

# Form of Supply Agreement

This supply agreement (the “Supply Agreement”) is made on [insert date]:

**BETWEEN** [insert name of the Customer]

a company duly incorporated under the laws of the [insert name of the Emirate], United Arab Emirates, under license no. [insert license number] issued by the [insert name of issuing authority], with its registered address at [insert registered address];

(hereinafter referred to as the “Customer”)

**AND** **Cinmar Plus Building Materials L.L.C.**

a company duly incorporated under the laws of the Emirate of Abu Dhabi, United Arab Emirates, under commercial license no. CN-1008223 issued by the Department of Economic Development of Abu Dhabi, with its registered address at Office no. 3812, Addax Tower, City of Lights, 77 Al Rayfah Street, Al Reem Island, Abu Dhabi, P.O. Box 44199, Abu Dhabi, UAE

(hereinafter referred to as the “Supplier”)

(individually a “Party” and collectively the “Parties”)

**WHEREAS** The Customer desires that certain goods should be supplied and/or services should be performed by the Supplier, namely the [insert brief description of the goods to be supplied and/or services to be performed by the Supplier] for [insert name of the project] (hereinafter called the “Project”), located at [insert address of the project], as detailed in Appendix 1 [Scope of Goods and/or Services] and has accepted an offer / proposal by the Supplier for the provision of such Goods and/or Services.

## THE CUSTOMER AND THE SUPPLIER AGREE AS FOLLOWS:

1. In this Supply Agreement, the words and expressions shall have the same meanings as are respectively assigned to them in Clause 1.2 of the Conditions of Contract.
2. The following documents (the “Contract Documents”) shall be deemed to form and be read and construed as part of the Supply Agreement and shall be given the order of precedence as below:
  - 2.1. this Form of Supply Agreement;
  - 2.2. any letter of acceptance by the Customer (if any) incorporated into the Supply Agreement;
  - 2.3. any letter of offer / proposal by the Supplier incorporated into the Supply Agreement;
  - 2.4. the Conditions of Contract;
  - 2.5. the Appendices to this Supply Agreement inserted at the end of these Conditions of Contract include Appendix I [Scope of Goods and/or Services], Appendix II [Personnel, Equipment, Facilities and Services of Others to be provided by the Customer], Appendix III [Remuneration and Payment], and Appendix IV [Programme];
  - 2.6. the Customer’s documents issued to the Supplier at the tender stage including any drawings, specifications, schedules, etc.;
  - 2.7. the Supplier’s Materials; and
  - 2.8. any other documents forming part of the Contract.
3. In consideration of the payments to be made by the Customer to the Supplier under the Supply Agreement, the Supplier hereby agrees with the Customer to provide the Goods and/or the Services in conformity with the provisions of the Supply Agreement.
4. The Customer hereby agrees to pay the Supplier in consideration of the provision of the Goods and/or the Services such amounts as may become payable under the provisions of the Supply Agreement at the times and in the manner prescribed by the Supply Agreement.

**IN WITNESS WHEREOF**, the Parties have duly executed this Supply Agreement as of the date written above.

	<b>For and on Behalf of the Customer</b>	<b>For and on Behalf of the Supplier</b>	
	<b>[Insert Name of the Customer]</b>	<b>Cinmar Plus Building Materials LLC</b>	
	<b>Signature and Stamp</b>	<b>Signature and Stamp</b>	
	<b>Name:</b>	<b>Name:</b>	
	<b>Title:</b>	<b>Title:</b>	
	<b>Date:</b>	<b>Date:</b>	

# Conditions of Contract

## 1. General Provisions

### 1.1. Recitals

- 1.1.1. These terms and conditions (these “**Conditions of Contract**”) apply to the purchase of all Goods and/or Services by the customer (including subsidiaries, assignees and successors) (the “**Customer**”) from the supplier (including subsidiaries, assignees and successors) (the “**Supplier**”) even if there is no written contract in place between the Customer and the Supplier which has been signed by both Parties.
- 1.1.2. These Conditions of Contract apply to the Contract to the exclusion of any other terms that either Party seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Contract shall commence and the Parties will be contractually bound upon the dispatch of a purchase order (the “**Purchase Order**”) by the Customer.
- 1.1.3. These Conditions of Contract shall apply to the provision of Goods and/or Services as detailed in the Contract.
- 1.1.4. Unless a separate Supply Agreement is signed between the Customer and the Supplier, the Purchase Order is subject to these Conditions and the Purchase Order will constitute a binding contract (the “**Contract**”) between the Customer and the Supplier.
- 1.1.5. If no Supply Agreement was entered into among the Parties, the Purchaser Order issued by the Customer, if accepted in writing by the Supplier, shall constitute a final acceptance of the Supplier’s Offer by the Customer to purchase the Goods and/or the Services from the Supplier in accordance with these Conditions of Contract (unless modified by some particular conditions in the Purchase Order). The Supplier must supply and deliver the Goods and/or Services for the Remuneration stated and by the date or within the period stated in the Purchase Order. If the Customer instructs a different time this shall be the basis for a Claim by the Supplier for extra costs.
- 1.1.6. The Purchase Order shall be deemed to be accepted by the Supplier on the earlier of:
- (a) the Supplier issuing written acceptance of the Purchase Order by an email or any other form of written communication; or
  - (b) the non-issuance of the Supplier for any qualifications as to the contents, terms or conditions of the Purchase Order within ten (10) Business Days from the date of its receipt of the Purchase Order.
- However, the Purchase Order shall be deemed to be accepted by the Supplier if the Purchase Order did not vary the Supplier’s Offer.
- 1.1.7. Upon acceptance of the Supplier of the Purchase Order pursuant to the provisions of Sub-Clause 1.1.6 hereinabove, the Purchase Order shall constitute a binding Contract between the Parties since it includes the entire elements of a contract which are offer, acceptance and consideration.
- 1.1.8. Unless terminated earlier in accordance with the provisions of Clause 7 [*Termination of Contract*] of these Conditions of Contract, the Contract shall have definite term expiring on the date specified in the Contract.
- 1.1.9. All the Conditions of Contract shall apply to the provision of Goods and/or Services except where the application to the one or the other is specified.

### 1.2. Definitions

The following words and expressions shall have the meanings assigned to them except where the context otherwise requires:

Term	Definition
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1.2.1.	<b>Appendix</b>	means a section at the end of these Conditions of Contract that contains supplementary material for the provision of particular Project-specific information. The Appendices inserted at the end of these Conditions of Contract include Appendix I [ <i>Scope of Goods and/or Services</i> ], Appendix II [ <i>Personnel, Equipment, Facilities and Services of Others to be provided by the Customer</i> ], Appendix III [ <i>Remuneration and Payment</i> ], and Appendix 4 [ <i>Programme</i> ].
1.2.2.	<b>Background Intellectual Property</b>	means, in respect of each Party, the Intellectual Property owned by or otherwise in the possession of that Party at the Commencement Date.
1.2.3.	<b>Business Day</b>	means a day other than a Saturday, Sunday, or a Public Holiday when the private sector in the Emirate of Abu Dhabi, United Arab Emirates are open for business.
1.2.4.	<b>Claim</b>	means an action (in the form of a demand of assertion of rights) by one Party of the Contract (either the Supplier or the Customer) against the other Party under the terms of these Conditions of Contract for damages resulting from the malfeasance of the other Party which violated their legally binding Contract. The Claim will seek remuneration or other compensation from the other Party.
1.2.5.	<b>Commencement Date</b>	means the date identified in the Conditions of Contract. Where no date is identified then the Commencement Date shall be fourteen (14) days after the Effective Date.
1.2.6.	<b>Conditions of Contract</b>	means these Conditions of Contract.
1.2.7.	<b>Confidential Information</b>	means all information specifically identified by the disclosing Party as confidential at the time of disclosure, or information that a reasonable person would consider from the nature of the said information and circumstances to be confidential, including, without limitation, confidential or proprietary information, trade secrets, data, documents, communications, plans, know-how, formulas, designs, calculations, test results, specimens, drawings, studies, specifications, surveys, photographs, software, processes, programmes, reports, maps, models, agreements, ideas, methods, discoveries, inventions, patents, concepts, research, development, and business and financial information.
1.2.8.	<b>Consents</b>	means all licenses, permits, registrations, approvals, consents and other authorizations and certifications and no-objection certificates (NOCs) that are required according to the Legal Requirements and/or the provisions of the Conditions of Contract.
1.2.9.	<b>Contract</b>	means the accepted Purchase Order and/or the duly signed Form of Supply Agreement together with these Conditions of Contract, Appendix I [ <i>Scope of Goods and/or Services</i> ], Appendix II [ <i>Personnel, Equipment, Facilities and Services of Others to be Provided by the Customer</i> ], Appendix III [ <i>Remuneration and Payment</i> ], Appendix IV [ <i>Programme</i> ], the Contract Documents, and any letters of offer (by the Supplier) and acceptance (by the Customer) attached to any of the above.
1.2.10.	<b>Contract Documents</b>	means the documents listed under Clause 2 of the Form of Supply Agreement and the documents listed under Sub-Clause 1.7.3 in the order or precedence assigned to them.

1.2.11.	<b>Cost</b>	means all expenditure reasonably incurred (or to be incurred) by the Supplier, whether on or off the Site, including overhead and similar charges, but does not include profit.
1.2.12.	<b>Country</b>	means the Emirate of Abu Dhabi and the United Arab Emirates.
1.2.13.	<b>Customer</b>	means the Party named as the “ <i>Customer</i> ” in the Form of Supply Agreement and/or the Party issuing the Purchase Order including its legal successors, subsidiaries, and permitted assignees.
1.2.14.	<b>Customer’s Personnel</b>	means the Customer’s Representative (if appointed), the assistants and all other staff, labour and other employees of the Customer engaged in fulfilling the Customer’s obligations under the Contract, and any other personnel identified as Customer’s Personnel, by a Notice from the Customer to the Supplier.
1.2.15.	<b>Customer’s Representative</b>	means the person referred to in the Conditions of Contract, or appointed from time to time by the Customer, and communicated by Notice to the Supplier to be its representative for the administration of the Contract.
1.2.16.	<b>day</b>	means a calendar day.
1.2.17.	<b>Deliverables</b>	means all documents, products, materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the provision of Goods and/or Services in any form or media including without limitation illustrations, maps, plans, diagrams, designs, computer programs, data, specifications and reports (including drafts).
1.2.18.	<b>Effective Date</b>	means the date on which the Contract comes into force and effect pursuant to Sub-Clause 4.1 [ <i>Effective Date</i> ].
1.2.19.	<b>Exceptional Costs</b>	means the costs, not otherwise compensated under the Contract, arising out of any necessary work, cost, expense or delay incurred by the Supplier which is additional to the Goods and/or Services (or Variations) and which is necessarily and unavoidably performed under the Contract and in each case identified as such in the Supply Agreement, the Purchase Order, and/or these Conditions of Contract.
1.2.20.	<b>Exceptional Event</b>	<p>means an event or circumstance which is:</p> <ul style="list-style-type: none"> <li>(a) beyond a Party’s control;</li> <li>(b) which such Party could not reasonably have provided against before entering into the Contract;</li> <li>(c) which having arisen, such Party could not reasonably have avoided or overcome; and</li> <li>(d) which is not substantially attributable to the other Party.</li> </ul> <p>An Exceptional Event may include, but is not limited to, events or circumstances of the kind listed below, subject to paragraphs 1.2.20(a) 1.2.20(d) above:</p> <ul style="list-style-type: none"> <li>(i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;</li> <li>(ii) rebellion, terrorism, revolution, insurrection, military or usurped power or civil war;</li> <li>(iii) riot, commotion, disorder, strike or lockout by persons other than a Party’s personnel and other employees and/or subcontractors of such Party;</li> </ul>

		(iv) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity except as may be attributable to a Party's actions; or (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.
1.2.21.	<b>Foreground Intellectual Property</b>	means all Intellectual Property created as a result of the provision of Goods and/or Services by the Supplier.
1.2.22.	<b>Foreign Currency</b>	means any currency other than the Local Currency.
1.2.23.	<b>Form of Supply Agreement</b>	means the document entitled Form of Supply Agreement (if any has been signed by the Parties) which forms part of the Contract.
1.2.24.	<b>Goods</b>	means the goods, equipment and/or materials required by the Customer and to be supplied by the Supplier pursuant to the Contract as set out in Appendix I [ <i>Scope of Goods and/or Services</i> ].
1.2.25.	<b>Intellectual Property</b>	means all intellectual property rights including, without limitation, any patents, patent application, trademarks, trade secrets, registered designs, registered design application, copyrights, design rights, moral rights, process, formula, specification, drawing, including rights in computer software and databases howsoever arising in any part of the world.
1.2.26.	<b>Legal Requirements</b>	means all requirements under the laws of the Emirate of Abu Dhabi and the federal laws of the United Arab Emirates as are applicable in the Emirate of Abu Dhabi and all regulations, orders, delegated or subordinate legislation and codes of practice made or established thereunder and the regulations and by-laws of any local authority and of any national or public utility company or other authority with whose systems any installation of the works will be connected.
1.2.27.	<b>Local Currency</b>	means the currency of the United Arab Emirates.
1.2.28.	<b>month</b>	means a calendar month.
1.2.29.	<b>Notice</b>	means a written communication identified as a Notice and issued in accordance with the provisions of Sub-Clause 1.4 [ <i>Notices and Other Communications</i> ].
1.2.30.	<b>Party and Parties</b>	means the Customer and/or the Supplier as the context requires and " <b>third party</b> " means any other person or entity.
1.2.31.	<b>Programme</b>	means the meaning given to it in Clause 4.4 [ <i>Programme</i> ].
1.2.32.	<b>Project</b>	means the project named in the Contract for which the Goods and/or the Services are to be provided.
1.2.33.	<b>Proper Use</b>	means the use of Goods and/or Services provided by the Supplier in strict accordance with the provisions of Supplier's Materials and/or any instructions or recommendations notified by the Supplier from time to time.
1.2.34.	<b>Public Holiday</b>	means any day announced by the government of the Emirate of Abu Dhabi as a public holiday for the private sector.
1.2.35.	<b>Purchase Order</b>	means the Purchase Order issued by the Customer for the provision of Goods and/or Services attached to and includes these terms and conditions (the " <b>Conditions of Contract</b> "). No variation of or addition to these Conditions of Contract is effective without the Parties' prior written agreement. These Conditions of Contract prevail over and take the place of any other terms, conditions or provisions emanating from or referred to by the Parties prior to the date of issuing the Purchase Order or signing the Supply Agreement.

1.2.36.	<b>Remuneration</b>	means the pay or other financial compensation provided in exchange for the provision of Goods and/or Services by the Supplier under the Contract.
1.2.37.	<b>Services</b>	means the works and/or services to be performed by the Supplier as set out in the Appendix I [ <i>Scope of Goods and/or Services</i> ] to the Contract, including without limitation, all labour, plant and materials required to carry out the specified services, and any report, document or other deliverables to be supplied and/or completed as part of, or as a result of, such services (the “ <b>Deliverable(s)</b> ”).
1.2.38.	<b>Site</b>	means the plots of land at the Project named in the Contract for which the Goods and/or the Services are to be provided.
1.2.39.	<b>Subcontractor</b>	means any person or persons or firm or company whom the Supplier may appoint as a specialist subcontractor after obtaining the written consent from the Customer in accordance with the provisions of Sub-Clause 1.8 [ <i>Assignments and Subcontracting</i> ].
1.2.40.	<b>Supplier</b>	means the professional firm or individual named in the Contract and its legal successors, subsidiaries and permitted assignees. The Supplier is the Party from which the Customer is purchasing Goods and/or Services.
1.2.41.	<b>Supplier’s Key Personnel</b>	means the positions of the Supplier’s Personnel other than the Supplier’s Representative that are in direct contact with the Customer and/or in senior positions for the provision of Goods and/or Services, subject to the provisions of Sub-Clause <b>Error! Reference source not found.</b> [ <i>Supplier’s Key Personnel</i> ].
1.2.42.	<b>Supplier’s Manufacturers</b>	means the person or company that produces the finished Goods from raw materials by using various tools, equipment, and processes, and then sells the Goods to the Supplier.
1.2.43.	<b>Supplier’s Materials</b>	means all specifications, calculations, data, schedules, programs, charts, information, manuals, studies, reports, records, consents and other documents and materials as referred to in the Contract pertaining to the Goods, the Services and/or the Project and which are to be prepared and provided by, or on behalf of, the Supplier, whether in computer or machine readable or other form.
1.2.44.	<b>Supplier’s Offer</b>	(also known as “ <b>Supplier’s Proposal</b> ”) means the written offer / proposal submitted by the Supplier to the Customer for the provision of Goods and/or Services based on the documents and written information provided by the Customer to the Supplier.
1.2.45.	<b>Supplier’s Personnel</b>	means the Supplier’s Representative and all personnel whom the Supplier utilizes on the Site or other places where the Goods and/or Services are being carried out, including the staff, labour and other employees of the Supplier and of each Subcontractor, and any other personnel assisting the Supplier in the provision of Goods and/or Services.
1.2.46.	<b>Supplier’s Representative</b>	means the person referred to in these Conditions of Contract or appointed from time to time by the Supplier, and communicated by Notice to the Customer to be its representative for the administration of the Contract.
1.2.47.	<b>Supply Agreement</b>	means the duly signed Form of Supply Agreement together with these Conditions of Contract, Appendix I [ <i>Scope of Goods and/or Services</i> ], Appendix II [ <i>Personnel, Equipment, Facilities</i>

		<i>and Services of Others to be Provided by the Customer</i> ], Appendix III [ <i>Remuneration and Payment</i> ], Appendix IV [ <i>Programme</i> ], the Contract Documents, and any letters of offer (by the Supplier) and acceptance (by the Customer) attached to any of the above.
1.2.48.	<b>Term</b>	means the period of time from the Commencement Date of the Contract until its conclusion, unless the Contract is terminated prematurely. <b>“Initial Term”</b> means the first Term agreed between the Parties. <b>“Renewed Term”</b> means the additional Term(s) agreed between the Parties after the expiry of the Initial Term.
1.2.49.	<b>Time for Completion</b>	means the time for the provision of Goods and/or Services as stated in these Conditions of Contract, or as may be amended in accordance with the Contract, calculated from the Commencement Date.
1.2.50.	<b>Valid Tax Invoice</b>	means a VAT invoice that meets all of the requirements of the VAT law no 8 of 2017 (the <b>“VAT Law”</b> ) as may be amended or supplemented from time to time and replacement thereto.
1.2.51.	<b>Variation</b>	means any change to the Goods, the Services, the Term (whether an Initial Term or a Renewed Term) and/or the Remuneration instructed or approved as a Variation under the provisions of Sub-Clause 5.1 [ <i>Variations</i> ].
1.2.52.	<b>Variation Notice</b>	means a written communication identified as a Variation Notice and issued in accordance with the provisions of Sub-Clause 1.4 [ <i>Notices and other Communications</i> ].
1.2.53.	<b>Variation Request</b>	means a request for a change to the terms of the Contract made by the Customer or the Supplier after the execution of the Contract.
1.2.54.	<b>Variation Order (VO)</b>	(also known as <b>“Change Order (CO)”</b> ) means the written bilateral agreement representing the mutual consensus amending the Contract between the Customer and the Supplier, issued after the execution of the Contract, authorizing a change or amendment in the Goods or Services or an adjustment in the Remuneration, the Supply Agreement requirements, the Purchase Order requirements or the Time for Completion as originally defined by the Contract Documents, which may add to, subtract from, or vary the Scope of Goods and/or Services which is required for the proper provision and completion of the Goods and/or Services. Each Party to the Contract must agree to the Variation Order (VO) by signing it. Neither Party can unilaterally issue or impose a Variation Order. No changes in the Goods and/or Services shall be undertaken by the Supplier without written direction by the Customer. Any changes made without such written direction are done so at the Supplier’s own risk. Variation Orders and Variation procedures shall be processed in accordance with the provisions of Clause 5 [ <i>Variations and Adjustments to Goods and Services</i> ].
1.2.55.	<b>VAT</b>	means the <b>“Value Added Tax”</b> as imposed by the VAT law no 8 of 2017 (the <b>“VAT Law”</b> ) as may be amended or supplemented from time to time and replacement thereto.
1.2.56.	<b>year</b>	means a calendar year.

### 1.3. Interpretation

- 1.3.1. Words indicating the singular include the plural, and vice versa where the context requires.
- 1.3.2. Words indicating one gender include all genders.
- 1.3.3. Provisions including the words "**agree**", "**agreed**" or "**agreement**" or any terms of similar import require the agreement to be recorded in writing, and signed by both Parties.
- 1.3.4. The words "**shall**" and "**must**" mean that the Party or person referred to has the obligation under the Contract to perform the duty referred to.
- 1.3.5. The word "**may**" means that the Party or person referred to has the choice of whether to act or not in the matter referred to.
- 1.3.6. The words "**written**" or "**in writing**" means handwritten, type-written, printed or electronically made and resulting in a permanent un-editable record.
- 1.3.7. Any reference to "**price**", "**rates**", "**Costs**", "**expenses**", "**damages**", and the like shall be a reference to the value of such item net of any applicable taxes unless specified otherwise.
- 1.3.8. The word "**include**" (in all forms) shall be construed without limitation.
- 1.3.9. The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions of Contract.
- 1.3.10. In these Conditions of Contract, provisions including the expression "**Cost plus reasonable profit**" require this profit to be twenty-five percent (25%) of such Cost unless otherwise agreed by the Parties.

### 1.4. Notices and Other Communications

- 1.4.1. Wherever the Contract provides for the giving or issuing of a Notice, a Variation Notice or other form of communication including, without limitation, approvals, consents, instructions, and decisions, then such Notice, Variation Notice or communication shall be:
  - (a) where it is a Notice or Variation Notice, identified as such with reference to the Clause or Sub-Clause under which it is issued;
  - (b) where it is another form of communication, identified as such with reference to the Clause or Sub-Clause under which it is issued where appropriate;
  - (c) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted by any form of agreed system of electronic transmission stated in the Conditions of Contract; and
  - (d) delivered, sent or transmitted to the address for the recipient's communications as stated under Sub-Clause 1.4.3, However:
    - (i) if the recipient gives Notice of another address, Notices and other forms of communication shall thereafter be delivered accordingly; and
    - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.
- 1.4.2. Notices and other forms of communications shall not be unreasonably withheld or delayed.
- 1.4.3. The addresses of the Parties for receiving Notices, Variation Notices and other forms of communications shall be as stated in the Form of Supply Agreement and/or the Purchase Order.
- 1.4.4. A Notice under or in connection with the Contract (a "**Notice**") shall be sent by courier and email to the Party to the address specified in the Contract. A Notice shall be deemed to have been received by the receiving Party:
  - (a) if sent by courier, when the courier company confirms delivery thereof as supported by written evidence;
  - (b) if mailed, three (3) days after the date of postmark;

- (c) if delivered by facsimile, receipt of automatically-generated confirmation of facsimile transmission; or
- (d) if sent by email on the same day if successfully transmitted on a Business Day before 4:00 pm local time and on the following Business Day if sent after 4:00 pm local time and confirmed by a delivery report.

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## **1.5. Law and Language**

- 1.5.1. The Contract shall be governed by and construed in accordance with the laws of the Emirate of Abu Dhabi and the federal laws of the United Arab Emirates as applied in the Emirate of Abu Dhabi.
- 1.5.2. The ruling language of the Contract shall be the English language.
- 1.5.3. The language for all communications shall be the ruling language stated in Sub-Clause 1.5.2 hereinabove.

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## **1.6. Changes in Legislation**

- 1.6.1. If after the date of the Supplier's Offer / Proposal in relation to the Contract, the scope, extent, nature or type of Goods and/or Services is affected by any change to national, state, or international legislation, any statute, statutory instrument, order, regulation, bylaw, code or other legislation having application to the Goods and/or Services then such change to the Goods and/or Services shall be treated as a Variation to the Goods and/or Services under the provisions of Sub-Clause 5.1 [*Variations*].
- 1.6.2. If after the date of the Supplier's Offer / Proposal in relation to the Contract, any change to national, state, or international legislation, any statute, statutory instrument, order, regulation, bylaw, code or other legislation in the Country or in any other country in which the Goods and/or Services are required by the Customer, causes the Supplier to incur Exceptional Costs, then the agreed Remuneration shall be adjusted in accordance with the provisions of Sub-Clause 8.1 [*Payment to the Supplier*], and the Time for Completion amended in accordance with the provisions of Sub-Clause 4.5 [*Delays*]. As soon as reasonably practicable, the Supplier shall inform the Customer by issue of a Notice of the occurrence of the Exceptional Costs. Either Party may by a separate Notice to the other require that the provisions of the Contract be amended to comply with the change in legislation where applicable.

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## **1.7. Contract Documents**

- 1.7.1. The intent of the Contract Documents is to include all information necessary for the proper provision of Goods and/or Services by the Supplier. The Supplier shall provide the Goods and/or Services described in and reasonably inferable from the Contract Documents as necessary to produce the results indicated by the Contract Documents. The Contract Documents are to be taken as mutually explanatory of one another. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.
- 1.7.2. In cases of disagreement, the order of precedence stated in Clause 2 of the Form of Supply Agreement shall govern (top item receiving priority of interpretation) with the understanding that a common sense approach will be utilized as necessary so that the Contract Documents produce the intended response.
- 1.7.3. If no Supply Agreement was entered into between the Parties, the priority of the Contract Documents shall be in accordance with the following sequence:
  - (a) the accepted Purchase Order;
  - (b) the letter of acceptance issued by the Customer;
  - (c) the letter of Offer / Proposal issued by the Supplier;
  - (d) the particular conditions inserted in the Purchase Order (if any);

- (e) these Conditions of Contract;
  - (f) the Appendices 1 to 4 to these Conditions of Contract (Appendix I [*Scope of Goods and/or Services*], Appendix II [*Personnel, Equipment, Facilities and Services of Others to be provided by the Customer*], Appendix III [*Remuneration and Payment*], and Appendix 4 [*Programme*];
  - (g) the Customer's documents issued to the Supplier at the tender stage including any drawings, specifications, schedules, etc.;
  - (h) the Supplier's Materials; and
  - (i) any other documents forming part of the Contract.
- 1.7.4. As soon as the Supplier becomes aware of any conflict, ambiguity or discrepancy in the Contract Documents, the Supplier shall immediately (and in any event, before carrying out the provision of the relevant Goods and/or Services) give a Notice to the Customer, describing the conflict, ambiguity or discrepancy and seeking clarifications and instructions as to which part takes priority and/or how the relevant parts should be construed. After receiving such Notice, or if the Customer finds a conflict, ambiguity or discrepancy in the Contract Documents, the Customer shall issue the necessary clarification or instruction. The Supplier shall comply with the instructions of the Customer in relation to such conflict, ambiguity or discrepancy.
- 1.7.5. If the Supplier suffers delay and/or incurs Cost as a result of such conflict, ambiguity or discrepancy in the Contract Documents and/or as a result of Customer's clarifications and instructions, the Supplier shall give a further Notice to the Customer and shall be entitled subject to the provisions of Clause 5 [*Variations and Adjustments to Goods and Services*] to:
- (a) an extension of time for completion for any such delay, if completion is or will be delayed, under Sub-Clause 4.5 [*Delays*]; and
  - (b) payment of any such Cost plus reasonable profit, which shall be included in the Remuneration.
- After receiving such further Notice, the Customer shall proceed in accordance with Sub-Clause 2.2 [*Decisions*] to agree or determine these matters.
- 1.7.6. Unless otherwise stated in the Contract Documents, words that have well-known technical or common industry meanings are used in the Contract Documents in accordance with such recognized meanings.

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## **1.8. Assignment and Subcontracting**

- 1.8.1. Neither Party shall, at any time, assign the benefit of the whole or any part of the Contract without the prior written consent of the other Party. Such consent shall not be unreasonably withheld or delayed. However, either Party may:
- (a) assign the whole or any part the Contract with the prior agreement of the other Party, at the sole discretion of such other Party; and
  - (b) as security in favor of a bank or financial institution, assign the Party's right to any moneys due, or to become due, under the Contract without the prior agreement of the other Party.
- 1.8.2. Neither Party shall, at any time, assign any of its obligations under the Contract without the prior written consent of the other Party.
- 1.8.3. The Supplier shall not subcontract provision of all or part of the Goods and/or Services without the written consent of the Customer. However, for the avoidance of doubt, the Supplier's Manufacturers as defined under Sub-Clause 1.2.42 [*Supplier's Manufacturers*] are not considered to be Subcontractors of the Supplier.
- 1.8.4. The Customer's consent to any subcontract arrangement shall not relieve the Supplier of any of the Supplier's obligations under the Contract. The Supplier shall remain responsible

and liable to the Customer for the acts, omissions and defaults of the Subcontractors in relation to the Contract as if they were the acts, omissions and defaults of the Supplier.

- 1.8.5. Where the prior consent of the Customer is given to the Supplier for subcontracting the provision of any part of the Goods and/or the Services, then the Supplier shall:
- (a) warrant that such Subcontractor is sufficiently qualified, skilled, experienced and competent and has all the organization and resources of finance, personnel, equipment, tools and materials necessary to undertake the work assigned to it;
  - (b) actively supervise the work of the Subcontractor; and
  - (c) remain fully liable to the Customer for the performance and result of the Goods and/or Services so subcontracted as well as for any delay or claim by or claim against such Subcontractor.
- 1.8.6. In case the performance of any Subcontractor in respect of whom Customer's consent is given shall not be satisfactory to the Customer, then the Customer shall be entitled to require the Supplier to propose alternative Subcontractor(s) for approval by the Customer and substitute such approved Subcontractor(s) to whom the above provisions shall apply at no cost to the Customer.

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## **1.9. Intellectual Property**

- 1.9.1. All Intellectual Property held in any medium, whether electronic or otherwise, created by the Supplier during the provision of Goods and/or Services (**Foreground Intellectual Property**) shall be vested in the Supplier. The Supplier shall grant to the Customer a royalty-free worldwide license to use and copy the Foreground Intellectual Property for any purpose in connection with the Project.
- 1.9.2. All Background Intellectual Property shall remain the property of the original owner. The Supplier hereby grants to the Customer, or agrees to procure the grant to the Customer of an unrestricted royalty-free license to use and copy the Supplier's Background Intellectual Property to the extent reasonably required to enable the Customer to make use of the Goods and/or Services or the Project. The Customer hereby grants to the Supplier an unrestricted royalty-free license to use and copy the Customer's Background Intellectual Property provided to the Supplier to the extent reasonably required to enable the Supplier to provide the Goods and/or Services.
- 1.9.3. The Supplier shall ensure (except in respect of any of the Customer's Background Intellectual Property) that the Foreground Intellectual Property and the Supplier's Background Intellectual Property, to the extent incorporated into the Goods and/or Services, will not infringe any Intellectual Property or other rights of any third party.
- 1.9.4. The Customer shall ensure that the Customer's Background Intellectual Property to the extent related to the Goods and/or Services, will not infringe any Intellectual Property or other rights of any third party.
- 1.9.5. The Supplier shall not be liable for the use by any person of the Supplier's Background Intellectual Property or the Supplier's Foreground Intellectual Property for any purpose other than the purpose for which it was originally intended.
- 1.9.6. In the event that the Customer is in default of payment of any amounts due under the Contract, then the Supplier may, upon seven (7) days' Notice, revoke any license granted therein.

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## **1.10. Confidentiality**

- 1.10.1. Except with the prior written consent of the other Party, neither Party shall disclose or cause or permit their employees, professional advisers, agents or Subcontractors to disclose to third parties any Confidential Information.
- 1.10.2. The restrictions on use and disclosure set forth in Sub-Clause 1.10.1 shall not apply to any information:

- (a) which at the date of its disclosure is public knowledge or which subsequently becomes public knowledge other than by any act or failure to act on the part of the receiving Party or persons for whom the receiving Party has assumed responsibility under the Contract;
  - (b) which the receiving Party can establish by written proof was already in its possession at the time of disclosure by the disclosing Party and was not acquired directly or indirectly from the disclosing Party;
  - (c) which at any time after the Commencement Date has been acquired from any third party who did not acquire such information directly or indirectly from the disclosing Party or any of the disclosing Party's employees or professional advisers;
  - (d) which by proof in writing has been independently developed by the receiving Party without the use of Confidential Information; or
  - (e) which is required to be disclosed by law or order of a court of competent jurisdiction or government, department, agency or other public authority.
- 1.10.3. The Parties must not use any Confidential Information to the other Party for the benefit of any other person.
- 1.10.4. Neither Party shall disclose Confidential Information (whether personal or business related) relating to the other Party unless:
- (a) the other Party consents in writing; or
  - (b) disclosure is necessary to answer or defend any complaint, claim, allegation, or proceedings against the disclosing Party; or
  - (c) the disclosing Party is required by law to disclose the information; or
  - (d) the disclosure is consistent with the information privacy principles set out in the applicable laws.
- 1.10.5. Where the disclosing Party discloses Confidential Information under paragraphs 1.10.4(b), 1.10.4(c), or 1.10.4(d) above, it may be only to the appropriate person or entity and only to the extent necessary for the permitted purpose.
- 1.10.6. Each Party acknowledges that all Confidential Information disclosed to it by the other Party is confidential and undertakes to the Party providing the Confidential Information to keep the same and all and every part secret and not to disclose the same to any other person except to such officers, employees and agents of the Party to whom the Confidential Information is disclosed, and their design, construction, installation, and other contractors, Subcontractors, suppliers and consultants as have, and so far only as they have, a need to know the same for the purpose of performance of their duties in relation to Project.
- 1.10.7. In the event of disclosures under the provisions of Sub-Clause 1.10.3 above, it shall be the responsibility of the disclosing Party to procure that all persons to whom Confidential Information is disclosed shall first have entered into a confidentiality undertaking in terms and conditions similar to those of this Sub-Clause 1.10 [*Confidentiality*].
- 1.10.8. The Parties undertake not to use or permit others to use the Confidential Information or any part thereof otherwise than for the purposes of providing Goods and/or Services or performing duties in relation to the Contract.
- 1.10.9. Each Party shall return all Confidential Information disclosed to it by the other Party as soon as it is no longer required for the provision of Goods and/or Services or performance of duties in relation to the Contract and in any event upon completion of the provision of Goods and/or Services or termination of the Contract under Clause 7 [*Termination of Contract*], together with all copies, notes and transcriptions thereof or shall destroy such copies, notes and transcriptions and confirm to the other Party in writing that it has done so.
- 1.10.10. The confidentiality obligations set forth in this Sub-Clause 1.10 [*Confidentiality*] shall continue in full force and effect until the expiry of five (5) years after completion of the provision of Goods and/or Services or the termination of the Contract under Clause 7

[*Termination of Contract*] (whichever is the earlier) unless stated otherwise in these Conditions of Contract. In any case where either Party is under confidentiality obligation to a contractor or any third party in respect of any such Confidential Information, the confidentiality obligations set forth in this Sub-Clause 1.10 [*Confidentiality*] shall continue in full force and effect until the expiry or termination of such obligation if later.

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## 1.11. Publication

- 1.11.1. Subject to the provisions of Sub-Clause 1.10 [*Confidentiality*] and unless otherwise specified in these Conditions of Contract, the Supplier, either alone or jointly with others, may publish material relating to the Goods and/or Services. Publication shall be subject to approval of the Customer if it is within five (5) years of completion of the provision of Goods and/or Services or termination of the Contract under Clause 7 [*Termination of Contract*] (whichever is the earlier).
- 1.11.2. The Supplier may use material and information relating to the Goods and/or Services and the Project for commercial tendering purposes, without the Customer's consent.
- 1.11.3. The Supplier may use material and information relating to the Goods and/or Services and the Project for its own web site, without the Customer's consent.
- 1.11.4. The Customer may publish any information (other than the Confidential Information related to the Supplier) relating to the Project without the Supplier's consent.
- 1.11.5. Unless otherwise permitted under the provisions of Sub-Clauses 1.11.1, 1.11.2, 1.11.3, and 1.11.4 above, neither Party shall make any publications regarding the Goods and/or the Services before getting the prior consent of the other Party.

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## 1.12. Anti-Corruption

- 1.12.1. In the performance of their obligations under the Contract, the Parties, their agents and employees shall comply with all applicable laws, rules, regulations, and orders of any applicable jurisdiction, including without limitation those relating to corruption and bribery. The Parties shall also comply with the standards provided in the OECD (Organization for Economic Cooperation and Development) [*Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*].
- 1.12.2. The Parties hereby represent, warrant and covenant that:
  - (a) they shall not participate, directly or indirectly in bribery, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money laundering, use of insider information, the possession of illegally obtained information or any other criminal activity; and
  - (b) they shall neither receive nor offer, pay or promise to pay either directly or indirectly, anything of value to a "**public official**" (as defined under Sub-Clause 1.12.3 below) in connection with any business opportunities which are the subject of the Contract. Furthermore, either Party shall immediately give Notice to the other Party with full particulars in the event that such Party receives a request from any public official requesting illicit payments related to the Goods and/or Services.
- 1.12.3. A "**public official**" is:
  - (a) any official or employee of any government agency or government-owned or controlled enterprise;
  - (b) any person performing a public function;
  - (c) any official or employee of a public international organization including without limitation donor or funding agencies;
  - (d) any candidate for political office; or
  - (e) any political party or an official of a political party.

- 1.12.4. In conjunction with the requirements of this Sub-Clause 1.12 [*Anti-Corruption*], either Party shall at the other Party's request demonstrate that it adheres to a documented code of business ethics in respect of the prevention of corruption and bribery. As a minimum the Parties shall comply with the [*FIDIC Code of Ethics*] and the [*FIDIC Integrity Management System*] available at [www.fidic.org](http://www.fidic.org).
- 1.12.5. The terms "**Party**" or "**Parties**" as used in this Sub-Clause 1.12 [*Anti-Corruption*] shall include the Party and its employees, agents and Subcontractors.
- 1.12.6. The Parties agree that they shall, in implementation of the Contract, act in compliance with all anti-corruption provisions of the laws of the United Arab Emirates including the UAE Penal Code.

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### **1.13. Relationship of the Parties**

- 1.13.1. Nothing contained in the Contract shall be construed as creating a partnership, agency or joint venture between the Parties. The Supplier shall provide the Goods and/or the Services and discharge its obligations under the Contract as an independent contractor. Nothing in the Contract shall be construed as authorizing either Party:
- (a) to incur any expenses on behalf of the other Party;
  - (b) to enter into any engagement or make any representation or warranty on behalf of the other Party;
  - (c) to pledge the credit of, or otherwise bind or place the other Party under any obligations; or
  - (d) to commit the other Party in any manner whatsoever;
- without in any such case first obtaining the consent of the other Party in writing.
- 1.13.2. Where either Party consists of a joint venture or consortium then members of such joint venture or consortium shall be jointly and severally liable under the Contract.
- 1.13.3. Neither Party shall have any authority to amend or modify in any manner any agreement concluded between the other Party and any contractor, supplier, consultant or other person in relation to the Contract or to waive, or release any such contractor, supplier, consultant or other person from any obligation any such agreement.

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### **1.14. Amendment**

- 1.14.1. The Contract can only be amended with the written agreement of the Parties.

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### **1.15. Severability**

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

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### **1.16. Non-Waiver**

- 1.16.1. No failure or delay by either Party in exercising any of its rights under the Contract shall operate as a waiver of such rights. Any waiver given by either Party in connection with the Contract is binding only if it is served as a Notice and then strictly in accordance with the terms of such Notice.

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### **1.17. Good Faith**

- 1.17.1. In all dealings related to the performance and the enforcement of the Contract, the Parties shall act in good faith and in a spirit of mutual trust.

- 1.17.2. As defined by the Uniform Commercial Code (UCC) the term “*good faith*” refers to honesty in fact and the observance of reasonable commercial standards of fair dealing. Good faith excludes a variety of types of conduct characterized as involving “*bad faith*” because they violate community standards of decency, fairness or reasonableness.
- 1.17.3. Good faith shall be considered to be violated by:
- (a) evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other Party’s performance;
  - (b) dishonest conduct in enforcing contract rights such as conjuring up a pretended dispute, asserting an interpretation contrary to one’s own understanding, or falsification of facts;
  - (c) dealing which is candid but unfair, such as taking advantage of the necessitous circumstances of the other Party to extort a modification of the Contract for the provision of Goods and/or Services without a legitimate commercial reason; and/or
  - (d) harassing demands for assurances of performance, rejection of performance for unstated reasons, willful failure to mitigate damages, and abuse of a power to determine compliance or to terminate the Contract.
- 1.17.4. A violation by either Party of the “*good faith*” principles stipulated under Sub-Clauses 1.17.2 and 1.17.3 above, shall be considered as a breach of Contract and may be a reason for the non-violating Party to terminate the Contract.

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## **1.18. Indemnity**

- 1.18.1. The Supplier hereby indemnifies and holds the Customer, its officers, employees, agents and representatives harmless from and against all claims, proceedings, damages, expenses (including legal fees and expenses), loss and liability whatsoever arising:
- (a) in respect of personal injury to or disease, sickness or death of any person or loss of or damage to any property, real or personal, arising out of or in the course of or by reason of the provision of Goods and/or Services and remedy of any defects therein insofar as attributable to breach of the Contract by negligence or willful act of the Supplier, its officers, employees, agents and representatives or any of them; and
  - (b) by reason of violation by the Supplier, its officers, employees, agents or representatives or any of them of any laws of the Emirate of Abu Dhabi or the federal laws of the United Arab Emirates as applied in the Emirate of Abu Dhabi.
- 1.18.2. The Customer hereby indemnifies and holds the Supplier, its officers, employees, agents and representatives harmless from and against all claims, proceedings, damages, expenses (including legal fees and expenses), loss and liability whatsoever arising:
- (a) in respect of personal injury to or disease, sickness or death of any person or loss of or damage to any property, real or personal, arising out of or in the course of or by reason of the provision of Goods and/or Services and remedy of any defects therein insofar as attributable to breach of the Contract by negligence or willful act of the Customer, its officers, employees, agents and representatives or any of them; and
  - (b) by reason of violation by the Customer, its officers, employees, agents or representatives or any of them of any laws of the Emirate of Abu Dhabi or the federal laws of the United Arab Emirates as applied in the Emirate of Abu Dhabi.

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## **1.19. Conflict of Interest**

- 1.19.1. Neither Party nor any of their officers, employees, agents or representatives shall have any interest in or receive any remuneration from any third party in respect of the Goods and/or

Services or performance of the obligations of the Parties under the Contract or otherwise howsoever in connection with the Contract except as provided in the Contract.

- 1.19.2. Neither Party shall engage in any activity which might conflict with the interests of the other Party under the Contract.
- 1.19.3. The Parties declare that as at the Effective Date of the Contract there are no circumstances or matters that may give rise to a conflict of interest in the performance of their obligations under the Contract. Each Party shall inform the other Party immediately if it becomes aware of any such circumstances or matters. If a conflict of interest arises then the Parties shall agree, in good faith, on measures to manage such conflict.

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## 1.20. Set-Off

- 1.20.1. Either Party shall have the right to deduct from any moneys due or which may become due to the other Party any moneys or sums recoverable by such Party according to the provisions of the Contract subject only to the recovering Party notifying the other Party in writing of the Claim and the amount to be deducted and only after the other Party has been provided fourteen (14) days to remedy the situation. The extent of recovery shall be limited according to the liability limit under Sub-Clause 9.3 [*Limit of Liability*].

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## 1.21. Taxes and Duties

- 1.21.1. The Supplier shall be liable for all taxes (except Value Added Tax (VAT)), imposts, duties, withholding taxes, charges or other assessments of whatsoever nature, whether levied by the government of the Emirate of Abu Dhabi or the federal government of the United Arab Emirates or any other government elsewhere in relation to fees paid or other payments made to the Supplier or any costs incurred by the Supplier pursuant to the Contract.

Where provision of the Goods and/or Services by the Supplier to the Customer constitutes a “**taxable supply**” according to Federal Law No. 8/2017 on Value Added Tax (VAT) and the Customer receives from the Supplier a Valid Tax Invoice in respect thereof, it shall be the obligation of the Customer to remit the tax so invoiced to the Supplier in accordance with the terms for payment of the remuneration provided in the Contract.

The Supplier warrants that all payments related to the Value Added Tax (VAT) shall be reported to the Federal Tax Authority (FTA) and the amount due to the Federal Tax Authority (FTA) paid on time and that the Supplier shall indemnify the Customer on all matters related to implementation of the Value Added Tax (VAT) by the Supplier.

- 1.21.2. In the event of change in law of the Emirate of Abu Dhabi or change in the federal laws of the United Arab Emirates, occurring subsequent to the Effective Date of the Contract, that results in any change thereafter in the level of:

- (a) costs incurred by the Supplier pursuant to the Contract; or
- (b) fees or other payments to be made to the Supplier;

then either Party may by seven (7) days’ Notice to the other Party giving particulars of such change in law and change in costs and/or fees or other payments and calling a meeting to discuss the matter.

In all events any additional costs and/or fees or other payments attributable to a change in laws shall be paid by the Customer to the Supplier. In the event of differences arising between the Parties regarding this matter, then the provisions of Clause 11 [*Disputes and Litigation*] may be applied.

For the purposes of this Sub-Clause 1.21 [*Taxes and Duties*], the term “**change in law**” means any change in regulation or repeal of an existing law or enactment of a new law by the government of the Emirate of Abu Dhabi or the federal government of the United Arab Emirates.

- 1.21.3. All payments related to sponsorship which enable the Supplier and any of its officers, directors or employees to work in the United Arab Emirates as well as all personal income tax or any corporate taxes or registration charges levied by the government of the Emirate of Abu Dhabi or the federal government of the United Arab Emirates on the Supplier shall be to the sole account of the Supplier.
- 1.21.4. All port dues, landing, pilotage, lighterage and any other charges whatsoever relating to the importation of materials, tools and equipment of the Supplier shall be for the sole account of the Supplier.

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## 1.22. Miscellaneous General Provisions

- 1.22.1. The Contract represents the full agreement of the Parties in relation to its subject matter and supersedes all previous proposals, discussions, negotiations, correspondence, understandings, arrangements, representations, approvals, agreements and commitments relating thereto, which shall have no further effect.
- 1.22.2. All remedies for which the Contract provides are cumulative and not exclusive of any rights or remedies provided by law.
- 1.22.3. The Contract may be executed in separate counterparts each of which shall be an original and all of which shall together constitute one and the same instrument.

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## 2. The Customer

### 2.1. Information

- 2.1.1. In order not to delay the Supplier in the provision of Goods and/or Services, the Customer shall within a reasonable time and with due regard to the Programme (if any), provide to the Supplier, free of cost, all information known by or available to the Customer relating to the Contract and pertinent to the Goods and/or Services that is requested by the Supplier and which the Customer is permitted to disclose, and any further information reasonably requested by the Supplier, which may pertain to the Goods and/or Services and which the Customer is able to obtain. All information so provided shall be subject to the provisions of Sub-Clause 1.10 [*Confidentiality*].
- 2.1.2. The Customer warrants and represents to the Supplier the accuracy, sufficiency, consistency and completeness of any information provided to the Supplier by the Customer or by others on behalf of the Customer. The Supplier shall use reasonable endeavors to review all significant information provided to it by the Customer or by others on behalf of the Customer within a reasonable time of receipt. To the extent achievable using the "*standard of care*" in Sub-Clause 3.5 [*Standard of Care*], the Supplier shall review such information with a view to ensuring that such information does not contain any manifest error, omission or ambiguity and shall give Notice to the Customer promptly of any adverse findings.
- 2.1.3. In the event of any error, omission, or ambiguity (for the avoidance of doubt, including a manifest error, omission or ambiguity) in the information provided to the Supplier, then the Customer shall rectify such matter by Notice and where necessary shall issue a Variation to the Goods and/or Services in accordance with the provisions of Sub-Clause 5.1 [*Variations*] as the case may require.
- 2.1.4. The Customer grants its permission to the Supplier to have access to the Site as is necessary for provision of the Goods and/or Services and shall cooperate with the Supplier in application for access permits (where required) to the competent authorities.
- 2.1.5. If the Supplier suffers delay and/or incurs Cost as a result of a failure of the Customer to provide information to the Supplier or to issue any rectification of an error, omission or ambiguity, issue any instruction within a time which is reasonable and is specified in the Notice with supporting details, or to grant its permission to the Supplier to have access to the Site as is necessary for provision of the Goods and/or Services, the Supplier shall give a

Notice to the Customer and shall be entitled subject to the provisions of Clause 5 [*Variations and Adjustments to Goods and Services*] to:

- (a) an extension of the Time for Completion for any such delay, if completion is or will be delayed, under Sub-Clause 4.5 [*Delays*]; and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Remuneration.

After receiving such Notice, the Customer shall proceed in accordance with Sub- Clause 2.2 [*Decisions*] to agree or determine these matters.

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## **2.2. Decisions**

- 2.2.1. On all matters properly referred to the Customer in writing by the Supplier, the Customer shall give its decision, approval, consent, instruction or Variation, as the case may be, in writing within a reasonable time and with regard to the Programme (if any) so as not to delay the provision of Goods and/or Services.
  - 2.2.2. Any decision issued by the Customer which the Supplier does not agree with, shall constitute a "**Dispute**" and shall be resolved in accordance with the provisions of Clause 11 [*Disputes and Litigation*].
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## **2.3. Assistance**

- 2.3.1. The Customer shall (where he is in a position to do so) provide reasonable assistance to the Supplier at the request of the Supplier:
    - (a) by obtaining copies of the laws of the Country which are relevant to the Contract but are not readily available; and
    - (b) for the Supplier's applications for any permits, licences or approvals required by the laws of the Country:
      - (i) which the Supplier is required to obtain for compliance with the laws of the Country;
      - (ii) for the provision of Goods and/or Services, including clearance through customs; and
      - (iii) for the export of Supplier's equipment when it is removed from the Site.
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## **2.4. Customer's Financial Arrangements**

- 2.4.1. The Customer shall submit, within twenty-eight (28) days after receiving any request from the Supplier, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Customer to pay the Remuneration (as estimated at that time) in accordance with the provisions of Clause 8 [*Remuneration and Payment*].
- 2.4.2. Before the Customer makes any material change to its financial arrangements, the Customer shall give Notice to the Supplier with detailed particulars.
- 2.4.3. In addition, if the bank financing the Customer has notified to the Customer that the bank has suspended disbursements under its loan, which finances in whole or in part the provision of Goods and/or Services, the Customer shall give Notice of such suspension to the Supplier with detailed particulars, including the date of such notification, within seven (7) days of the Customer having received the suspension notification from the bank. If alternative funds will be available in appropriate currencies to the Customer to continue making payments to the Supplier beyond a date thirty (30) days after the date of bank notification of the suspension, the Customer shall provide reasonable evidence in such Notice of the extent to which such funds will be available.
- 2.4.4. If the Supplier suffers delay and/or incurs Cost as a result of a failure of the Customer to provide proper financial arrangements to ensure payment of the Remuneration (as estimated at that time) in accordance with the provisions of Clause 8 [*Remuneration and*

*Payment*], the Supplier shall give a Notice to the Customer and shall be entitled subject to the provisions of Clause 6 [*Suspension of Provision of Goods and/or Services*], Clause 7 [*Termination of Contract*], and Sub-Clause 5.1 [*Variations*] to:

- (a) suspend the provision of Goods and/or Services in accordance with the provisions of Clause 6 [*Suspension of Provision of Goods and/or Services*]; or
- (b) terminate the Contract in accordance with the provisions of Clause 7 [*Termination of Contract*]; and in all cases
- (c) an extension of time for completion for any such delay, if completion is or will be delayed, under Sub-Clause 4.5 [*Delays*]; and
- (d) payment of any such Cost plus reasonable profit, which shall be included in the Remuneration.

After receiving such Notice, the Customer shall proceed in accordance with Sub- Clause 2.2 [*Decisions*] to agree or determine these matters.

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## **2.5. Supply of Customer's Personnel, Equipment, Facilities and Service of Others**

- 2.5.1. The Customer shall make the Customer's Personnel, equipment, facilities and services of others to be provided by the Customer as described in Appendix II [*Personnel, Equipment, Facilities and Services of Others to be Provided by the Customer*] available to the Supplier for the purpose of the provision of Goods and/or Services, with due regard to the Programme (if any) and free of cost.

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## **2.6. Customer's Personnel**

- 2.6.1. The Customer shall be responsible for ensuring that the Customer's Personnel and the Customer's other contractors, subcontractors and suppliers:
- (a) cooperate with the Supplier's efforts to allow appropriate opportunities for carrying out work to:
    - (i) any other contractors employed by the Customer; and
    - (ii) the personnel of any legally constituted public authorities;who may be employed in the execution on or near the Site of any work not included in the Contract; and
  - (b) take actions similar to those which the Supplier is required to take (as applicable to the Contract) including, without limitation, the following:
    - (i) compliance with all applicable safety regulations;
    - (ii) taking care for the safety of all persons entitled to be on the Site;
    - (iii) using reasonable efforts to keep the Site clear of unnecessary obstruction so as to avoid danger to these persons;
    - (iv) taking all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of their operations; and
    - (v) ensuring that emissions, surface discharges and effluent from the Supplier's activities shall not exceed the values prescribed by applicable laws.

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## **2.7. Customer's Representative**

- 2.7.1. The Customer shall, from time to time, by Notice to the Supplier, designate a representative, to be coordinator. The Customer shall notify the Supplier of the extent of powers and authority delegated to the Customer's Representative.
- 2.7.2. The Customer's Representative shall be entitled by Notice to the Supplier to delegate to other sub-managers any of his/her functions related to performance of the Contract,

and/or the provision of Goods, and/or Services and may by such Notice vary or terminate such appointments.

- 2.7.3. All submissions and communications by or on behalf of the Supplier relating to the Contract, the provision of Goods, and/or Services shall be directed to the Customer's Representative (or to the sub-manager to whom a function is delegated under Sub-Clause 2.7.2) including all matters required by the Contract to be directed to the Customer or involving discharge of responsibilities or other activity under the provisions of the Contract by the Customer.
- 2.7.4. The Customer's Representative is hereby authorized to receive the same on behalf of the Customer and shall be responsible for liaison with the Supplier in all such matters.
- 2.7.5. All decisions, approvals, consents, agreements, and documentation made, concluded or issued by the Customer shall be valid only if recorded in writing and signed by the Customer's Representative.

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## **2.8. Services of Others**

- 2.8.1. The Customer may arrange, at its own cost, for the provision of services from others (if any) as described in Appendix II [*Personnel, Equipment, Facilities and Services of Others to be Provided by the Customer*], and the Supplier shall cooperate with the suppliers of such services but shall not be responsible for them or their performance. Where the provision of services by others is necessary for the proper provision of Goods and/or Services, then the Customer shall ensure that such provision of services by others is given in sufficient time so as to allow the Supplier to proceed in accordance with the Programme (if any).
- 2.8.2. Unless otherwise stated in Appendix I [*Scope of Goods and/or Services*], the responsibility for interface management between the Supplier and the services provided by others remains with the Customer.

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## **2.9. Customer's Instructions**

- 2.9.1. The Customer may issue to the Supplier (at any time) instructions and additional or modified information (in any format) which may be necessary for the provision of Goods and/or Services, all in accordance with the Contract. The Supplier shall only take instructions from the Customer's Representative, or from an assistant to whom the appropriate authority has been delegated under Sub-Clause 2.7.2 above. If an instruction constitutes a Variation, the provisions of Clause 5 [*Variations and Adjustments to Goods and Services*] shall apply.
- 2.9.2. The Supplier shall comply with the instructions given by the Customer's Representative or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Customer's Representative or a delegated assistant:
  - (a) gives an oral instruction; or
  - (b) receives a written confirmation of the instruction, from (or on behalf of) the Supplier, within two (2) Business Days after giving the oral instruction; and
  - (c) does not reply by issuing a written rejection and/or instruction within two (2) Business Days after receiving the confirmation;

then the confirmation shall constitute the written instruction of the Customer's Representative or delegated assistant (as the case may be).

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## **2.10. Customer's Claims**

- 2.10.1. If the Customer considers himself to be entitled to any payment under any Clause of these Conditions of Contract or otherwise in connection with the Contract, and/or to any extension of the defects notification period, the Customer shall give Notice and particulars to the Supplier.

- 2.10.2. The Notice shall be given as soon as practicable after the Customer became aware, or should have become aware, of the event or circumstances giving rise to the Claim. A Notice relating to any extension of the defects notification period shall be given before the expiry of such period.
- 2.10.3. The particulars shall specify the Clause or other basis of the Claim, and shall include substantiation of the amount and/or extension to which the Customer considers himself to be entitled in connection with the Contract. The Supplier shall then proceed to agree or disagree: (i) (ii) in accordance with Sub-Clause 11.3 [ Extension of Defects Notification Period].
- (a) the amount (if any) which the Customer considers himself to be entitled to be paid by the Supplier; and/or
- (b) the extension (if any) of the defects notification period of the provided Goods and/or Services.
- 2.10.4. If the Supplier agrees the Customer's Claim, the amount (if any) which the Customer is entitled shall be included as a deduction (negative Variation) in the Remuneration, and/or the defects notification period of the provided Goods and/or Services shall be extended.
- 2.10.5. If the Supplier disagrees the Customer's Claim, such disagreement shall be considered as a "*dispute*" and shall be resolved in accordance with the provisions of Clause 11 [*Disputes and Litigation*].
- 2.10.6. The Customer shall only be entitled to set off against or make any deduction from an amount certified in a payment certificate, or to otherwise claim against the Supplier, in accordance with this Sub-Clause 2.10 [*Customer's Claims*].

## **3. The Supplier**

### **3.1. Scope of Goods and/or Services**

- 3.1.1. The Supplier shall provide the Goods and/or the Services as stated in Appendix I [*Scope of Goods and/or Services*] which shall include all ancillary and incidental duties and tasks as it is necessary or reasonably anticipated for the Supplier to perform as part of or in order to discharge the Goods and/or Services.
- 3.1.2. The Supplier shall provide the Goods and/or the Services in accordance with the Programme (if any) as may be amended from time to time in accordance with the provisions of the Contract.

### **3.2. Function and Purpose of Goods and/or Services**

- 3.2.1. Where appropriate, the Customer shall describe the function and purpose of the Goods and/or Services and state the same explicitly in Appendix I [*Scope of Goods and/or Services*].

### **3.3. Supply and Provision of Services**

- 3.3.1. The Supplier shall provide the Services and perform its obligations in a professional and workmanlike manner and with all reasonable skill, care and diligence applicable to the professional standards for such Services. The Supplier shall from the date set out in the Contract commence the Services.
- 3.3.2. The Supplier shall:
- (a) ensure that the Services and Deliverables fully confirm with the Service specifications and that the Deliverables be fit for any purpose expressly or implicitly made known by the Customer to the Supplier;
- (b) not to or omit to do anything which may cause the Customer to lose its license, authority, consent or permission on which it relies for conducting its business;

- (c) obtain and maintain at all times all necessary licenses and consents, and comply with all applicable laws and regulations;
  - (d) use the best quality Goods, material, standards and techniques;
  - (e) cooperate with the Customer in all matters relating the Services and comply with all instructions and policies of the Customer;
  - (f) use sufficient number of personnel who are suitably skilled and experienced to perform the tasks assigned to them;
  - (g) provide all equipment, tools, vehicles and such other items as are required to provide the Services;
  - (h) ensure that the Deliverables and all Goods and materials supplied and used in the Services or transferred to the Customer will be free from defects in workmanship, installation and design;
  - (i) hold all materials, equipment, tools, drawings, specifications and data supplied by the Customer to the Supplier in safe custody, at its own risk and maintain such materials in good condition and return the same to the Customer (if applicable); and
  - (j) not dispose of any materials, equipment, tools, drawings, specifications and data other than in accordance with written instructions or authorization.
- 3.3.3. The Supplier and its employees or subcontractors (as applicable) shall comply with all policies, instructions, procedures, security requirements of the Customer and the premises or facility where the Services are being provided. Any failure to comply with such requirements that leads to delays or denial of access to the employees completing the Services properly and on time shall be the Supplier's total responsibility. The Supplier must ensure and also procure that its employees or subcontractors (as applicable) are aware of and have received, read and complied with all the requirements as stated in this Sub-Clause 3.3.3.
- 3.3.4. In the event the Customer has subcontracted the Services to the Supplier for its own client then all the provisions of the main contract signed between the Customer and its client shall apply on back-to-back basis to the Supplier. For this Sub-Clause 3.3.4 to be applicable, the Supplier shall be given a copy of the main contract signed between the Customer and its client prior to signing the Supply Agreement and/or accepting the Purchase Order.
- 3.3.5. If the provisions of the main contract signed between the Customer and its client became known to the Supplier after signing the Supply Agreement and/or accepting the Purchase Order, and the Supplier considered that compliance with the provisions of Sub-Clause 3.3.4 above will constitute a Variation, then the provisions of Clause 5 [*Variations and Adjustments to Goods and Services*] shall apply.

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## 3.4. Supply and Provision of Goods

- 3.4.1. The Goods / Deliverables delivered to the Site must be accompanied by a delivery note listing the Goods / Deliverables in sufficient detail to enable the Customer to check them at the time of delivery. No responsibility will be accepted by the Customer for any Goods / Deliverables unless delivery notes have been signed by the Customer. Signing the delivery note by the Customer, necessarily means that the Customer has accepted the quality and the quantity of the Goods / Deliverables. Until the Goods are delivered as per the requirements, all risks including loss and damage and any obligation to insure are with the Supplier. Upon delivery of the Goods / Deliverables to the Customer and acceptance by the Customer as to the quality and the quantity of the Goods / Deliverables, all risks including loss and damage and any obligation to insure are with the Customer. Title in the Goods / Deliverables passes to the Customer only upon payment for the Goods / Deliverables.
- 3.4.2. Taking into consideration the provisions of Sub-Clause 1.17 [*Good Faith*], upon checking the Goods / Deliverables by the Customer, the Customer may:
- (a) accept all or part of the Goods / Deliverables that meet the requirements of the Contract;

- (b) reject and return to the Supplier all or part of the Goods / Deliverables that do not meet the requirements of the Contract; or
- (c) return to the Supplier, at the Supplier's risk and expense, or require the Supplier forthwith to collect, any Goods / Deliverables delivered in excess of the specified quantity.

The expenses of delivery or return of Goods (if any) shall be borne by the Supplier.

- 3.4.3. The Supplier must deliver the Goods / Deliverables to the place of delivery and in the way agreed by the Parties. Delivery to any carrier (which acts as an agent of the Supplier) shall not constitute delivery to the Customer.
- 3.4.4. If a delivery time is specified in the Contract, such time shall be of the essence. The Supplier must at once in writing, report to the Customer the anticipated delay in delivery (if any). The Supplier must notify the Customer forthwith of the dispatch of the Goods / Deliverables to the delivery point, of the mode of carriage and of the expected time of delivery. The Customer may at any time, whether before or after dispatch, inspect and/or test the Goods / Deliverables, but unless agreed otherwise between the Parties, no such inspection shall relieve the Supplier of any of its obligations. The Customer reserves the right to not accept delivery, nor pay for the Goods / Deliverables if they do not comply with the requirements of the Contract.
- 3.4.5. The Customer may accept delivery in instalments.
- 3.4.6. The Supplier must pack the Goods / Deliverables securely in suitable packaging and ensure that:
  - (a) on the outside there is a description in English of the Goods / Deliverables, their quantity, any special handling and storage directions, and (where applicable) the expiry date of the contents; and
  - (b) the Goods / Deliverables and associated documentation are marked in accordance with the Customer's reasonable instructions.

If the Goods / Deliverables or their transport handling, storage, or use are hazardous or toxic, the Supplier must ensure that they are marked with appropriate international danger symbols and all information reasonably available to the Supplier regarding any potential hazard are promptly made to the Customer in writing. The Supplier shall ensure that the Goods / Deliverables, where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months at minimum or as applicable from the manufacturer (whichever is higher) after delivery and comply with all international applicable statutory and regulatory requirements relating to manufacture, labelling, packaging, storage, handling and delivery of Goods.

- 3.4.7. If the Customer identifies any defects or deficiencies in the Goods / Deliverables, then the Supplier must promptly replace the deficient Goods / Deliverables or, at the Customer's absolute discretion, rectify the deficiency.
- 3.4.8. In case of failure by the Supplier to deliver or complete within the stipulated time or to comply with the terms of the Contract or in case of continued delivery of defective Goods or material, the Customer reserves the right to cancel the whole or part of the Contract.
- 3.4.9. The Supplier warrants that prior to delivery, the Goods / Deliverables are lawfully the Supplier's, and the Goods / Deliverables are not mortgaged in any way. The Supplier further agrees that the Supplier has not breached any Intellectual Property right in regard to the Goods / Deliverables.

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## **3.5. Standard of Care**

- 3.5.1. Notwithstanding any term or condition to the contrary in the Contract or any related document or any Legal Requirement of the Country or any other relevant jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Supplier), in the provision of Goods and/or Services, the Supplier shall have no other

responsibility than to exercise the reasonable skill, care and diligence to be expected from a supplier experienced in the provision of such goods and/or services for projects of similar size, nature and complexity. The Supplier undertakes to provide the Goods and/or the Services with the level of skill, care judgment and diligence and to a standard of quality that is commensurate with the level and standard expected of a professional supplier of established international reputation and experience in the provision and management of goods and/or services equivalent to the Goods and/or Services in relation to developments comparable in scope, size, nature and complexity to the Project and in accordance with all standard industry practices.

- 3.5.2. To the extent achievable, using the standard of care in Sub-Clause 3.5.1, and without extending the obligation of the Supplier beyond that required under Sub-Clause 3.5.1, the Supplier shall provide the Goods and/or the Services with a view to satisfying any function and purpose that may be described in Appendix I [*Scope of Goods and/or Services*].
- 3.5.3. The Supplier shall comply with all regulations, statutes, ordinances and other forms of standards, codes of practice and legislation applicable to the Goods and/or Services and the Contract.
- 3.5.4. Other than the provision of the facilities (if any) stated under Appendix II [*Personnel, Equipment, Facilities and Services of Others to be Provided by the Customer*], the provision of all personnel, equipment, facilities and materials necessary or incidental for timely and professional provision of the Goods and/or the Services shall be wholly the responsibility of the Supplier. The Supplier warrants that it has, and shall at all times during continuance of its appointment under the Contract have, all the organization and resources of finance, personnel, equipment and materials necessary for, or required or incidental to, the supply of the Goods and/or performance of the Services in a timely and professional manner in accordance with and to the standards of care required by the Contract. The Supplier undertakes that the Goods and/or the Services shall be provided by officers and employees of the Supplier fully trained and qualified, and of sufficient skill, experience, competence and reliability, to discharge the duties they perform in strict compliance with the standards of care required by the Contract.
- 3.5.5. Where the provision of the Goods and/or the Services by the Supplier includes the performance of duties or exercise of powers required or authorized by the terms of a contract between the Customer and any third party (including any contractor(s) assigned by the Customer for performance of the works of the Project) and provided that the terms of such contract have been made known to the Supplier in advance of the relevant provision of Goods and/or Services, the Supplier shall:
  - (a) act in accordance with the requirements of such contract (but not where to do so may be, or be likely to bring about, a breach of any Legal Requirement), provided that such actions and requirements are within the scope of Goods and/or Services as stipulated in Appendix I [*Scope of Goods and/or Services*] of the Supplier under the Contract; and
  - (b) where such performance requires the exercise of any discretion or a certification or decision or determination concerning the respective rights and obligations of the Customer and such third party, act fairly and impartially as an independent professional exercising his judgment with probity and reasonable skill, care and diligence and not as an arbitrator or litigator.
- 3.5.6. If the provisions of the contract signed between the Customer and any third party became known to the Supplier after entering into the Contract, and the Supplier considered that compliance with the provisions of Sub-Clause 3.5.5 above will constitute a Variation, then the provisions of Clause 5 [*Variations and Adjustments to Goods and Services*] shall apply.

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## **3.6. Customer's Property**

- 3.6.1. Anything supplied by or paid for by the Customer for the use of the Supplier shall be the property of the Customer and, where practicable, shall be so marked. The Supplier shall

make reasonable endeavors to safeguard and protect such property of the Customer until completion of the provision of Goods and/or Services and/or return of such property to the Customer.

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### 3.7. Supplier's Personnel

- 3.7.1. The Supplier's Personnel (including Supplier's Key Personnel) shall be appropriately qualified, skilled, experienced and competent in their respective trades or occupations. Prior to mobilization of the Supplier's Personnel, the Supplier shall submit details of all Key Personnel as well as details of any other personnel the Customer may specifically request, for the approval of the Customer.
- 3.7.2. The Customer may by Notice require the Supplier to remove (or cause to be removed) any person employed on the Site, including the Supplier's Representative and Supplier's Key Personnel, who:
- (a) persists in any misconduct or lack of care;
  - (b) persists in any conduct which might negatively affect others;
  - (c) carries out duties incompetently or negligently;
  - (d) fails to comply with any provision of the Contract;
  - (e) persists in any conduct which is prejudicial to safety, health, or the protection of the environment;
  - (f) is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice;
  - (g) has been recruited from the Customer's Personnel;
  - (h) is selling or is under the influence of alcoholic liquor or drugs; or
  - (i) is in dealing in or in possession of arms or ammunition of any kind.

The Supplier shall immediately remove such person(s), and shall replace such person(s) within twenty-eight (28) days (or such other period as agreed by the Parties) of being requested by the Customer so to do. The Supplier shall then promptly appoint (or cause to be appointed) a suitable replacement and shall ensure that any replacement person or persons shall be competent and shall have the necessary qualifications and experience to perform their role for the purposes of progressing and completing the provision of the Goods and/or the Services in accordance with the requirements of the Contract. The Supplier may not employ such worker or representative again on the provision of the Goods and/or the Services without Customer's prior written consent. The Supplier shall at all times maintain good discipline and order on or off the Site in all matters pertaining to the Contract.

- 3.7.3. In the event of replacement of the Supplier's Representative, the provisions of Sub-Clause 3.8 [*Supplier's Representative*] shall apply. In the event of replacement of any of the Supplier's Personnel, the provisions of Sub-Clause 3.9 [*Changes in Supplier's Personnel*] shall apply. In the event of replacement of any of the Supplier's Key Personnel, the provisions of Sub-Clause **Error! Reference source not found.** [*Supplier's Key Personnel*] shall apply.
- 3.7.4. Nothing contained in the Contract or any contract awarded by the Supplier to any of the Supplier's Personnel shall create any contractual relationship between the Customer and any of the Supplier's Personnel.

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### 3.8. Supplier's Representative

- 3.8.1. The Supplier's Representative shall be the individual appointed by the Supplier by Notice to the Customer and approved by the Customer, who shall be appointed no later than seven (7) days after the Commencement Date or as otherwise agreed between the Parties.
- 3.8.2. The Supplier shall notify the Customer of the extent of powers and authority delegated to the Supplier's Representative.
- 3.8.3. The Supplier's Representative shall:

- (a) be responsible for the management of the operations of the Supplier in relation to the Contract and the Goods and/or the Services;
  - (b) be authorized to receive all Notices and communications of the Customer and/or the Customer's Representative relating to the Contract and the Goods and/or the Services; and
  - (c) represent the Supplier and liaise with the Customer and/or the Customer's Representative in all matters arising in connection with the Contract, and the provision of Goods and/or Services.
- 3.8.4. Subject to prior approval by the Customer, the appointment of the Supplier's Representative may be changed from time to time by the Supplier giving not less than twenty-eight (28) days' Notice to the Customer with full particulars of the proposed replacement for Customer's approval.
- 3.8.5. The Supplier's Representative shall be entitled by Notice to the Customer to delegate to other sub-managers any of his functions related to performance of the Contract and the provision of Goods and/or the Services and may by such Notice vary or terminate such appointments subject always to the prior approval by the Customer.

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### **3.9. Changes in Supplier's Personnel**

- 3.9.1. The Customer shall be entitled, from time to time, to reasonably require the removal from the provision of Goods and/or Services or from the Project and to require a replacement of any of the Supplier's Personnel (including the Supplier's Representative and/or any of the Supplier's Key Personnel) engaged in the provision of the Goods and/or the Services:
- (a) whose performance is unsatisfactory including by reason of misconduct, rudeness, consumption of alcohol or drugs, negligence, dishonesty or untrustworthiness; or
  - (b) who is unable to perform satisfactorily in accordance with the provisions of Sub-Clause 3.5 [*Standard of Care*]; or
  - (c) who is the subject of any order for his removal by a competent authority; or
  - (d) who is certified by a medical officer as medically unfit to perform the provision of Goods and/or Services to be rendered by him;
- If it is necessary for any reason to replace any of the Supplier's Personnel, the Supplier shall arrange for replacement by a person(s) of suitable qualification and experience in the provision of the Goods and/or the Services in accordance with the provisions of Sub-Clause 3.9.2 hereinafter.
- 3.9.2. In any case where Supplier's Personnel are to be replaced, the Supplier shall:
- (a) immediately notify the Customer;
  - (b) provide as promptly as possible but no later than fourteen (14) days a transitional replacement for such personnel upon the vacancy occurring;
  - (c) within twenty-eight (28) days of the Customer's Notice, provide to the Customer curricula vitae and diplomas of candidates for the full replacement who shall in all cases fulfill the relevant requirements of Sub-Clause 3.5 [*Standard of Care*] in relation to the responsibilities to be undertaken and the duties to be performed;
  - (d) within twenty-eight (28) days of receiving approval of the Customer, mobilize the full replacement to provide the Goods and/or the Services; and
  - (e) in any event (subject only to extension of time required in case of interview of candidates by the Customer) appoint the full replacement as aforesaid within twenty-eight (28) days from the vacancy occurring.
- 3.9.3. All costs associated with replacements of the Supplier's Personnel shall be borne by the Supplier.
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### **3.10. Supplier's Key Personnel**

- 3.10.1. Without prejudice to the generality of Sub-Clause 3.7 [*Supplier's Personnel*], the Supplier shall ensure that the "**Supplier's Key Personnel**" are appointed as key personnel for the purpose of undertaking and completing the provision of Goods and/or Services and carrying out the specific functions.
- 3.10.2. The following Supplier's Personnel (other than the Supplier's Representative) shall be considered as Supplier's Key Personnel:
- (a) the quantity surveying team;
  - (b) the engineering team;
  - (c) the maintenance team (if any);
  - (d) any other person of the Supplier's Personnel who might be in direct contact with the Customer.
- 3.10.3. The Supplier shall:
- (a) ensure that the Supplier's Key Personnel are available and have sufficient capacity to properly fulfil their specific functions for the duration of the Contract (unless otherwise agreed in writing with or directed by the Customer);
  - (b) not assign, remove or replace any of the Supplier's Key Personnel (or any replacements of Supplier's Key Personnel) without the prior written consent of the Customer; and
  - (c) immediately notify the Customer if any of the Supplier's Key Personnel resigns from the Supplier's employment.
- 3.10.4. The Supplier shall appoint the natural persons approved by the Customer to the positions of Supplier's Key Personnel. If an appointed person fails to act in the relevant position of Supplier's Key Personnel, the Supplier shall submit to the Customer for consent the name and particulars of another person the Supplier proposes to appoint to such position. If consent is withheld or subsequently revoked, the Supplier shall similarly submit the name and particulars of a suitable replacement for such position.
- 3.10.5. If the Customer does not respond within fourteen (14) days after receiving any such submission, by giving a Notice stating his/her objection to the appointment of such person (or replacement), the Customer shall be deemed to have given his/her consent.
- 3.10.6. The Supplier shall not, without the Customer's prior consent, revoke the appointment of any of the Supplier's Key Personnel or appoint a replacement (unless the person is unable to act as a result of death, illness, disability, misconduct or resignation, in which case the appointment shall be deemed to have been revoked with immediate effect and the appointment of a replacement shall be treated as a temporary appointment until the Customer gives his/her consent to this replacement, or another replacement is appointed, under this Sub-Clause 3.10 [*Supplier's Key Personnel*]).
- 3.10.7. All Supplier's Key Personnel shall be fluent in the language for communications defined in Sub-Clause 1.5 [*Law and Language*].

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### **3.11. Safety and Security of Supplier's Personnel**

- 3.11.1. If in the reasonable opinion of the Supplier, the health, safety or security of its personnel whilst in the Country is compromised by an Exceptional Event, then the Supplier shall be entitled to suspend all or part of the provision of Goods and/or Services in accordance with Sub-Clause 6.1 [*Suspension of Provision of Goods and/or Services*] and remove such personnel from the Country until such time as the Exceptional Event has ceased.

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### **3.12. Supplier's Duties and Authority**

- 3.12.1. The Customer hereby appoints the Supplier who shall carry out the duties assigned to it in the Contract. The Customer shall inform the Customer's other contractors, suppliers

and/or service providers (if any) in writing of the duties and authorities assigned to the Supplier pursuant to the Contract. The Supplier's Personnel shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

- 3.12.2. The Supplier shall have no authority to amend the Customer's contracts with Customer's other contractors, suppliers and/or service providers (if any).
- 3.12.3. The Supplier may exercise the authority attributable to it as specified in or necessarily to be implied from the Contract. If the Supplier is required to obtain the approval of the Customer before exercising a specified authority, the requirements shall be as stated in these Conditions of Contract. The Customer undertakes not to impose further constraints on the Supplier's authority, except as agreed with the Supplier.
- 3.12.4. The Supplier is required to obtain the Customer's approval prior to exercising the following duties and authorities under the Contract:
  - (a) assigning Subcontractors and/or assigning any benefits in the Contract under Sub-Clause 1.8 [*Assignments and Subcontracting*];
  - (b) relieving any third party of any obligations or liability under a contract with the Customer;
  - (c) waiving any rights of the Customer; and/or
  - (d) initiating any work which may result in a Variation.
- 3.12.5. Notwithstanding the obligations, as set out under Sub-Clause 3.12.4 above, to obtain Customer's approval, if in the opinion of the Supplier, an emergency occurs affecting the safety of life or of the Project or of adjoining properties, the Supplier may execute all such work or to do all such things as may, in the opinion of the Supplier, be necessary to abate or reduce the risk. The Customer shall determine an addition to the Remuneration, in respect of such emergency work, in accordance with the provisions of Clause 5 [*Variations and Adjustments to Goods and Services*].
- 3.12.6. The limitations upon authority and responsibility set forth in this Sub-Clause 3.12 [*Supplier's Duties and Authority*] shall also apply to Supplier's Subcontractors, Supplier's Representative and Supplier's Personnel (including Supplier's Key Personnel).

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### **3.13. Supplier's Responsibilities**

- 3.13.1. The Supplier warrants that it has obtained all necessary licenses and consents relating to the provision of the Goods and/or Services and/or Deliverables and will engage at the Supplier's own risk, cost and expense, the amount of resources as may be necessary to ensure compliance with the requirements of the Contract. The Supplier undertakes to ensure that the Goods and/or Services and/or Deliverables comply with all applicable rules, regulations and codes of practice relating to the provision of the Goods and/or Services and/or Deliverables. During the warranty period (if any), the Supplier shall at no cost to the Customer remedy all defects and deficiencies in the Goods and/or Services and/or Deliverables as notified by the Customer to the Supplier within a reasonable time as determined by the Supplier.
- 3.13.2. The Supplier shall be responsible for maintaining or ensuring that all its Subcontractors maintain a duly licensed and established branch or company office in Abu Dhabi throughout the continuance of the Contract with a sufficient local technical team to provide the required management support. The Supplier shall be responsible for maintaining at all times the validity of all licensing, registration and classification as required for its performance in accordance with the Contract.
- 3.13.3. The Supplier shall be responsible for submission to the Customer for the Customer's approval (which is not to be unreasonably withheld) the curricula vitae and diplomas of the Supplier's Representative and Supplier's Key Personnel proposed to be assigned to provide the Goods and/or the Services prior to their assignment.

- 3.13.4. Provision of the Supplier's Personnel shall conform with the organization chart (resource allocation and staffing) contained in Appendix I [*Scope of Goods and/or Services*] as may be adjusted by the Supplier (subject to Customer's written approval of such adjustment) from time to time in order to meet the requirements for the proper provision of Goods and/or Services. Initial mobilization to the Site (if any) shall not commence until issue by the Customer's Representative of his written approval, which approval shall not be unreasonably withheld and all such mobilized personnel shall devote their services wholly or partially (as applicable) to the Project.
- 3.13.5. The Supplier shall obtain all passes, permits and other documentation from the competent authorities as may be required in order for its personnel to provide the Goods and/or the Services and to obtain access to the Site and shall comply with all safety and security requirements and regulations in force at the Site. All medical examinations and treatment or hospitalization of Supplier's Personnel and all their vaccinations and inoculations shall be the sole responsibility and cost of the Supplier.
- 3.13.6. The Supplier shall maintain a very close cooperation with the Customer in relation to the provision of the Goods and/or the Services and interpretation of the Customer's requirements and undertakes to comply promptly with all reasonable instructions of the Customer and/or Customer's Representative that may be given from time to time during continuance of the Contract.
- 3.13.7. The Supplier undertakes not to do or omit to do any act the doing or omission of which would or might result in breach by the Supplier of any of its obligations under the Contract or act or omission contrary to the provisions of the Contract.
- 3.13.8. If any part of the Goods and/or Services shall be incomplete or not in accordance with the requirements of the Contract, the Customer shall be entitled to reject the same and the Supplier undertakes promptly to replace or rectify (as the case may be) such Goods and/or repeat such Services as required in order to remedy the defect or deficiency, complete the provision of the Goods and/or the Services or conform with the requirements of the Contract at the Supplier's sole cost and expense and shall use its best endeavors to minimize impact on the Project and the Goods and/or Services.
- 3.13.9. The Supplier shall be responsible for paying any tax, levy, excise, duty or fee that may be payable in relation to the Goods and/or Services.
- 3.13.10. The Supplier must comply with all applicable occupational health, safety and environmental laws, guidelines, rules, procedures and codes of practice.
- 3.13.11. Any reasonable expenses and third-party costs in connection with the provision of the Goods and/or Services shall be subject to the Customer's prior written approval before such expenses or costs are incurred and suitable documentary evidence in support thereof is submitted to the Customer prior to reimbursement.
- 3.13.12. In the event that part or all of the provision of the Goods and/or Services is subcontracted, the Supplier will remain fully responsible to the Customer in respect of the provision of the Goods and/or Services by such Subcontractor.
- 3.13.13. The Supplier will be responsible for the safety of all its labour, equipment, quality spares, parts and consumable materials.
- 3.13.14. The Supplier represents and affirms that they will comply with all applicable laws and the written policies and procedures of the Customer.

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### **3.14. Disorderly Conduct**

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

- 3.14.2. The Supplier shall forthwith dismiss from Site any person guilty of dishonesty or attempted dishonesty to the Customer and/or any third party, or of disobedience of the regulations aforesaid, or of bad behavior, or who causes or attempts to cause trouble and unrest among the labour force.

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### **3.15. Customer Care**

- 3.15.1. The Supplier shall act in the best interests of the Customer and shall act in accordance with the reasonable Customer's instructions unless to do so would be contrary to the applicable laws and regulations.
- 3.15.2. The Supplier must not engage in any conduct that would put the Customer or any third party under undue or unfair pressure.
- 3.15.3. The Supplier must communicate regularly and in a timely manner and keep the Customer well informed of matters relevant to the Customer's interest, unless otherwise instructed by the Customer.
- 3.15.4. The Supplier must not mislead any third party as to the price expectations of the Customer.
- 3.15.5. The Supplier must take due care to:
- (a) ensure to not jeopardize the security of the Project in respect of which the Supplier is providing its Goods and/or its Services; and
  - (b) avoid risks of damage that may arise from third parties related to the Supplier accessing the Project.
- 3.15.6. Unless authorized in writing by the Customer, through the Contract, the Supplier must not offer or market any component of the Project, including by putting details on any website or by placing a sign on the Project.
- 3.15.7. When authorized by the Customer to incur expenses, the Supplier must seek to obtain the best value for the Customer.

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### **3.16. Supplier's Documents and Supplier's Submittals**

#### **General Overview**

- 3.16.1. In these Conditions of Contract, the term "**Supplier's Documents**" means the documents including, without limitation, pre-qualifications for Subcontractors, suppliers, manufacturers and fabricators, calculations, product data, drawings, materials, storage and handling requirements, installation instructions, plant, equipment, samples, mock-ups, warranties, operation and maintenance manuals, etc., and any other information required to be prepared and submitted by the Supplier under the Contract for Customer's review and approval.
- 3.16.2. The Supplier's Documents shall comprise the documents:
- (a) stated in the Contract;
  - (b) required to satisfy all permits, permissions, licences and other regulatory approvals which are the Supplier's responsibility pursuant to the Contract; and
  - (c) required under:
    - (i) any Sub-Clause of the Contract;
    - (ii) any Sub-Clause of these Conditions of Contract; and
    - (iii) any Appendix to these Conditions of Contract.

#### **Preparation of Supplier's Documents and Supplier's Submittals**

- 3.16.3. Unless otherwise stated in the Contract or otherwise required by the authorities having jurisdiction over the Project, the Supplier's Documents shall be written in the language for communications defined under Sub-Clause 1.5 [*Law and Language*].

- 3.16.4. The Supplier shall prepare all Supplier's Documents and the Customer's Personnel shall have the right to review and inspect the preparation of all these documents, whenever they are being prepared.
- 3.16.5. The Supplier shall prepare, or cause to be prepared the necessary submittals (the "**Supplier's Submittals**"), to a standard acceptable to the Customer, for:
- (a) the proper coordination of the Supplier's own works;
  - (b) the proper coordination of the Supplier's, Subcontractors' and manufacturers' works;
  - (c) the proper procurement, provision of the Goods, and/or the Services; and
  - (d) the proper coordination of all the above works with the operational requirements.
- 3.16.6. The Supplier's Submittals shall be submitted to the Customer so as to meet the requirements of the Programme.
- 3.16.7. Notwithstanding any approval, anything included by the Supplier within the Supplier's Submittals that is not included within the Contract Documents shall not constitute a Variation under the terms of the Contract unless instructed by the Customer or expressly notified by the Supplier in accordance with the provisions of Clause 5 [*Variations and Adjustments to Goods and Services*].

**Submittals Schedule**

- 3.16.8. Within twenty-eight (28) days from the Commencement Date, the Supplier shall submit for Customer's review a detailed submittals schedule (the "**Submittals Schedule**") in compliance with the dates specified for submission of such Supplier's Submittals in the Programme under Sub-Clause 4.4 [*Programme*].
- 3.16.9. Upon receiving the Submittals Schedule, the Customer shall proceed with reasonable promptness (but no later than fourteen (14) days from receiving the Submittals Schedule) to review and comment the Submittals Schedule.

**Customer's Review of Supplier's Documents and Supplier's Submittals**

- 3.16.10. Whenever the Contract Documents specify that a Supplier's Document and/or a Supplier's Submittal is to be submitted to the Customer for review, it shall be submitted accordingly, together with a Notice from the Supplier stating that the Supplier's Document and/or Supplier's Submittal is ready for review and that it complies with the Contract.
- 3.16.11. The Customer shall, within twenty-one (21) days (the "**Review Period**") after receiving the Supplier's Document and/or Supplier's Submittal and the Notice from the Supplier, give a Notice to the Supplier:
- (a) of no-objection (**status "A"**); or
  - (b) of no-objection with comments concerning minor matters which will not substantially affect the Goods, the Services or the Project (**status "B"**); or
  - (c) that the Supplier's Document and/or Supplier's Submittal fails (to the extent stated) to comply with the Contract, with reasons (**status "C" or "D"** depending on the extent of failure to comply with the Contract).
- 3.16.12. If the Customer gives a Notice to the Supplier that such submitted Supplier's Document and/or Supplier's Submittal has a status "**A**" or status "**B**" under paragraphs 3.16.11(a) or 3.16.11(b) above, then the Supplier may proceed with the provision of the relevant Goods and/or Services, taking into consideration the comments concerning the minor matters (if any) referred to under paragraph 3.16.11(b) above.
- 3.16.13. If the Customer gives a Notice to the Supplier that such submitted Supplier's Document and/or Supplier's Submittal has a status "**C**" or status "**D**" under paragraph 3.16.11(c) above, then the Supplier shall not proceed with the provision of the relevant Goods and/or Services and shall resubmit, within fourteen (14) days from receiving the Customer's Notice under paragraph 3.16.11(c) above, a revised Supplier's Document and/or Supplier's

Submittal to the Customer for review in accordance with this Sub-Clause and the Review Period of twenty-one (21) days shall be calculated from the date that the Customer receives it.

- 3.16.14. The Supplier shall not proceed with the provision of the relevant Goods and/or Services covered under such Supplier's Document and/or Supplier's Submittal until receiving a status "A" or status "B" under paragraphs 3.16.11(a) or 3.16.11(b) above.
- 3.16.15. If the Customer gives no Notice within the Review period of twenty-one (21) days, the Customer shall be deemed to have given a Notice of no-objection to the Supplier's Document and/or Supplier's Submittal.
- 3.16.16. If the Customer gives a Notice to the Supplier requesting a further Review Period for the review of a Supplier's Document and/or a Supplier's Submittal, such further Review Period shall be considered as an extension of Time for Completion for the provision of the Goods and/or the Services related to such Supplier's Document and/or a Supplier's Submittal. Furthermore, if the Supplier incurs Cost as a result of the Customer's further Review Period, the Supplier shall be entitled to recover such Cost plus reasonable profit in accordance with the provisions of Clause 5 [*Variations and Adjustments to Goods and Services*].
- 3.16.17. The Supplier shall exercise its best endeavors to prepare the Supplier's Documents and/or Supplier's Submittals in such a manner so that not more than two resubmittals are necessary to obtain the Customer's approval.
- 3.16.18. For each part of the Goods and/or Services, and except to the extent that the prior consent of the Customer shall have been obtained:
  - (a) performance of work shall not commence on such part of the Goods and/or Services prior to the expiry of the Review Periods for the submittals and the resubmittals (as applicable) which are relevant to the performance of such part; and
  - (b) performance of work shall be in accordance with such submittals and the resubmittals, as applicable.
- 3.16.19. Notwithstanding any other provision under this Sub-Clause 3.16 [*Supplier's Documents and Supplier's Submittals*], the Customer's review of Supplier's Documents and/or Supplier's Submittals shall be performed by the Customer in strict compliance with the principles of good faith set out under Sub-Clause 1.17 [*Good Faith*].

**Other Supplier's Documents and Supplier's Submittals**

- 3.16.20. Other Supplier's Documents and Supplier's Submittals may include, as applicable, without limitation, the following:
  - (a) prequalification for Subcontractors, suppliers, manufacturers, fabricators, third-party service providers, and specialist service providers;
  - (b) materials Submittals;
  - (c) method statements;
  - (d) programmes;
  - (e) health, safety and environment (HSE) plan(s);
  - (f) quality control plan(s) (QCPs);
  - (g) risk assessment plan(s) (RAPs); and
  - (h) any other Supplier's Documents and/or Supplier's Submittals which may be reasonably requested by the Customer.
- 3.16.21. If the Customer instructs that, further Supplier's Documents and/or Supplier's Submittals, as may be reasonably necessary for carrying out the provision of the Goods and/or the Services, should be provided, the Supplier shall upon receiving the Customer's instructions prepare such further Supplier's Documents and/or Supplier's Submittals. Errors, omissions, ambiguities, inconsistencies, inadequacies and other defects shall be rectified (along with any necessary correction to the Goods and/or Services) by the Supplier at its own cost.

### 3.17. Observances by Others

- 3.17.1. The Supplier shall be responsible for the observance by its Subcontractors, suppliers, manufacturers, service providers, etc., of the foregoing provisions of Clause 3 [*The Supplier*].
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## 4. Commencement and Term

### 4.1. Effective Date

- 4.1.1. The Contract shall be effective from the date of the latest signature necessary to complete the formal Contract (the “**Effective Date**”).
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### 4.2. Commencement and Term of Contract

- 4.2.1. The Supplier shall commence the provision of the Goods and/or the Services on the Commencement Date which shall be notified to the Supplier. However, notwithstanding any other provision in these Conditions of Contract, the provision of the Goods and/or the Services shall not commence until receiving the agreed advance payment (if any) by the Supplier.
- 4.2.2. The initial term of the Contract (the “**Initial Term**”) will begin on the Effective Date of the Contract and shall remain in full force until completion of the provision of the Goods and/or the Services (the “**Completion Date**”) or until terminated in accordance with the provisions of Clause 7 [*Termination of Contract*].
- 4.2.3. If not terminated under Clause 7 [*Termination of Contract*] the Term of the Contract may be renewed for additional Term(s) (the “**Renewed Term(s)**”) in accordance with the provisions of Sub-Clause 4.3 [*Renewal of Term of Contract*].
- 4.2.4. Except as otherwise provided in the Contract, the obligations of the Supplier will end upon the end of the Initial Term (or the Renewed Term, as the case may be), the termination of the Contract or otherwise until the fulfillment of the Supplier’s obligations under the Contract.
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### 4.3. Renewal of Term of Contract

- 4.3.1. Each Party shall notify the other Party in writing of its intention whether to renew the Contract at least twenty-eight (28) days prior to the Completion Date of the Initial Term. The Contract may be renewed upon the Parties’ mutual consent. If either Party fails to notify the other Party prior to expiration, such Party shall be deemed to have agreed on the termination hereof, and the other Party shall be entitled to take any action without assuming any liability for breach of contract.
- 4.3.2. Unless agreed otherwise between the Parties, the Contract shall be renewed on the same terms and conditions as contained in the Contract, unless either Party shall, prior to the expiration of the Initial Term or of any Renewed Term, give a written Notice the other Party of its intention not to renew the Contract.
- 4.3.3. The Parties shall promptly give Notice to each other of any specific, actual or probable future events or circumstances which may adversely affect the provision of Goods and/or Services or lead to an increase in the cost of the Goods and/or the Services.
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### 4.4. Programme

- 4.4.1. Within fourteen (14) days of the Commencement Date the Supplier shall submit to the Customer its Programme which shall include as a minimum:
- (a) the order and timing in which the Supplier intends to carry out the provision of the Goods and/or the Services in order to complete its obligations within the Time for Completion;

- (b) any key dates stipulated in Appendix IV [*Programme*] or elsewhere in the Contract for the provision of any part of the Goods and/or the Services to the Customer;
- (c) the key dates when decisions, consents, approvals or information from the Customer or third parties is required to be given to the Supplier; and
- (d) any other requirements stated in Appendix IV [*Programme*].

The Supplier shall keep the Programme under review and shall amend the same as and when necessary to comply with the provisions of the Contract.

- 4.4.2. Unless the Customer, within fourteen (14) days of receiving the Programme, gives Notice to the Supplier stating the extent to which it does not comply with the Contract, the Supplier shall proceed in accordance with the Programme, subject to its other obligations under the Contract.
- 4.4.3. The Parties shall promptly give Notice to each other of any specific, actual or probable future events or circumstances which may adversely affect or delay the provision of the Goods and/or the Services or lead to an increase in the cost of the Goods and/or the Services.

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## **4.5. Delays**

- 4.5.1. The Supplier shall be entitled to an extension of the Time for Completion if and to the extent that completion of the provision of the Goods and/or the Services is or will be delayed by any of the following causes:
  - (a) a Variation to the scope of Goods and/or Services;
  - (b) any delay, impediment or prevention caused by or attributable to the Customer, or the Customer's other service providers, contractors, or other third parties;
  - (c) an Exceptional Event; or
  - (d) any other event or circumstance giving an entitlement to an extension of the Time for Completion under the Contract.
- 4.5.2. Any extension of the Time for Completion shall have due regard to the Programme and any constraints therein.
- 4.5.3. Where any circumstance referred to in Sub-Clause 4.5.1 causes the Supplier to incur Exceptional Costs, then the agreed Remuneration shall be adjusted in accordance with Sub-Clause 8.1 [*Payment to the Supplier*]. As soon as reasonably practicable the Supplier shall inform the Customer of the occurrence of the Exceptional Costs by issue of a Notice.

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## **4.6. Rate of Progress of Provision of Goods and/or Services**

- 4.6.1. If, for any reason that does not entitle the Supplier to an extension of the Time for Completion, the rate of progress of the provision of the Goods and/or the Services is, in the reasonable opinion of the Customer, insufficient to ensure completion of the provision of Goods and/or the Services within the Time for Completion, then the Customer may give Notice to that effect to the Supplier. Upon receipt of such Notice, the Supplier shall revise the Programme and shall issue a Notice to the Customer describing the measures the Supplier intends to put in place in order to complete the provision of the Goods and/or the Services in accordance with the Time for Completion.

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## **4.7. Exceptional Events**

- 4.7.1. If a Party is prevented from performing any of its obligations under the Contract by, or due to, an Exceptional Event then it shall give a Notice to the other Party providing a description of the Exceptional Event together with an assessment of its effects on the Party's ability to comply with its obligations under the Contract. The Notice shall be given within fourteen (14) days from when the Party becomes aware, or should have become aware, of the event or circumstance constituting an Exceptional Event.

The Party having given Notice, shall be excused from performance of such obligations for so long as the effects of the Exceptional Event prevent such performance.

- 4.7.2. Where an Exceptional Event gives rise to an unavoidable change in the scope of the Goods and/or the Services, then the Customer shall issue a Variation to the Contract in accordance with the provisions of Sub-Clause 5.1 [Variations]. Where an Exceptional Event gives rise to a delay in the completion of the provision of the Goods and/or the Services, then the Supplier shall be entitled to an extension of the Time for Completion in accordance with the provisions of Sub-Clause 4.5 [Delays].
- 4.7.3. Notwithstanding any other provision of this Sub-Clause 4.7 [Exceptional Events], the obligations of either Party to make payments to the other Party under the Contract shall not be excused by an Exceptional Event.

## 5. Variations and Adjustments to Goods and Services

### 5.1. Variations

#### Right to Vary

- 5.1.1. A Variation to the provision of the Goods and/or the Services may be initiated by the Customer by issue of a Variation Notice at any time prior to completion of the provision of the Goods and/or the Services. The Customer may request the Supplier to submit a proposal in respect of a proposed Variation. If the proposal is accepted by the Customer, then the Variation shall be confirmed by the Customer by issue of a Variation Order which shall be signed by both Parties. Any such Variation shall not substantially change the extent or nature of the Goods and/or the Services.
- 5.1.2. A Variation to the provisions of the Goods and/or the Services may be issued in respect of any:
- (a) any amendment to Appendix I [Scope of Goods and/or Services], to Appendix II [Personnel, Equipment, Facilities and Services of Others to be Provided by the Customer], to Appendix III [Remuneration and Payment] or to Appendix IV [Programme];
  - (b) omission of part of the Goods and/or the Services but only where such omitted Goods and/or Services are no longer required by the Customer and they are not to be carried out by others;
  - (c) changes in the specified sequence or timing of the provision of the Goods and/or the Services;
  - (d) changes in the method of implementation of the Goods and/or the Services;
  - (e) a provision of the Contract requiring the issue of a Variation; or
  - (f) a proposal submitted by the Supplier (at the Customer's request or otherwise) and accepted in writing by the Customer.
- 5.1.3. The Supplier shall give Notice to the Customer as soon as reasonably practicable where the Supplier considers that any instruction, direction or information received from the Customer or any other circumstance constitutes a Variation to the provision of the Goods and/or the Services. The Supplier shall include in the Notice details of the estimated impact upon the Programme and cost of the Goods and/or the Services for such matters. Within fourteen (14) days of receipt of the Notice, the Customer shall either issue a Variation Order (which should be signed by both Parties), or cancel the instruction, direction or information, or state by issue of a further Notice why the Customer considers the instruction, direction, information or circumstance does not constitute a Variation to the provision of the Goods and/or the Services. In such case, the Supplier shall comply with and be bound by such further Notice unless the Supplier refers the matter as a "dispute" under Clause 11 [Disputes and Litigation] within seven (7) days of receipt of such further Notice.
- 5.1.4. Unless the Supplier promptly gives Notice to the Customer (with supporting evidence) that:

- (a) it does not possess the relevant skills or resources to carry out the Variation; or
- (b) the Supplier considers that the Variation will substantially change the extent or nature of the Goods and/or the Services;

the Supplier shall be bound by each Variation.

- 5.1.5. The Supplier shall not otherwise make any changes, alterations and/or modifications to the provision of the Goods and/or the Services, unless and until the Customer instructs or approves a Variation.

**Value Engineering**

- 5.1.6. Whether upon an instruction from the Customer or as an initiative from the Supplier, the Supplier may, at any time, submit to the Customer a written proposal (a “**Value Engineering Proposal**”) which (in the Supplier’s opinion) will, if adopted:

- (a) accelerate completion of the provision of Goods and/or Services;
- (b) reduce the cost to the Customer of the provision of the Goods and/or the Services;
- (c) improve the efficiency or value to the Customer of the completed Goods and/or Services; or
- (d) otherwise be of benefit to the Customer.

- 5.1.7. If the Customer approves the Value Engineering Proposal submitted by the Supplier, the Customer shall issue a Variation Order which shall be signed by both Parties.

**Variation Procedure**

- 5.1.8. If the Customer requests a proposal, prior to instructing a Variation, the Supplier shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed Goods and/or Services to be provided and a programme for its provision;
- (b) the Supplier’s proposal for any necessary modifications to the programme according to Sub-Clause 4.4 [*Programme*] and to the Time for Completion; and
- (c) the Supplier’s proposal for evaluation of the Variation.

- 5.1.9. The Customer shall, as soon as practicable after receiving such proposal (under Sub-Clauses 5.1.6 and 5.1.7 [*Value Engineering*] or otherwise), respond with approval, disapproval or comments.

- 5.1.10. Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Customer to the Supplier, who shall acknowledge receipt.

- 5.1.11. Each Variation shall be evaluated in accordance with Sub-Clause 5.2 [*Agreement of Variation Value and Impact*], unless the Customer instructs or approves otherwise in accordance with this Sub-Clause 5.1 [*Variations*].

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**5.2. Agreement of Variation Value and Impact**

**General Requirements**

- 5.2.1. The Customer and the Supplier shall agree the value of any Variation, or its method of calculation, including its impact (if any) upon other parts of the Goods and/or the Services.
- 5.2.2. The value of any Variation shall be determined in accordance with or based upon the rates and/or prices in Appendix III [*Remuneration and Payment*]. Where the rates and/or prices are not applicable to the Variation, then new rates shall be agreed by the Parties.
- 5.2.3. The value of the Variation and its impact on the Goods and/or the Services shall be agreed and confirmed in writing by the Customer to the Supplier. Pursuant to such agreement, the Customer shall issue a Variation Order which constitutes an instruction to the Supplier to commence work on the Variation.

- 5.2.4. Where agreement under Sub-Clause 5.2.3 is not reached within fourteen (14) days of receipt by the Supplier of the Variation Notice or it is not practicable to establish and agree between the Parties all the effects of the Variation prior to the Supplier commencing work on the Variation, then the Customer may by Notice instruct the Supplier to commence work on the Variation and the Supplier shall comply with such instruction. The Supplier shall be compensated on a time-spent basis at the rates and prices stated in Appendix III [*Remuneration and Payment*] or if no rates and prices are stated then at reasonable rates and prices until such time as agreement is reached on all the effects of the Variation.

**Goods and/or Services to be Measured**

- 5.2.5. The Goods and/or Services shall be measured, and valued for payment, in accordance with this Sub-Clause 5.2 [*Agreement of Variation Value and Impact*].
- 5.2.6. Whenever the Customer requires any part of the Goods and/or the Services to be measured, reasonable Notice shall be given to the Supplier's Representative, who shall:
- (a) promptly either attend or send another qualified representative to assist the Customer in making the measurement; and
  - (b) supply any particulars requested by the Customer.
- 5.2.7. If the Supplier fails to attend or send a representative, the measurement made by (or on behalf of) the Customer shall be accepted as accurate.
- 5.2.8. Except as otherwise stated in the Contract, wherever any Goods and/or Services are to be measured from records, these shall be prepared by the Customer. The Supplier shall, as and when requested, attend to examine and agree the records with the Customer, and shall sign the same when agreed. If the Supplier does not attend, the records shall be accepted as accurate.
- 5.2.9. If the Supplier examines and disagrees the records, and/or does not sign them as agreed, then the Supplier shall give Notice to the Customer of the respects in which the records are asserted to be inaccurate. After receiving this Notice, the Customer shall review the records and either confirm or vary them. If the Supplier does not so give Notice to the Customer within fourteen (14) days after being requested to examine the records, they shall be accepted as accurate.

**Method of Measurement**

- 5.2.10. Except as otherwise stated in the Contract and notwithstanding local practice:
- (a) measurement shall be made of the net actual quantity of each item of the Goods and/or the Services; and
  - (b) the method of measurement shall be in accordance with the bill of quantities or other applicable schedules.

**Evaluation**

- 5.2.11. Except as otherwise stated in the Contract, the Customer shall proceed in accordance with Sub-Clause 2.2 [*Decisions*] to agree or determine the Remuneration by evaluating each item of the Goods and/or the Services, applying the measurement agreed or determined in accordance with the above Sub-Clauses 5.2.5, 5.2.6, 5.2.7, 5.2.8, 5.2.9, and 5.2.10 and the appropriate rate or price for the item.
- 5.2.12. For each item of the Goods and/or the Services, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar Goods and/or Services.
- 5.2.13. Any item of the Goods and/or the Services included in the bill of quantities for which no rate or price was specified shall be considered as included in other rates and prices in the bill of quantities and will not be paid for separately.
- 5.2.14. However, a new rate or price shall be appropriate for an item of the Goods and/or the Services:

- (a) if:
  - (i) the measured quantity of the item is changed by more than twenty-five percent (25%) from the quantity of this item in the bill of quantities or other schedule;
  - (ii) this change in quantity multiplied by such specified rate for this item exceeds a quarter percent (0.25%) of the accepted Remuneration;
  - (iii) this change in quantity directly changes the Cost per unit quantity of this item by more than one percent (1%); and
  - (iv) this item is not specified in the Contract as a "**fixed rate item**"; or
- (b) if:
  - (i) the Goods and/or Services are instructed under Sub-Clause 5.1 [*Variations*];
  - (ii) no rate or price is specified in the Contract for this item; and
  - (iii) no specified rate or price is appropriate because the item of Goods and/or Services is not of similar character, or is not executed under similar conditions, as any item in the Contract.

5.2.15. Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in paragraphs 5.2.14(a) and/or 5.2.14(b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of provision of the Goods and/or the Services, together with the reasonable profit, taking account of any other relevant matters.

5.2.16. Until such time as an appropriate rate or price is agreed or determined, the Customer shall determine a provisional rate or price for the purposes of interim payments.

**Omissions**

5.2.17. Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- (a) the Supplier will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the accepted Remuneration;
- (b) the omission of the Goods and/or Services will result (or has resulted) in this sum not forming part of the Remuneration; and
- (c) this cost is not deemed to be included in the evaluation of any substituted Goods and/or Services;

then the Supplier shall give Notice to the Customer accordingly, with supporting particulars. Upon receiving this Notice, the Customer shall proceed in accordance with Sub-Clause 2.2 [*Decisions*] to agree or determine this cost, which shall be included in the Remuneration.

**5.3. Supplier's Claims**

5.3.1. If the Supplier considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions of Contract or otherwise in connection with the Contract, the Supplier shall give Notice to the Customer, describing the event or circumstance giving rise to the Claim. The Notice shall be given as soon as practicable, after the Supplier became aware, or should have become aware, of the event or circumstance.

5.3.2. The Supplier shall also submit any other Notices which are required by the Contract, and supporting particulars for the Claim, all as relevant to such event or circumstance.

5.3.3. The Supplier shall keep such contemporary records as may be necessary to substantiate any Claim. Without admitting the Customer's liability, the Customer may, after receiving

any Notice under this Sub-Clause 5.3 [*Supplier's Claims*], monitor the record-keeping and/or instruct the Supplier to keep further contemporary records. The Supplier shall permit the Customer to inspect all these records, and shall (if instructed) submit copies to the Customer.

- 5.3.4. Within a period agreed by the Parties, after the Supplier became aware (or should have become aware) of the event or circumstance giving rise to the Claim, the Supplier shall send to the Customer a fully detailed Claim which includes full supporting particulars of the basis of the Claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the Claim has a continuing effect:
- (a) this fully detailed Claim shall be considered as interim;
  - (b) the Supplier shall send further interim Claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Customer may reasonably require; and
  - (c) the Supplier shall send a final Claim within twenty-eight (28) days after the end of the effects resulting from the event or circumstance, or within such other period as may be agreed by the Parties.
- 5.3.5. Within a period agreed by the Parties, after receiving a Claim or any further particulars supporting a previous Claim, the Customer shall respond with approval, or with disapproval and detailed comments. The Customer may also request any necessary further particulars, but shall nevertheless give his response on the principles of the Claim within such agreed period.
- 5.3.6. Each payment certificate shall include such amounts for any Claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the Claim, the Supplier shall only be entitled to payment for such part of the Claim as he has been able to substantiate.
- 5.3.7. The Customer shall proceed in accordance with the provisions of Sub-Clause 2.2 [*Decisions*] to agree or determine the extension (if any) of the Time for Completion (before or after its expiry) in accordance with the provisions of Sub-Clause 4.5 [*Delays*], and/or the additional payment (if any) to which the Supplier is entitled under the Contract.
- 5.3.8. The requirements of this Sub-Clause 5.3 [*Supplier's Claims*] are in addition to those of any other Sub-Clause which may apply to a Claim.

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## 6. Suspension of Provision of Goods and/or Services

Unless otherwise prohibited by the applicable laws, either Party may suspend all or part of the provision of Goods and/or Services subject to the provisions of the following Sub-Clauses of Clause 6 [*Suspension of Provision of Goods and/or Services*].

### 6.1. Suspension of Provision of Goods and/or Services

- 6.1.1. In the case of an Exceptional Event, the Customer may suspend all or part of the provision of Goods and/or Services by giving Notice to the Supplier (a "**Notice of Suspension**").
- 6.1.2. The Supplier may suspend all or part of the provision of Goods and/or Services in the following circumstances:
- (a) if the Supplier does not receive payment of an invoice or a part of an invoice, as the case may be, by the due date for payment of such invoice and the Customer has not issued a valid Notice in accordance with Sub-Clause 8.6 [*Disputed Invoices*] stating the reasons for non-payment of the invoice or part thereof, subject to the Supplier giving seven (7) days' Notice to the Customer; or
  - (b) if the Customer fails to comply with the provisions of Sub-Clause 2.4 [*Customer's Financial Arrangements*]; or
  - (c) if the bank financing the Customer has suspended disbursements under its loan, which finances in whole or in part the provision of the Goods and/or the Services,

- and no alternative funds are available as provided for in Sub-Clause 2.4 [Customer's Financial Arrangements]; or
- (d) where an Exceptional Event arises, including that contemplated under Sub-Clause 3.11 [Safety and Security of Supplier's Personnel].

- 6.1.3. Notice of Suspension of the provision of the Goods and/or the Services shall be given to the Customer as soon as reasonably practicable. However, in the case of paragraphs 6.1.2(b), 6.1.2(c), and/or 6.1.2(d), the Supplier may suspend the provision of the Goods and/or the Services by giving the Customer a Notice of Suspension with immediate effect.
- 6.1.4. For reasons other than the Exceptional Events (which is beyond the control of the Parties), the Customer shall take reasonable endeavors to avoid or minimize such causes of suspension of the provision of all or part of the Goods and/or the Services.
- 6.1.5. The Supplier's action shall not prejudice his entitlements to financing charges under Sub-Clause 8.2 [Time for Payment] and to termination under Sub-Clause 7.2 [Termination by the Supplier].
- 6.1.6. If the Supplier subsequently receives such payment, evidence or payment, or confirmation of finance (as described in the relevant Sub-Clause and in the above Notice) before giving a Notice of termination, the Supplier shall resume the normal provision of the Goods and/or the Services as soon as is reasonably practicable.
- 6.1.7. If the Supplier suffers delay and/or incurs Cost as a result of suspending the provision of the Goods and/or the Services (or reducing the rate of progress of the provision of the Goods and/or the Services, as the case may be) in accordance with this Sub-Clause 6.1 [Suspension of Provision of Goods and/or Services], the Supplier shall give Notice to the Customer and shall be entitled subject to the provisions of Clause 5 [Variations and Adjustments to Goods and Services] to:
- (a) an extension of the Time for Completion for any such delay, if completion is or will be delayed, under Sub-Clause 4.5 [Delays]; and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Remuneration.

After receiving such Notice, the Customer shall proceed in accordance with Sub-Clause 2.2 [Decisions] to agree or determine these matters.

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## 6.2. Resumption of Provision of Goods and/or Services

- 6.2.1. If the provision of the Goods and/or the Services (or a part thereof) have been suspended because of the occurrence of an Exceptional Event, whether by the Customer under Sub-Clause 6.1.1, or by the Supplier under Sub-Clause 6.1.2(d), the Supplier shall resume the provision of the Goods and/or the Services (or a part thereof), as the case may be, within twenty-eight (28) days of receipt of Notice from the Customer (a "Notice of Resumption") instructing the Supplier to resume the provision of the Goods and/or the Services (or a part thereof).
- 6.2.2. Where the provision of the Goods and/or the Services (or a part thereof) have been suspended by the Supplier under Sub-Clause 6.1.2(a), 6.1.2(b) or 6.1.2(c), the Supplier shall resume the provision of the Goods and/or the Services (or a part thereof), as the case may be, as soon as reasonably practicable after the matters giving rise to the suspension have ceased.

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## 6.3. Effects of Suspension of Provision of Goods and/or Services

- 6.3.1. The Supplier shall be paid for the provided Goods and/or Services in accordance with the Contract up to the date of suspension of the provision of the Goods and/or the Services (or a part thereof), as the case may be.
- 6.3.2. During the period of suspension, the Supplier shall not provide any Goods and/or Services or part thereof, as the case may be.

- 6.3.3. If during the suspension (under Sub-Clause 6.1.2(a), 6.1.2(b) or 6.1.2(c)) and resumption of the provision of the Goods and/or the Services (or a part thereof), as the case may be, the Supplier incurs Exceptional Costs, then:
- (a) the agreed Remuneration shall be adjusted in accordance with the provisions of Sub-Clause 8.1 [*Payment to the Supplier*]; and
  - (b) as soon as reasonably practicable, the Supplier shall inform the Customer by issue of a Notice of the occurrence of these Exceptional Costs.
- 6.3.4. If during the suspension, whether by the Customer under Sub-Clause 6.1.1, or by the Supplier under Sub-Clause 6.1.2(d), and resumption of the provision of the Goods and/or the Services (or a part thereof), as the case may be, either Party incurs Exceptional Costs, then such Exceptional Costs shall be borne by that Party.

## 7. Termination of Contract

Unless otherwise prohibited by the applicable laws, either Party may terminate the Contract subject to the provisions of the following Sub-Clauses of Clause 7 [*Termination of Contract*].

### 7.1. Termination by the Customer

#### Termination by the Customer for a Reason

- 7.1.1. If the Supplier:
- (a) without good reason fails, within a reasonable time, to fulfill its obligations under the Contract;
  - (b) plainly demonstrates the intention not to continue performance of its obligations under the Contract;
  - (c) assigns or otherwise transfers its obligations under the Contract without the prior written consent of the Customer;
  - (d) refuses or ignores the reasonable instructions of the Customer without reasonable justification (and any justification must be duly submitted by the Supplier in writing upon immediate receipt of the Customer's instruction);
  - (e) disregards laws or regulations of any public body having jurisdiction; or
  - (f) is otherwise in significant material breach of the Contract;
- the Customer may give Notice to the Supplier outlining the breach and the remedy required under the Contract.
- 7.1.2. If the Supplier has not proceeded to remedy the breach within twenty-eight (28) days after the issue of the Customer's Notice, then the Customer may terminate the Contract upon giving fourteen (14) days' Notice (the "**Notice of Termination**") to the Supplier.
- 7.1.3. Notwithstanding the Notice periods in Sub-Clause 7.1.2, if the Supplier becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events, the Customer may in so far as the applicable laws permit, terminate the Contract with immediate effect upon service of an appropriate Notice of Termination.
- 7.1.4. Notwithstanding the Notice periods in Sub-Clause 7.1.2, if the Supplier is in breach of Sub-Clause 1.12 [*Anti-Corruption*], the Customer may terminate the Contract with immediate effect upon service of an appropriate Notice of Termination.
- 7.1.5. Without prejudice to Sub-Clause 6.1.1 [*Suspension of Provision of Goods and/or Services*], where an Exceptional Event has led the Customer to a suspension of the provision of the Goods and/or the Services (or a part thereof) for more than one hundred eighty-two (182)

days, the Customer may terminate the Contract upon giving fourteen (14) days' Notice to the Supplier.

**Termination by the Customer for Convenience**

- 7.1.6. Notwithstanding the provisions of Sub-Clauses 7.1.1, 7.1.2, 7.1.3, 7.1.4, and 7.1.5 above [*Termination for a Reason*], the Customer shall be entitled to terminate the Contract, at any time, for the Customer's convenience, by giving a Notice of Termination to the Supplier. The termination shall take effect fifty-six (56) days after the Supplier receives such Notice of Termination.

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**7.2. Termination by the Supplier**

- 7.2.1. If the Customer:
  - (a) except during disputes, fails to make the payment within twenty-eight (28) days after the expiry of the time for payment stated in Sub-Clause 8.2 [*Time for Payment*];
  - (b) substantially fails to perform its obligations under the Contract;
  - (c) plainly demonstrates the intention not to continue performance of its obligations under the Contract;
  - (d) disregards the laws or regulations of any public body having jurisdiction; or
  - (e) is otherwise in significant material breach of the Contract;the Supplier, may at any time on or after the occurrence of any of the events or circumstances under paragraphs 7.2.1(a) through 7.2.1(e) above, give a written Notice to the Customer requiring the events or circumstances to be rectified within a reasonable time.
- 7.2.2. If the Customer fails to rectify such events or circumstances within the said reasonable time, the Supplier may, upon giving fourteen (14) days' Notice of Termination to the Customer, terminate the Contract.
- 7.2.3. If the provision of the Goods and/or the Services (or a part thereof) have been suspended by the Customer because of an Exceptional Event under Sub-Clause 6.1.1 [*Suspension of Provision of Goods and/or Services*] for more than one hundred eighty-two (182) days, the Supplier may terminate the Contract upon giving fourteen (14) days' Notice of Termination to the Customer.
- 7.2.4. If the provision of the Goods and/or the Services (or a part thereof) have been suspended by the Supplier due to non-payment by the Customer under Sub-Clause 6.1.2(a) [*Suspension of Provision of Goods and/or Services*] for more than forty-two (42) days, the Supplier may terminate the Contract upon giving fourteen (14) days' Notice of Termination to the Customer.
- 7.2.5. If the provision of the Goods and/or the Services (or a part thereof) have been suspended by the Supplier due to the Customer's failure to comply with the provisions of Sub-Clause 2.4 [*Customer's Financial Arrangements*] under Sub-Clause 6.1.2(b) or because of the bank's suspension of the provision of financing to the Customer under Sub-Clause 6.1.2(c) for more than ninety-one (91) days, the Supplier may terminate the Contract upon giving fourteen (14) days' Notice of Termination to the Customer.
- 7.2.6. If the provision of the Goods and/or the Services (or a part thereof) have been suspended by the Supplier because of an Exceptional Event under Sub-Clause 6.1.2(d) for more than one hundred eighty-two (182) days, the Supplier may terminate the Contract upon giving fourteen (14) days' Notice of Termination to the Customer.
- 7.2.7. If the Customer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events, the Supplier may in so far as the applicable laws permit terminate the Contract

with immediate effect upon service of an appropriate Notice of Termination to the Customer.

- 7.2.8. If the Customer is in breach of Sub-Clause 1.12 [*Anti-Corruption*], the Supplier may terminate the Contract with immediate effect upon service of an appropriate Notice of Termination to the Customer.
- 7.2.9. The Supplier's election to terminate the Contract under the provisions of this Sub-Clause 7.2 [*Termination by the Supplier*] shall not prejudice any other rights of the Supplier, under the Contract or otherwise.

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### **7.3. Termination Assistance**

- 7.3.1. In providing termination assistance to the Customer under this Sub-Clause 7.3 [*Termination Assistance*], the Supplier shall provide to the Customer all management records relating to each of the applicable properties in electronic format compatible with Customer's computer system. As part of the provision of termination assistance to the Customer, the Supplier shall also provide to the Customer copies of all relevant legal documents and any other records relating to the properties which the Supplier has under its possession or control in an ordered and indexed fashion in electronic and hard copy formats.
- 7.3.2. From the date of issue of a Notice of Termination of the Contract under the provisions of Sub-Clause 7.1 [*Termination by the Customer*] or Sub-Clause 7.2 [*Termination by the Supplier*], the Supplier shall cooperate with the Customer (and/or any new supplier of the goods and/or the services appointed by the Customer) in ensuring the smooth handover and continued running of the provision of Goods and/or Services during such handover to the Customer and/or any new supplier.
- 7.3.3. No later than ninety-one (91) days prior to the expiry of the Initial Term (or a Renewed Term) of the Contract or within seven (7) days of receipt by either Party of a Notice of Termination under Sub-Clause 7.1 [*Termination by the Customer*] or Sub-Clause 7.2 [*Termination by the Supplier*] (in the event Contract is terminated before the expiry of its Term (whether Initial Term or Renewed Term)), the Parties shall hold a review meeting at which both Parties' Representatives shall be present, the sole purpose of which will be to discuss arrangements for the hand-over of the Goods and/or the Services from the Supplier to the Customer and/or to a new supplier appointed by the Customer and thereafter the Parties shall hold at least one similar review meeting in each month until the Contract expires or terminates, or until the receipt by the Customer and/or the new supplier of all Supplier's Documents (whichever is later). If the Contract expired sooner than ninety-one (91) days after the Notice of Termination, the Supplier shall continue to attend such meetings and provide the required termination assistance envisaged in this Sub-Clause 7.3 [*Termination Assistance*] for a period of ninety-one (91) days from the date of such Notice of Termination.
- 7.3.4. Notwithstanding the provisions of this Sub-Clause 7.3 [*Termination Assistance*], if the Contract is terminated due to non-payment by the Customer under Sub-Clause 6.1.2(a) [*Suspension of Provision of Goods and/or Services*], the Supplier shall not hand over any Supplier's Documents until all moneys due to the Supplier have been settled by the Customer.

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### **7.4. Effects of Termination**

- 7.4.1. The Supplier shall be paid for all Goods and/or Services provided under the Contract up to the date of termination of the Contract. For the avoidance of doubt, the phrase "*all Goods and/or Services provided under the Contract*" includes all Goods ordered by the Supplier but not yet delivered to the Customer.
- 7.4.2. If the Contract is terminated by the Customer for reasons in accordance with the provisions of Sub-Clauses 7.1.1, 7.1.2, 7.1.3, or 7.1.4 [*Termination by the Customer for a Reason*], the

Customer shall, without prejudice to any other rights the Customer may have under the Contract, be entitled to:

- (a) take over from the Supplier all Supplier's Documents, information, calculations and other Deliverables, whether in electronic format or otherwise (all documents in electronic format shall be editable), pertaining to the Goods and/or the Services provided up to the date of termination, necessary to enable the Customer to complete the provision of the Goods and/or the Services either by itself or with the assistance of another supplier;
- (b) claim compensation for the reasonable costs (if any) directly incurred as a consequence of the termination, including but not limited to additional costs incurred in arranging for the provision of the Goods and/or the Services to be completed by another supplier; and
- (c) withhold payments due to the Supplier until all the costs incurred by the Customer under Sub-Clause 7.4.2(b) above have been established and all documents, information, calculations and other Deliverables necessary to enable the Customer to complete the provision of the Goods and/or the Services have been received. The Customer shall act expeditiously and without delay in establishing its own costs under Sub-Clause 7.4.2(b).

The Customer shall take all reasonable steps to mitigate such costs. The Customer's entitlement under Sub-Clause 7.4.2(b) shall be limited to those costs that are reasonably foreseeable at the time of signature of the Contract.

7.4.3. If the Contract is terminated by the Customer due to an Exceptional Event under Sub-Clause 7.1.5 [*Termination by the Customer for a Reason*], or for Customer's convenience under Sub-Clause 7.1.6 [*Termination by the Customer for Convenience*], or if the Contract is terminated by the Supplier under the provisions of Sub-Clause 7.2 [*Termination by the Supplier*], then, without prejudice to any other rights the Supplier may have under the Contract and/or under the law, then:

- (a) if the Supplier incurs Exceptional Costs, the agreed Remuneration shall be adjusted in accordance with the provisions of Sub-Clause 8.1 [*Payment to the Supplier*]. The Supplier shall inform the Customer as soon as reasonably practicable by issue of a Notice of the occurrence of the Exceptional Costs; and
- (b) the Supplier shall be entitled to be paid the loss of profit that would otherwise have been earned on the provision of the Goods and/or the Services not yet provided due to the termination at the rate of twenty-five percent (25%) of the price of non-provided Goods and/or Services.

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## **7.5. Optional Termination, Payment and Release**

7.5.1. If the provision of substantially all or part of the Goods and/or the Services in progress is prevented for a continuous period of ninety-one (91) days by reason of Exceptional Events of which Notice has been given under Sub-Clause 4.7 [*Exceptional Events*], or for multiple periods which total more than one hundred eighty-two (182) days due to the same notified Exceptional Event(s), then either Party may give to the other Party a Notice of Termination of the Contract (the "**Optional Termination**"). In this event, the termination shall take effect seven (7) days after the Notice of Termination is given.

7.5.2. Upon such Optional Termination, the Parties shall agree on the value of the provided Goods and/or Services which shall include, without limitation, the following:

- (a) the amounts payable for any Goods and/or Services carried out for which a price is stated in the Contract;
- (b) the Cost plus reasonable profit of any plant, materials, goods and/or services ordered for the provision of the Goods and/or the Services which have been delivered to the Supplier, or of which the Supplier is liable to accept delivery. Such plant, materials, goods and/or services shall become the property of (and be at

- the risk of) the Customer when paid for by the Customer, and the Supplier shall place the same at the Customer's disposal;
- (c) any other Costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Supplier in the expectation of completing the provision of the Goods and/or the Services;
  - (d) the Cost of removal of any Supplier's temporary works (if any) and Supplier's equipment (if any) from the Site and the return of these items to the Supplier's country (or to any other destination at no greater cost); and
  - (e) the Cost of repatriation of the Supplier's staff and labour employed wholly in connection with the provision of the Goods and/or the Services at the date of termination.

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## **7.6. Rights and Liabilities of the Parties in Case of Termination**

- 7.6.1. Termination of the Contract shall not prejudice or affect the rights and liabilities of the Parties that have been accrued in accordance with the Contract prior to its termination and neither the right to terminate nor exercise of that right shall prevent the Parties from pursuing claims in relation to such rights and liabilities for any such remedies or relief as may be available in accordance with and subject to applicable laws.
- 7.6.2. The Supplier shall be entitled to be paid any unpaid balance of the Remuneration payable in accordance with the provisions of the Contract to the date of termination or in case of suspension of the provision of the Goods and/or the Services in effect at the date of suspension, any re-imbusement of costs and expenses to which the Supplier shall be entitled in accordance with the provisions of the Contract.
- 7.6.3. The Supplier shall cooperate fully with the Customer and any other person or persons appointed in the place of or to assume the responsibilities of the Supplier on termination of the Contract in order to ensure that handover is achieved as soon as possible with minimum disruption to the operations of the Customer.
- 7.6.4. All provisions expressed to have effect after termination of the Contract or by implication having effect after its termination or necessary to give effect to any such provisions after termination or to give effect to termination and its consequences shall continue in force notwithstanding termination of the Contract.

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## **7.7. Defective Goods and/or Services after End of Term or Termination**

- 7.7.1. By the end of the Initial Term or a Renewed Term of the Contract (under Sub-Clause 4.2 [*Commencement and Term of Contract*]) or on its termination under Sub-Clause 7.1 [*Termination by the Customer*] or Sub-Clause 7.2 [*Termination by the Supplier*], the Customer shall, within a reasonable time (but in no way more than twenty-eight (28) days from the date of end of the Initial Term or a Renewed Term of the Contract or the date of termination of the Contract, as the case may be), ascertain the extent to which (if any) the Goods and/or the Services has not been provided in accordance with the Contract. A list of such defects shall be provided to the Supplier.
- 7.7.2. On receipt of the list of defective Goods and/or Services (under Sub-Clause 7.7.1), no further defects shall be added or accepted at this stage. Upon receipt of the list of defective Goods and/or Services, the Supplier shall have a period of fourteen (14) days from the date of receipt of such list, to dispute any items, and any such disputed item shall be referred to the Customer in the first instance with a view to reaching an agreement. If not agreed between the Parties, then the provisions of Clause 11 [*Disputes and Litigation*] shall apply.
- 7.7.3. After the fourteen (14) days' period referred to in Sub-Clause 7.7.2 above (disputed items apart) the Supplier shall have a further period of seven (7) days, in respect of the list of defective Goods and/or Services, to commence rectifying the defects and proceed diligently to complete the remedial works to the standards defined in the Contract. In the event that the necessary works remedying the agreed defects are not commenced within the seven-(7)-day period referred to above, the Supplier shall forfeit the right to carry out

such works and the Customer shall carry out the works (whether by itself or by others) and the Supplier shall immediately pay to the Customer the proper cost of such works.

- 7.7.4. In respect of any disputed defect (being those first referred to the Customer or subsequently to the dispute resolution procedures under Clause 11 [*Disputes and Litigation*]), the Customer shall at a proper cost forthwith remedy such disputed defects. The Supplier shall reimburse the Customer the proper cost of such works if this is either agreed between the Parties or if the Supplier is found to be liable for such costs under this Contract.

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## **8. Remuneration and Payment**

### **8.1. Payment to the Supplier**

- 8.1.1. The Customer shall pay the Supplier for the provision of the Goods and/or the Services (including Variations to the Goods and/or the Services) in accordance with the details stated in Appendix III [*Remuneration and Payment*].
- 8.1.2. Unless otherwise agreed in writing between the Parties, the Customer shall pay the Supplier in respect of Exceptional Costs:
- (a) if the Parties agree that the provision of the Goods and/or the Services by the Supplier requires the Supplier to involve any third party (or parties), and the Supplier incurs Cost for such third parties (subject always to the prior approval of the Customer of such Costs), then the Supplier will be fully reimbursed for any fees payable by the Supplier to any third parties related to the provision of the Goods and/or the Services; and
  - (b) if the Parties agree that the provision of the Goods and/or the Services by the Supplier requires the Supplier to travel outside the United Arab Emirates, and the Supplier incurs travel and stay expenses outside the United Arab Emirates as a result of the provision of the Goods and/or the Services (subject always to the prior approval of the Customer of such costs and expenses), then the Supplier shall be entitled for the full reimbursement of such incurred expenses.
- 8.1.3. The Customer shall pay any other amounts that become due under the Contract.
- 8.1.4. Payment of the amount due in each currency shall be made into the bank account, nominated by the Supplier, in the payment country (for the currency) specified in the Contract.

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### **8.2. Time for Payment**

- 8.2.1. Unless otherwise stated in Appendix III [*Remuneration and Payment*], all amounts due to the Supplier shall be paid within twenty-eight (28) days of the date of issue of the Supplier's invoice.
- 8.2.2. Without prejudice to the provisions of Sub-Clause 7.4.2(c) [*Effects of Termination*] the Customer shall not withhold payment of any part of an invoice for any amount properly due to the Supplier under the Contract by reason of claims or alleged claims against the Supplier unless the amount to be withheld has been agreed with the Supplier as due to the Customer, or has been awarded by a court to the Customer pursuant to a referral under Clause 11 [*Disputes and Litigation*].

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### **8.3. Advance Payment**

- 8.3.1. If agreed between the Parties and stated in Appendix III [*Remuneration and Payment*], the Customer shall make an advance payment, as an interest-free loan to the Supplier in accordance with the provisions of this Sub-Clause 8.3 [*Advance Payment*]. The total advance payment, the number and timing of instalments (if more than one), and the

applicable currencies and proportions, shall be as stated in Appendix III [*Remuneration and Payment*].

- 8.3.2. If the advance payment is not stated in Appendix III [*Remuneration and Payment*], this this Sub-Clause 8.3 [*Advance Payment*] shall not apply.
- 8.3.3. Unless stated otherwise in Appendix III [*Remuneration and Payment*], the advance payment shall be repaid through percentage deductions from the interim payments determined by the Customer as follows:
- (a) deductions shall commence in the next interim payment certificate following the advance payment; and
  - (b) deductions shall be made at the amortization rate stated in Appendix III [*Remuneration and Payment*] of the amount of each interim payment certificate in the currencies and proportions of the advance payment until such time as the advance payment has been repaid.
- 8.3.4. If the advance payment has not been repaid by the end of the Initial Term or a Renewed Term of the Contract (under Sub-Clause 4.2 [*Commencement and Term of Contract*]) or on its termination under Sub-Clause 7.1 [*Termination by the Customer*] or Sub-Clause 7.2 [*Termination by the Supplier*], (as the case may be), the whole of the balance of the advance payment then outstanding shall immediately become due and payable by the Supplier to the Customer.

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#### **8.4. Currencies of Payment**

- 8.4.1. Unless stated otherwise in Appendix III [*Remuneration and Payment*], the currency applicable to the Contract shall be the Local Currency of the United Arab Emirates.
- 8.4.2. If Exceptional Costs were incurred by the Supplier in Foreign Currencies, such Exceptional Costs shall be paid by the applicable Foreign Currency.

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#### **8.5. Third-Party Charges on the Supplier**

- 8.5.1. Unless stated otherwise in Appendix III [*Remuneration and Payment*], the Supplier shall be solely responsible for the payments required by the government or authorized third parties in the Country which arise from the Contract in respect of:
- (a) the Supplier's Remuneration;
  - (b) the Supplier's imported Goods;
  - (c) any goods imported for the Supplier's Services; and
  - (d) any documents imported for the provision of the Goods and/or the Services;

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#### **8.6. Disputed Invoices**

- 8.6.1. Without prejudice and subject to the provisions of Sub-Clause 8.2 [*Time for Payment*], if any item or part of an item in an invoice submitted by the Supplier is contested by the Customer as not properly due under the Contract, the Customer shall, within seven (7) days of the date of issue of the Supplier's invoice, give a Notice of its intention to withhold payment with reasons but shall not delay payment of the remainder of the invoice.

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#### **8.7. Independent Audit**

- 8.7.1. Except where the Contract provides for lump sum payments, the Supplier shall maintain up-to-date records which clearly identify relevant time and expense and shall make these available to the Customer on reasonable request.
- 8.7.2. Except where the Contract provides for lump sum payments, not later than one (1) year after the completion of the provision of the Goods and/or the Services or termination of the Contract, the Customer may, by Notice of not less than fourteen (14) days to the Supplier, require that an independent reputable firm of professionally qualified

accountants nominated by it audit any time and expense records claimed by the Supplier. The audit shall be conducted by attending during normal working hours at the office where the records are kept and the Supplier shall afford all reasonable assistance to the auditors. Any such audit shall be at the Customer's cost.

## 8.8. Remuneration

- 8.8.1. In this Contract, the term “**Remuneration**” refers to the remuneration for the provision of the Goods and/or the Services specified in Appendix III [*Remuneration and Payment*] and any Variation thereof in accordance with Clause 5 [*Variations and Adjustments to Goods and Services*].
- 8.8.2. The Remuneration for the Goods shall be price set out in Appendix III [*Remuneration and Payment*] and shall be inclusive of the costs of packaging, insurance, royalty fees and carriage of the Goods, unless otherwise agreed in writing by the Customer. No extra charges shall be effective unless agreed in writing and signed by the Customer.
- 8.8.3. The Remuneration for the Services shall be set out in Appendix III [*Remuneration and Payment*] and shall be the full and exclusive remuneration of the Supplier in this respect. The Remuneration shall be inclusive of every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.8.4. In consideration of provision by the Supplier of the Goods and/or the Services in accordance with the Contract, the Customer shall pay the Supplier the Remuneration in respect of the periods stated in Appendix III [*Remuneration and Payment*] for the Goods and/or the Services specified in Appendix I [*Scope of Goods and/or Services*] in accordance with the terms specified in Appendix III [*Remuneration and Payment*].
- 8.8.5. In case of extension of the periods stated in these Conditions of Contract under (caused otherwise than by default of the Supplier) the additional Remuneration (if any) shall be paid in accordance with the Variation Order(s).
- 8.8.6. Any Variation in the Remuneration, determined otherwise according to a Variation Order, shall be applied as determined by the Variation Order and commensurate with the value of the Variation made by such Variation Order.
- 8.8.7. The Remuneration so paid shall represent the full compensation of the Supplier for all the Goods and/or the Services and any work necessary for or incidental to such Goods and/or Services inclusive of all fees and compensation as shall be payable to Supplier's Subcontractors, suppliers, manufacturers, etc., and subject only to such Variation as may be determined by any Variation Order.
- 8.8.8. The Customer shall be under no obligation to pay fees, compensation or make any other payments to Subcontractors, suppliers, manufacturers, etc., which payments shall be the sole responsibility of the Supplier.
- 8.8.9. Unless stated otherwise in the Contract, a payment made by the Customer on any invoice shall constitute an acceptance by the Customer of the Goods and/or the Services represented by that invoice.
- 8.8.10. Unless otherwise stated in the Contract:
- (a) the Remuneration shall be agreed between the Parties or determined in accordance with the provisions of Sub-Clause 5.2 [*Agreement of Variation Value and Impact*] and be subject to adjustments in accordance with the Contract;
  - (b) the Supplier shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Remuneration shall not be adjusted for any of these costs except as stated otherwise in the Contract;
  - (c) any quantities which may be set out in the bill of quantities or other schedule are accurate quantities and are to be taken as the actual and correct quantities:

- (i) of the Goods and/or the Services which the Supplier is required to provide; or
  - (ii) for the purposes of Sub-Clause 5.2 [*Agreement of Variation Value and Impact*]; and
- (d) the Supplier shall submit to the Customer, within twenty-eight (28) days after the Commencement Date, a proposed breakdown of each lump sum price (if any) in the schedules. The Customer shall take account of the breakdown when preparing payment certificates, and shall be bound by it.

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## 9. Liabilities

### 9.1. Liability for Breach

- 9.1.1. The Supplier shall be liable to the Customer for any breach of any provision of the Contract by the Supplier.
- 9.1.2. The Customer shall be liable to the Supplier for any breach of any provision of the Contract by the Customer.
- 9.1.3. If either Party is liable to the other, damages shall be payable only on the following terms:
  - (a) such damages shall be limited to the amount of reasonably foreseeable loss and damage suffered as a direct result of such breach;
  - (b) in any event, the amount of such damages shall be limited to the amount stated in Sub-Clause 9.3 [*Limit of Liability*]; and
  - (c) if either Party is considered to be liable jointly with third parties to the other Party, the proportion of damages payable by that Party shall be limited to that proportion of liability which is attributable to its breach.

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### 9.2. Liability Period

- 9.2.1. Notwithstanding any term or condition to the contrary in the Contract or any Legal Requirement of the Country or any other relevant jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Supplier), neither the Customer nor the Supplier shall be considered liable for any loss or damage resulting from any occurrence unless a Claim is formally made on one Party by the other Party before the expiry of a period of three (3) years (the "**Liability Period**").
- 9.2.2. The Liability Period shall commence upon completion of the provision of the Goods and/or the Services, or the end of the Initial Term (or Renewed Term, as the case may be), or termination of the Contract (whichever is earlier).
- 9.2.3. Each Party agrees to waive all Claims against the other Party in so far as such Claims are not formally made in accordance with the provisions of this Sub-Clause 9.2 [*Liability Period*].

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### 9.3. Limit of Liability

- 9.3.1. The maximum amount of damages payable by either Party to the other Party in respect of any and all liability, excluding liability arising from gross negligence, under or in connection with the Contract **shall not exceed the amount of the Remuneration as may be adjusted by Variations**. This limit is without prejudice to Sub-Clause 9.4 [*Exceptions*].
- 9.3.2. Except in the case of gross negligence, each Party agrees to waive all Claims against the other Party in so far as the aggregate of damages which might otherwise be payable exceeds the maximum amount payable under Sub-Clause 9.3.1 above.
- 9.3.3. Without prejudice to the right the Supplier may have under Sub-Clause 7.4 [*Effects of Termination*], neither Party shall be liable in contract, tort, under any law or in any statutory private right of action or otherwise, for any loss of revenue, loss of profit, loss of

production, loss of contracts, loss of use, loss of business, third-party punitive damages or loss of business opportunity or for any indirect, special or consequential loss or damage.

#### 9.4. Exceptions

- 9.4.1. The provisions of Sub-Clause 9.1 [*Liability for Breach*], Sub-Clause 9.2 [*Liability Period*], and Sub-Clause 9.3 [*Limit of Liability*] shall not apply to Claims arising out of deliberate manifest and reckless default, fraud, fraudulent misrepresentation, gross negligence or reckless misconduct by the defaulting Party.
- 9.4.2. The limit of liability for the Claims arising out of deliberate manifest and reckless default, fraud, fraudulent misrepresentation, gross negligence or reckless misconduct by the defaulting Party shall be as determined by a court under the applicable laws.

## 10. Insurance

### 10.1. General Requirements for Insurances

- 10.1.1. In this Clause 10 [*Insurance*], the term "**insuring Party**" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.
- 10.1.2. Wherever the Supplier is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Customer. These terms shall be consistent with any terms agreed by both Parties before the date of the letter of acceptance. This agreement of terms shall take precedence over the provisions of this Clause 10 [*Insurance*]. Wherever the Supplier is the insuring Party, each insurance shall be effected with insurers and in terms consistent with the details annexed to Appendix I [*Scope of Services*].
- 10.1.3. Wherever the Customer is the insuring Party, each insurance shall be effected with insurers and in terms consistent with the details annexed to Appendix I [*Scope of Services*].
- 10.1.4. If an insurance policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause 10 [*Insurance*]:
  - (a) the insuring Party shall act under the policy on behalf of these additional joint insured except that each Party shall act for their personnel;
  - (b) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer; and
  - (c) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the insurance policy.
- 10.1.5. Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.
- 10.1.6. The relevant insuring Party shall, within the respective periods stated in the Contract (calculated from the Commencement Date), submit to the other Party:
  - (a) evidence that the insurances described in this Clause 10 [*Insurance*] have been effected; and
  - (b) copies of the policies for the insurances described in Sub-Clause 10.2 [*Insurances to be taken out by the Supplier*] and Sub-Clause 10.3 [*Insurances to be taken out by the Customer*].
- 10.1.7. When each premium is paid, the insuring Party shall submit evidence of payment to the other Party.
- 10.1.8. Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the provision

of the Goods and/or the Services and ensure that insurance is maintained in accordance with this Clause 10 [*Insurance*].

- 10.1.9. Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give Notice to the other Party.
- 10.1.10. If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of insurance policies in accordance with this Sub-Clause 10.1 [*General Requirements for Insurances*], the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Remuneration shall be adjusted accordingly.
- 10.1.11. Nothing in this Clause 10 [*Insurance*] limits the obligations, liabilities or responsibilities of the Supplier or the Customer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Supplier and/or the Customer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.
- 10.1.12. Payments by one Party to the other Party shall be subject to the provisions of Sub-Clause 2.10 [*Customer's Claims*] or Sub-Clause 5.3 [*Supplier's Claims*], as applicable.
- 10.1.13. The Supplier shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to in this Clause 10 [*Insurance*]) with insurers from any eligible source country.
- 10.1.14. All insurances required under this Clause 10 [*Insurance*] shall be in accordance with laws of the Emirate of Abu Dhabi and the federal laws of the United Arab Emirates as applied in the Emirate of Abu Dhabi.

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## **10.2. Insurances to be taken out by the Supplier**

- 10.2.1. Subject to the provisions of Sub-Clause 10.1 [*General Requirements for Insurances*], the Supplier shall effect and maintain the insurance(s) stated in the Annex to Appendix I [*Scope of Goods and/or Services*].
- 10.2.2. The insurance(s) shall be for a limit per occurrence of not less than the amount stated in the Annex to Appendix I [*Scope of Goods and/or Services*], with no limit on the number of occurrences. If an amount is not stated in the Annex to Appendix I [*Scope of Goods and/or Services*], this Sub-Clause 10.2 [*Insurances to be taken out by the Supplier*] shall not apply.

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## **10.3. Insurances to be taken out by the Customer**

- 10.3.1. Subject to the provisions of Sub-Clause 10.1 [*General Requirements for Insurances*], the Customer shall effect and maintain the insurance(s) stated in the Annex to Appendix I [*Scope of Goods and/or Services*].
  - 10.3.2. The insurance(s) shall be for a limit per occurrence of not less than the amount stated in the Annex to Appendix I [*Scope of Goods and/or Services*], with no limit on the number of occurrences. If an amount is not stated in the Annex to Appendix I [*Scope of Goods and/or Services*], this Sub-Clause 10.3 [*Insurances to be taken out by the Customer*] shall not apply.
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## 11. Disputes and Litigation

### 11.1. Avoidance of Disputes

- 11.1.1. The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with the Contract or its interpretation.

### 11.2. Notice of Dispute

- 11.2.1. Any dispute arising out of or in connection with or in relation to the Contract, including any question regarding the Contract's existence, validity or the termination of the Supplier's appointment or employment under the Contract (a "**Dispute**"), shall be settled and finally resolved in accordance with this Clause 11 [*Disputes and Litigation*].
- 11.2.2. It shall be a condition precedent to a Party referring a Dispute to litigation under Sub-Clause 11.4 [*Litigation*] that the Parties must attempt to settle the Dispute amicably. The referring Party must issue a Notice (a "**Notice of Dispute**") which shall state that it is given under this Sub-Clause 11.2.2 [*Notice of Dispute*] to the responding Party:
- (a) stating that a Dispute, in the opinion of the referring Party, exists;
  - (b) setting out the broad details of the Dispute, including a summary of the factual and legal grounds on which the referring Party intends to rely; and
  - (c) requesting the other Party to attempt amicable settlement.

Such Notice of Dispute shall contain sufficient information regarding the Dispute to enable the other Party to be sufficiently informed as to the nature of the Dispute thus permitting the other Party's reasonable evaluation.

### 11.3. Amicable Settlement

#### General Requirements

- 11.3.1. Where a Notice of Dispute has been given under Sub-Clause 11.2.2 [*Notice of Dispute*], both Parties shall attempt to settle the Dispute amicably before the commencement of litigation. However, unless both Parties agree otherwise, litigation may be commenced on or after the twenty-eighth (28th) day after the day on which the Notice of Dispute was given, even if no attempt at amicable settlement has been made. Amicable Settlement may include, without limitation, the following:
- (a) Dispute resolution meetings;
  - (b) mediation;
  - (c) expert determination; or
  - (d) any other form of alternative dispute resolution that is not as formal, time-consuming and costly as litigation.

#### Dispute Resolution Meetings

- 11.3.2. Amicable settlement shall include (but not limited to) meetings (the "**Dispute Resolution Meetings**"). The first Dispute Resolution Meeting shall be held between the Parties within twenty-eight (28) days of the Notice of Dispute being received in an attempt to settle such Dispute amicably. In the event that the Dispute cannot be resolved amicably by the Parties within fourteen (14) days of the first Dispute Resolution Meeting between the Parties or within fifty-six (56) days of receipt of a Notice of Dispute if no meeting took place, the Dispute shall be referred to senior representatives of the Parties, who shall meet in an attempt to settle such Dispute amicably. Each Party shall use its best endeavors to ensure that its representative attending a Dispute Resolution Meeting:
- (a) shall have the authority to settle the Dispute on behalf of that Party; and
  - (b) shall attempt to resolve the Dispute in good faith.

- 11.3.3. In the event that the Parties cannot settle the Dispute within fifty-six (56) days from the referral to the senior representatives, either Party shall be entitled to commence litigation under Sub-Clause 11.4 [*Litigation*].

**Mediation**

- 11.3.4. The Parties may, at any time, and without prejudice to any other proceedings, seek to settle any Dispute arising out of or in connection with the Contract amicably by mediation in accordance with the Mediation Rules, published by the Abu Dhabi Chamber of Commerce (ADCC).

**Expert Determination**

- 11.3.5. The Parties may, at any time, and without prejudice to any other proceedings, seek to settle any Dispute arising out of or in connection with the Contract amicably by expert determination in accordance with Expert Rules published by the Abu Dhabi Chamber of Commerce (ADCC).

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**11.4. Litigation**

- 11.4.1. If not avoided under Sub-Clause 11.1 [*Avoidance of Disputes*] and/or resolved amicably under Sub-Clause 11.3 [*Amicable Settlement*], any Dispute arising out of or in connection with or in relation to the Contract, including any question regarding the Contract's existence, validity or the termination of the Supplier's appointment or employment under the Contract (a "**Dispute**"), shall be settled and finally resolved by litigation (under this Sub-Clause 11.4 [*Litigation*]) in the courts of the Emirate of Abu Dhabi under the laws of the Emirate of Abu Dhabi and the federal laws of the United Arab Emirates as applied in the Emirate of Abu Dhabi.
- 11.4.2. The Contract shall be governed by and construed and interpreted in accordance with the laws of the Emirate of Abu Dhabi and the federal laws of the United Arab Emirates as applied in the Emirate of Abu Dhabi, and the Parties hereby submit to the exclusive jurisdiction of the courts of the Emirate of Abu Dhabi.
- 11.4.3. If any Party institutes any legal suit, action, or proceeding against the other Party to enforce this Contract (or obtain any other remedy regarding any breach of this Contract) arising out of or relating to this Contract, including, but not limited to, contract, equity, tort, fraud, and statutory claims, the prevailing Party in a final, non-appealable judgment regarding the suit, action, or proceeding is entitled to receive, and the non-prevailing Party shall pay, in addition to all other remedies to which the prevailing Party may be entitled, the costs and expenses incurred by the prevailing Party in conducting the suit, action, or proceeding, including actual attorneys' fees and expenses, and court costs, and any other expenses sustained by the prevailing Party, even if not recoverable by law (including, without limitation, all fees, taxes, costs, and expenses incident to appellate, bankruptcy, and post-judgment proceedings).

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**11.5. Survival**

- 11.5.1. The provisions of this Clause 11 [*Disputes and Litigation*] survives the completion, expiry or termination of this Contract.

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**END OF CONDITIONS OF CONTRACT**

**APPENDIX I**

**Scope of Goods and/or Services**

**This Appendix shall include a detailed list of all items of Goods and/or Services required to be provided by the Supplier under the Contract**

**An Annex to this Appendix I [*Scope of Goods and/or Services*] must be added if there are any insurances to be effected and maintained by either Party**

**END OF APPENDIX I**

**APPENDIX II**

**Personnel, Equipment, Facilities and Services of Others to  
be provided by the Customer**

**This Appendix shall include a detailed list of all personnel, equipment, facilities and services of others  
required to be provided by the Customer under the Contract**

**END OF APPENDIX II**

**APPENDIX III**

**Remuneration and Payment**

**This Appendix shall include the terms of payment, any advance payment, any milestone(s) payment(s), and final payment**

**This Appendix shall include the Remuneration for the provision of the Goods and/or Services**

**END OF APPENDIX III**

**APPENDIX IV**

**Programme**

**This Appendix shall include the Programme for the provision of the Goods and/or the Services**

**END OF APPENDIX IV**