoing provisions of Clause 68.7 A., Clause 68.7 B. and Clause 68.7 C. the Contractor may request for the payment of the amount retained by submitting to the Employer a bank guarantee in the sum equal to the amount of Retention Monies retained. The said bank guarantee must be issued by a local bank in Bangkok or a local branch of a foreign bank in the form appearing in **Appendix 4** and shall be valid until the Contractor's liability under the Contract has been fulfilled. The Employer shall return the bank guarantee(s) to the Contractor within forty-five (45) Days after the issue of the Final Payment Certificate in accordance with Clause 68.5A has been issued.

#### 68.8 Failure to Submit Statement of Final Account

- A. If the Contractor fails to submit a statement of final account within three (3) Months of the date of the Defects Liability Certificate in accordance with Clause



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**KEYWORDS:** child abuse; child sexual abuse; child sexual exploitation; child sexual abuse investigation; child sexual abuse assessment

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any works instructed, pursuant to Clauses 53 and 55, have been completed to the satisfaction of the Employer's Representative.

## 70.2 Unfulfilled Obligations

- A. Notwithstanding the issue of the Defects Liability Certificate, the Contractor and the Employer shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the issue of the Defects Liability Certificate which remains unperformed at the time such Defects Liability Certificate is issued and, for the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties to the Contract.

## 70.3 Cessation of Employer's Liability

- A. Without in any way derogating from the other provisions of the Contract, and in particular without prejudice to Clause 60, the Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or the Execution of the Works after the issue of the Defects Liability Certificate.

## 71. DEFAULT OF CONTRACTOR

### 71.1 Forfeiture

- A. If the Contractor shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditors or shall agree to carry out the Contract under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction to which the Employer has given his prior written approval (which shall not be unreasonably withheld)) or in the event of any analogous event under the laws of the country in which the Contractor is incorporated or if the Contractor shall assign the Contract without the consent in writing of the Employer first obtained or shall have an execution levied on his goods or if the Employer's Representative shall certify in writing to the Employer that in his opinion the Contractor:
1. has abandoned the Contract; or
  2. without reasonable excuse has failed to commence the Execution of the Works or has suspended the progress of the Execution of the Works for twenty-eight (28) Days after receiving from the Employer's Representative written notice to proceed; or
  3. has failed to remove materials or Equipment from the Site which in the opinion of the Employer's Representative are not in accordance with the Contract within the time specified by the Employer's Representative; or
  4. is not Executing the Works in accordance with the Contract or is persistently or flagrantly neglecting to carry out his obligations under the Contract (delay in Substantial Completion of the Works by ninety (90) Days (save where such delay is the result of an event entitling the Contractor to an extension of time pursuant to Clause 48) shall be deemed to constitute persistent neglect under this Clause 71.1A(4)); or



5. has to the detriment of good design or workmanship or in defiance of the Employer's Representative's instructions to the contrary sub-let any part of the Works; or
6. has persistently neglected to carry out the written instructions of the Employer's Representative despite previous warnings;

then the Employer may (but shall not be obliged) after giving fourteen (14) Days notice in writing to the Contractor enter upon the Site and the Works and expel the Contractor therefrom without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Employer or the Employer's Representative by the Contract and may himself complete the Execution of the Works or may employ any other contractor to complete the Execution of the Works and the Employer or such other contractor may use for such completion so much of the Contractor's Plant, Temporary Works and materials which have become the property of the Employer under the provisions of the Contract as he or they may think proper and the Employer may at any time sell any of the said Contractor's Plant, Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

#### 71.2 Valuation at Date of Forfeiture

- A. The Employer's Representative shall as soon as may be practicable after any such entry and expulsion by the Employer fix and determine ex-parte or by or after reference to the parties or after such investigation or enquiries as he may think fit to make or institute and shall certify what amount (if any) had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the Contractor in respect of Works then actually Executed by him under the Contract and what was the value of any unused or partially used materials, Equipment and any Contractor's Plant, and Temporary Works which have been deemed to become the property of the Employer under the provisions of the Contract.

#### 71.3 Payment after Forfeiture

- A. If the Employer shall enter and expel the Contractor under this Clause 71 he shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Defects Liability Period and thereafter until the costs of completion of the Execution of the Works, damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Employer's Representative. The Contractor shall then be entitled to receive only such sum or sums (if any) as the Employer's Representative may certify would have been due to him upon due completion of the Execution of the Works by him after deducting the said amount. However if such amount shall exceed the sum which would have been payable to the Contractor on such due completion by him then the Contractor shall upon demand pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

#### 71.4 Assignment of Benefit of Agreement

- A. If so required by the Employer or the Employer's Representative the Contractor shall before the expiration of the notice referred to in Clause 71.1 assign to the Employer or his nominee without payment the benefit of any agreement which



the Contractor has entered into for the supply of materials or for the Execution of any part of the Works or novate without payment such agreement to the Employer or his nominee and the Contractor will execute all documents and perform all acts necessary to perfect such assignment or novation as the case may be. The Employer may pay the Sub-Contractor or Supplier for any such material or any part of the Works supplied and delivered to the Site or any part of the Works Executed under such agreement (whether the same be assigned or novated as aforesaid or not) before or after the giving of the said notice the amount due by such agreement in so far as it has not already been paid by the Contractor to the Sub-Contractor or Supplier. Payments under this Clause 71 may be made out of any monies due or which may become due to the Contractor under the Contract.

## 72. URGENT REPAIRS

### 72.1 Urgent Repairs

- A. If by reason of any accident or failure or other event occurring to or in connection with the Works or any part thereof either during the Execution of the Works or during the Defects Liability Period any remedial or other work or repair shall in the opinion of the Employer's Representative be urgently necessary for the security and/or the safety of the Works or any part thereof and the Contractor is unable or unwilling at once to do such work or repair the Employer may by his own or other contractors or workmen do such work or repair as the Employer's Representative may consider necessary. If the work or repair so done by the Employer is work which in the opinion of the Employer's Representative, the Contractor was liable to do at his own expense under the Contract all costs and charges properly incurred by the Employer in so doing shall be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor or may be recovered as a debt. Provided always that the Employer's Representative shall as soon after the occurrence of any such emergency or urgency as may reasonably be practicable notify the Contractor thereof in writing.

### 72.2 Remedy on Default of Contractor

- A. If the Contractor shall fail duly to observe or perform any requirement, instruction, direction or order of the Employer's Representative duly made or given in accordance with the Contract or shall otherwise fail to fulfil any obligation imposed upon him by the Contract, the Employer may without prejudice to any other rights or remedies he may have himself or by his servants or agents remedy such default and all expenses consequent thereon or incidental thereto, shall be borne by the Contractor and shall be recoverable from him or may be deducted by the Employer from any monies due or which may become due to the Contractor or may be recovered as a debt.

## 73. SPECIAL RISKS

### 73.1 No liability for Special Risks

- A. The Contractor shall be under no liability whatsoever in consequence of any of the special risks referred to in Clause 73.2, whether by way of indemnity or otherwise, for or in respect of:
1. destruction or damage to the Works, save for work condemned under the provisions of Clause 43 prior to the occurrence of any of the said special risks; or



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thereof which shall be added to the Contract Price and shall notify the Contractor, with a copy to the Employer.

### 73.6 Outbreak of War

- A. If during the currency of the Contract there shall be an outbreak of war (whether war is declared or not) in any part of the world which whether financially or otherwise materially affects the Execution of the Works the Contractor shall unless and until the Contract is determined under the provisions in this Clause 73.6 continue to use his best endeavours to complete the Execution of the Works. Provided that the Employer shall be entitled at any time after such outbreak of war to determine this Contract by giving notice in writing to the Contractor and upon such notice being given, this Contract shall, except as to the rights of the parties under this Clause 73.6 and to the operation of Clause 76, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.

### 73.7 Removal of Contractor's Plant on Determination

- A. If the Contract is determined under the provisions of Clause 73.6 the Contractor shall, with all reasonable despatch, remove from the Site all Contractor's Plant and shall give similar facilities to his Sub-Contractors and/or Suppliers to do so.

### 73.8 Payment if Contract Determined

- A. If the Contract is determined as aforesaid, the Contractor shall be paid by the Employer, insofar as such amounts or items shall not have already been covered by payments on account made to the Contractor, for all Works Executed prior to the date of termination at the rates and prices provided in the Contract and in addition:
1. The amounts payable in respect of any preliminary items so far as the work or service comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed;
  2. The cost of materials, Equipment reasonably ordered for the Works which shall have been delivered to the Contractor or as to which the Contractor is legally liable to accept delivery, such materials or Equipment, becoming the property of the Employer upon such payment being made by him;
  3. A sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the Execution of the Works insofar as such expenditure has not been covered by any other payments referred to in Clause 73.8;
  4. Any additional sum payable under the provisions of Clauses 73.3 and 73.5;
  5. Such proportion of the cost as may be reasonable, taking into account payments made or to be made for Works Executed, of removal of Contractor's Plant under Clause 73.7 and, if required by the Contractor, return thereof to the Contractor's main Plant yard in his country of registration or to other destination, at no greater cost;



6. The reasonable cost of repatriation of the entire Contractor's staff and workmen employed on or in connection with the Works at the time of such termination.

B. Provided always that against any payment due from the Employer under this Clause 73.8 the Employer shall be entitled to be credited with any outstanding balance due from the Contractor for advances in respect of the Works and any other sums which, at the date of termination, were recoverable by the Employer from the Contractor under the terms of the Contract. Any sums payable under this Clause 73.8 shall, after due consultation with the Employer and the Contractor, be determined by the Employer's Representative who shall notify the Contractor accordingly, with a copy to the Employer.

## 74. TERMINATION FOR CONVENIENCE

### 74.1 Termination of Contract for Employer's Convenience

A. At any time, in his absolute discretion, the Employer may terminate the Contractor's performance of work under the Contract, by thirty (30) Days notice in writing whenever the Employer shall in his sole discretion, determine that such termination is in the best interest of the Employer in which event the sum payable by the Employer to the Contractor in respect of the Works Executed shall be the same as that which would have been payable under Clause 73 if the Contract had been determined under the provisions of that Clause.

### 74.2 No Additional Reimbursement

A. Save as aforesaid the Contractor shall not be entitled to any reimbursement of any loss, expense, compensation, profit or damages as a result of the operation of this Clause 74. Provided that termination of the Contract in accordance with Clause 74.1 shall be without prejudice to the rights of either party in respect of any antecedent breach thereof

### 74.3 Contractor's Obligations

- A. In the event of termination in accordance with Clause 74.1, the Contractor shall at the expiry of the said thirty (30) Days:
1. remove from the Site all Contractor's Plant, temporary buildings and surplus materials and shall similarly allow his Sub-Contractors and/or Suppliers to do so; and
  2. so far as may be necessary, transfer property to the Employer and deliver up as directed by the Employer's Representative such property that would be required to be furnished to the Employer under the Contract save that this requirement shall not apply to such property for which the Contractor has not been paid; and
  3. take all necessary or appropriate steps in a safe and orderly fashion to cease the Execution of the Works so as to enable the Employer to take full, sole and unencumbered possession of the Site and the Contractor shall ensure that all his personnel and the personnel of his Sub-Contractors and Suppliers have left the Site, that full sets of all Contract Documents and other information relating to the Works have been delivered up to the Employer, and that the Execution of the Works are



tidy, safe and ready for the Employer to continue with the Works, if he so wishes.

#### 74.4 Assignment of Agreements

- A. By the notice referred to in Clause 74.1 the Employer may require the Contractor to assign to the Employer and if so required the Contractor shall forthwith assign to the Employer the benefit of any agreement which the Contractor may have entered into relating to or for the Execution of any Works.

#### 75. RELEASE FROM PERFORMANCE

- A. In the event of the Contract being frustrated whether by war or otherwise howsoever the sum payable by the Employer to the Contractor in respect of the Works Executed shall be the same as that which would have been payable under Clause 73 if the Contract had been determined under the provisions of that Clause.

#### 76. SETTLEMENT OF DISPUTES

##### 76.1 Settlement of Disputes Arbitration

- A. Any and all Disputes shall be settled in accordance with the provisions of this Clause 76.
- B. No action at law concerning or arising out of any Dispute shall be commenced unless and until all applicable Dispute resolution procedures set out in this Clause 76 shall have been finally exhausted (whether by a failure to serve a Notice of Dispute in accordance with Clause 76.1C attempted conciliation, arbitration award or otherwise) in relation to that Dispute or any Dispute out of which that Dispute shall have arisen with which it may be or may have been connected.
- C. For the purpose of Clause 76.1D, a Dispute shall be deemed to arise when one party serves on the Employer's Representative and on the other party a notice in writing (hereinafter called a "Notice of Dispute") stating the nature of the Dispute provided that no such notice shall be served later than twenty eight (28) Days after the date of issue by the Employer's Representative of the Defects Liability Certificate.
- D. Within twenty eight (28) Days of receipt of a Notice of Dispute, either:
1. the Employer's Representative shall decide the Dispute and notify the Employer and the Contractor in writing of his decision; or
  2. in the case of a Dispute arising from a decision of the Employer's Representative in accordance with a direction of the Employer under any requirements particularised pursuant to Clause 2.1 and/or 2.2, the Employer's Representative shall notify the Contractor in writing of that fact.
- E. Unless the Contract or the Contractor's employment thereunder has already been terminated, the Contractor shall in every case continue to proceed with the Works with all due diligence regardless of the nature of the Dispute and the Employer and the Contractor shall give effect forthwith to every decision of the Employer's



Representative (whether pursuant to this Clause 76 or otherwise) except and to the extent that the same shall have been revised by:

1. settlement agreement whether prior to or pursuant to Conciliation Proceedings ; or
  2. arbitral award.
- F. The reference of a dispute to Conciliation shall be conducted in accordance with the Conciliation Rules of the Arbitration Institute, the Ministry of Justice of Thailand.
- G. In relation to any Dispute in respect of which:
1. the Employer's Representative has given his decision in accordance with Clause 76.1D(1); or
  2. the Employer's Representative has given the Contractor notice in accordance with Clause 76.1D(2); or
  3. the time for giving such decision or notice under Clause 76.1D has expired, either party may, within twenty eight (28) Days of the date of such decision or notice or the expiry of such time limit, send to the other party and to the Employer's Representative, an invitation in accordance with Rule 5 (1) of the Conciliation Rules and that the other party may within fourteen (14) Days accept such invitation in accordance with Rule 5 (2) of the Conciliation Rules and in the event of such acceptance, the further provisions of the Conciliation Rules shall take effect but a failure to accept the said invitation within the said fourteen (14) Days shall be deemed to be a rejection of the invitation and the provisions of Rules 5 (3) of the Conciliation Rules shall not apply.

## 76.2 Arbitration

- A. The reference of a Dispute to arbitration shall be conducted in accordance with the Arbitration Rules of the Arbitration Institute, the Ministry of Justice of Thailand.
- B. Where, in relation to any dispute a dispute notice has been served and provided that:-
1. the Employer's Representative has failed to give notification in accordance with Clause 76.1D(1) or (2); or
  2. within the time limits stated in Rule 5 of the Conciliation Rules, an invitation has been sent in accordance with Clause 76.1G but has been rejected; or
  3. any Conciliation Proceedings which have been commenced have terminated in accordance with the Conciliation Rules,

then, subject to the provisions of this Clause 76, either party may commence Arbitration Proceedings by submitting a statement of claim in accordance with Rule 6 of the Arbitration Rules.





- C. Save as is provided in Clause 76.2D and subject to Clause 76.2E, no steps shall be taken in any reference of a Dispute to arbitration until after the Substantial Completion or alleged Substantial Completion of the Works unless with the written consent of the Employer and the Contractor. Provided that:
1. the giving of a Taking-Over Certificate for the Whole of the Works shall not be a condition precedent to the taking of any step in such reference;
  2. no decision given by the Employer's Representative in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before an arbitrator on any matter whatsoever relevant to a Dispute so referred to arbitration as aforesaid.
- D. In the case of any Dispute as to the exercise of the Employer's Representative's powers under Clause 71.1A the reference to the arbitrator may proceed notwithstanding that the Works shall not then be or be alleged to be complete.
- E.** Commencement of Arbitration Proceedings in relation to any Dispute shall take place no later than 90 days after:-
1. service of the relevant Notice of Dispute; or
  2. the giving by the Employer's Representative of a notification under Clause 76.1D(1) and (2); or
  3. the issue by the Employer's Representative of the Defects Liability Certificate,
- whichever is the latest.
- F. Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objection, assessment or valuation of the Employer's Representative relating to the Dispute and the arbitrator shall have full power to order the rectification of the Contract subject to any rule of law which would restrict this power.
- G. The Employer shall be fully entitled to seek any and all such remedies and relief as the arbitrator may be empowered to grant pursuant to Clause 76 notwithstanding that the relevant act or default of the Employer's Representative was or could have been at the time the subject of a direction by the Employer in accordance with the Employer's rights under its appointment of the Employer's Representative.
- H. Subject to the foregoing provisions of this Clause 76, the Employer and the Contractor agree to submit to the exclusive jurisdiction of the Courts of the Kingdom of Thailand.

## 77. NOTICES

### 77.1 Service of Notices

- A. Where any notice or other document is to be given to or served by either party upon the other it shall be deemed to have been duly given or served if it shall have been left at the address of such party as set out herein or at such other



address as may be notified in writing by either party to the other from time to time, or sent through the post addressed to such address. Any notice to be given under the Contract shall be in writing, typescript or printed, and if sent by post shall be deemed to have been served seven (7) Days after posting.

## 77.2 Service on Employer's Representative

- A. Any notice to be given to the Employer's Representative under the terms of the Contract shall be served by delivering the same by hand to the address set out in Appendix 1 with a copy to the Employer.

## 77.3 Service of Notices by Facsimile

- A. Documents may be served by facsimile only if the recipient has previously notified the other party and the Employer's Representative in writing that it is prepared to accept service of documents in that fashion. It shall in any event be a condition of valid service by facsimile that the hard copy is subsequently sent forthwith to the recipient in accordance with Clause 77.1.

## 78. DEFAULT OF THE EMPLOYER

### 78.1 Special Damages

- A. The Employer and the Contractor acknowledge that when they entered into the Contract, neither of them had knowledge of any special facts or circumstances which would entitle the Contractor to recover any additional amounts (including without limitation exchange losses).

### 78.2 Termination by the Contractor

- A. If, for any reason other than an exercise of its rights under Clause 50, the Employer fails to pay to the Contractor any sum certified in accordance with Clause 68 within twenty eight (28) Days after the same shall have become due under the provisions of the Contract, the Contractor may give fourteen (14) Days' notice in writing to the Employer to make payment of the sum due. Such notice shall make express reference to this Clause 78. In the event of failure by the Employer to make such payment within such fourteen (14) Day notice period, the Contractor may give seven (7) Days' notice in writing to the Employer stating its intention to terminate the Contract unless payment of the sum due is made. In the event of failure by the Employer to make such payment within such seven (7) Days period, the Contractor shall be entitled to terminate the Contract.
- B. In the event of the Contract being terminated under this Clause 78 the property in all Contractor's Plant, goods, materials and temporary buildings on the Site shall thereupon re-vest in the Contractor and the Contractor shall with all reasonable despatch remove the same from the Site.
- C. Nothing in this Clause 78 shall prejudice the right of the Contractor to exercise, either in lieu of or in addition to the rights and remedies in this Clause 78 specified, any other rights or remedies to which the Contractor may be entitled.

## 79. CHANGES IN LEGISLATION

### 79.1 Legislation





- A. If, after the date hereof, there occur in the Kingdom of Thailand changes to any Law, Ordinance, Decree or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such Ordinance, Decree, Law, regulation or bye-law which cause additional or reduced cost to the Contractor, in the Execution of the Works, beyond that which was reasonably foreseeable by an experienced contractor, such additional or reduced cost shall, after due consultation with the Contractor, be determined by the Employer's Representative and shall be added to or deducted from the Contract Price and the Employer's Representative shall notify the Contractor accordingly, with a copy to the Employer.

#### 79.2 No increases in cost

- A. Subject only to Clause 79.1, no adjustment shall be made in respect of the increase or decrease in the cost of labour, materials or other matters relevant to the Contract Price.

### 80. MAJOR ECONOMIC DISLOCATION

- A. In the event of there being subsequent to the date of the Contract such a major economic dislocation within the Kingdom of Thailand as to result in the imposition by the Thai Government of currency restrictions or in devaluation of the currency by the Thai Government, the Employer shall pay to the Contractor any increased cost of the Execution of the Works which is directly attributable to or consequent on or the result of such economic dislocation provided always that nothing in this Clause 80 shall prejudice the right of the Contractor to exercise any other rights or remedies to which the Contractor may be entitled in such event. Provided that there will be no payment made by the Employer under this Clause 80 in respect of fluctuations in any exchange rate which arise out of normal economic factors.

### 81. TAXATION

- A. The Contractor shall be responsible for and pay all prevailing taxes, duties, fees, permits and the like inside and outside the Kingdom of Thailand for which the Contractor, Sub-Contractors and Suppliers, of any tier, are liable, including but not limited to the following:
1. The Contractor shall pay when due, and its compensation shall be inclusive of, but not by way of limitation, all local, municipal, state, and federal sales and use taxes, stamp duty, excise taxes, taxes on personal property owned by Contractor, duties, port fees, port charges and port tariffs, clearances and all other government fees and taxes or charges of whatever nature applicable to the performance of this Contract.
  2. The Contractor shall pay or cause to be paid when due, but not by way of limitation, any and all pay-roll taxes and contributions which are measured by wages, salaries or other remuneration paid to persons employed by the Contractor, Sub-Contractors, Suppliers, in connection with the performance of the Execution of the Works or which arise by virtue of their employment and which now or hereafter are imposed by the Kingdom of Thailand, any municipality, or any subdivision thereof, or any governmental body or agency including without limitation such taxes or contributions for unemployment insurance benefits, workmen's compensation, old age retirement benefits and disability benefits.



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3. All immigration and other fees, permits and duty stamps assessed or collected by the Government of Thailand, or any political subdivision thereof, or any municipality therein, on the Contractor and the Contractor's employees shall be the responsibility of the Contractor and paid for by the Contractor.
4. The Contractor shall within its responsibility pay or cause to be paid the VAT to the Thai Tax Authorities, when and to the extent due.
5. Thailand income tax, including income tax of the Contractor's personnel, shall be for the Contractor's account, and the Contractor shall be responsible for payment thereof. The Employer shall be entitled to withhold from payment(s) made by the Employer for withholding taxes to the Contractor as and when required by Thai law.
6. Payment of any and all customs duties including customs duty surcharges for importation into the Kingdom of Thailand of equipment and materials to be permanently incorporated in the Works and/or required for the operation of the Equipment shall be the responsibility of the Contractor and paid for by the Contractor.
7. Payment of any import duty and taxes on all materials, construction equipment, special tools, instruments and apparatus imported for the purposes of carrying out the installation and testing of the Works shall be the responsibility of the Contractor and paid for by the Contractor.
8. The Contractor shall be deemed to have obtained all information and taken all actions necessary with respect to said taxes etc.

## 82. MISCELLANEOUS

### 82.1 Rates of Exchange

- A. Where the Contract provides for payment in whole or in part to be made to the Contractor in foreign currency or currencies, such payment shall, subject to Clause 79 and 80, not be subject to variations in the rate or rates of exchange between such specified foreign currency or currencies and Thai Baht.

### 82.2 Contractor to Furnish Details

- A. The Contractor shall furnish the Employer's Representative at monthly intervals with the details of all consignments of materials, Equipment and Contractor's Plant to be brought into Thailand.

## 83. MATERIALS OF THAI ORIGIN

- A. The Contractor shall use materials of Thai origin to the exclusion of imported materials provided they comply with the requirements specified in the Contract Documents or are materials specifically identified in the Contract Documents as being exempt from the provisions of this Clause 83. In no circumstances shall the Contractor be permitted to substitute imported materials unless he proves to the satisfaction of the Employer's Representative that locally manufactured materials are not available or if available are not of an accepted standard.



**84. MATERIALS AND EQUIPMENT PROVIDED BY EMPLOYER**

- A. Where the Contract Documents require the Contractor to receive from the Employer any materials and Equipment or other things for incorporation in or use by the Contractor in the Execution of the Works the Contractor shall immediately upon receiving the same be responsible therefore to the full extent specified in the Contract as if the same had been materials or Equipment or other things provided by the Contractor himself for or in connection with the Execution of the Works. Provided always the Contractor shall not be liable in respect of any defects in materials or workmanship or otherwise attributable to makers or suppliers of such materials and Equipment or for any damage to the same that may have occurred prior to delivery to the Contractor by the Employer.

**85. PROPERTY IN EXCAVATED MATERIALS**

- A. All materials and things of any kind obtained from excavations or found on or under the Site, or under any additional site which the Contractor may be allowed to occupy, shall remain the property of the Employer and shall not be used in the Execution of the Works or sold or otherwise disposed of without the written authority of the Employer's Representative unless otherwise expressly provided in the Contract Documents. No excavations are to be made upon the Site beyond those shown on the Drawings or described in the Contract Documents without the prior written authority of the Employer's Representative.

**86. USE OF EXPLOSIVES**

- A. Except as may be provided in the Contract Documents or ordered by the Employer's Representative the Contractor shall not use explosives.

**87. BRIBERY**

- A. Any commission, advantage, gift, gratuity, reward or bribe given promised or offered by or on behalf of the Contractor or his agent or any other person on his or their behalf to any officer, representative or agent of the Employer or of the Employer's Representative or to any person on their behalf or on behalf of any of them in relation to the obtaining or to the execution of this or of any other contract with the Employer shall in addition to any criminal liability which may be thereby incurred subject the Contractor to the termination, at the sole discretion of the Employer, of the Contract and all other contracts which he may have entered into with the Employer and also to payment of any loss or damage resulting from such termination. Any termination of the Contract pursuant to this Clause shall be treated as a termination pursuant to Clause 71 and the provisions of Clause 71.3 shall apply. Provided that the Employer shall be entitled upon a certificate in writing of the Employer's Representative to deduct the amount so determined under Clause 71.3 from any monies otherwise due or which may become due to the Contractor under the Contract or any other contract or to recover the said amounts as a debt due or partly the one and partly the other as the Employer shall deem advisable.

**88. NO WAIVER**

- A. The condoning by the Employer of any breach or breaches by the Contractor or any Sub-Contractor or Supplier of any of the stipulations and conditions contained in the Contract shall in no way prejudice or affect or be construed as a waiver of the Employer's rights, powers and remedies under the Contract in respect of that or those breaches or any other breach or breaches.



**89. SECRECY**

- A. The Contractor shall not use or divulge, except for the purpose of the Contract or with the express written permission of the Employer's Representative, any information relating to the Execution of the Works or to the Project or any correspondence or documentation emanating from or provided by or on behalf of the Employer, the Employer's Representative or any third party or give or make any statements or comments to the media in relation to the Execution of the Works or the Project. The Contractor shall ensure that each of his Sub-Contractors and Suppliers and each parent company or shareholder of the Contractor shall be bound by a like confidentiality undertaking and shall, if so required by the Employer's Representative, enforce the same at his own expense.

**90. ADVERTISING PROHIBITED**

- A. The Contractor shall not exhibit or permit to be exhibited any advertisement on the Site, Contractor's Plant or Temporary Works. All notices at the Site shall be subject to the approval of the Employer's Representative before they are put up and they shall be removed immediately if the Employer's Representative so demands.

**91. LAW GOVERNING CONTRACT****91.1 Thai Contract**

- A. The Contract shall be governed by and construed according to laws for the time being in force in the Kingdom of Thailand and, subject to Clause 76, the Courts of the Kingdom of Thailand shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of the Contract and the Contractor hereby submits to the jurisdiction of the Courts of the Kingdom of Thailand for the purpose of any such actions and proceedings.

**91.2 The Contractor's Undertaking for Decision Made**

- A. The Contractor binds himself to acknowledge and accepts as final in all respects within the country of domicile of the Contractor or elsewhere any decision or award of an arbitration or judgement in any Court of the Kingdom of Thailand in relation to any dispute between the parties under the Contract whether in respect of payments to be made thereunder or in other matters. This undertaking is valid in all respects whenever any such decision award or judgement is to be enforced in the Courts of the country of domicile of the Contractor or elsewhere in any manner.



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