

Sønderborg Forsyning



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Contract conditions

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1 GENERAL PROVISIONS

According to FIDIC, short form (green book).

1.1 Definitions

In the Contract, the words and expressions defined below must have the following meanings assigned to them, except where the context requires otherwise:

1.1.1 Affiliate

“Affiliate” means any legal person who is within the same group of companies as a Party, i.e. any company directly or indirectly (through strings of control) controlling, controlled by or under common control with that Party. For the sake of this definition, control ('bestemmende indflydelse') shall have the meaning given to it in the Danish Companies Act, section 7 (as amended).

1.1.2 Commencement Date

“Commencement Date” means the date of the Contract Agreement.

1.1.3 Conditions of contract

“Conditions of Contract” means Clauses 1 (General Provisions) to 16 (Miscellaneous).

1.1.4 Contract

“Contract” means the Agreement, these Conditions, the Schedules and any other documents listed therein.

1.1.5 Contractor

“Contractor” means the offer company and the legal successors in title to such person.

1.1.6 Contractor Group

“Contractor Group” means the Contractor and its Affiliates, its and their subcontractors of any tier and for all of the foregoing, its and their partners, co-venturers, joint-venturers, Affiliates, vendors, agents, representatives, directors, officers and employees (including agency personnel), but not the Employer and its Affiliates, its and their contractors and subcontractors of any tier (including the Engineer) and for all of the foregoing, its and their partners, co-venturers, joint-venturers, Affiliates, vendors, agents, representatives, directors, officers and employees (including agency personnel).

1.1.7 Contractor Price

“Contract Price” has the meaning given in the recitals.

1.1.8 Contractors Equipment

“Contractor's Equipment” means all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works, but does not include Materials or Plant.

- 1.1.9 Contractor's Representative
"Contractor's Representative" means a person appointed by the Contractor under Sub-Clause 4.2 (Contractor's Representative).
- 1.1.10 Contractor's Personnel
"Contractor's Personnel" means the Contractor's Representative and all personnel whom the Contractor utilises on the Site, including the staff, labour and other employees of the Contractor and of each subcontractor; and any other personnel assisting the Contractor in the execution of the Works.
- 1.1.11 Cost
"Cost" means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit. In these Conditions, the expression "overhead and similar charges" is defined as the percentage of Cost (exclusive of overhead and similar charge).
- 1.1.12 Country
"Country" means the country in which the Site is located.
- 1.1.13 Day
"day" means a calendar day.
- 1.1.14 Defects Liability Period
"Defects Liability Period" means the date stated according to Sub-Clause 9.1 (Remedying Defects).
- 1.1.15 Employer
"Employer" means the person or persons named as employer in the Contract Agreement and the legal successors in title to this person or persons and their permitted assignees.
- 1.1.16 Employer Group
"Employer Group" means the Employer and its Affiliates, its and their contractors and subcontractors of any tier (including the Engineer) and for all of the foregoing, its and their partners, co-venturers, joint-venturers, Affiliates, vendors, agents, representatives, directors, officers and employees (including agency personnel), but not the Contractor and its Affiliates, its and their subcontractors of any tier and for all of the foregoing, its and their partners, co-venturers, joint-venturers, Affiliates, vendors, agents, representatives, directors, officers and employees (including agency personnel).
- 1.1.17 Employers' Liabilities
"Employer's Liabilities" means those matters listed in Sub-Clause 6.1 (Employer's Liabilities).
- 1.1.18 Force majeure
"Force Majeure" has the meaning given in Sub-Clause 13.2 (Force Majeure).

- 1.1.19 Employers' Liabilities
"Interim Payment Application" means Contractor's application for payment according to Sub-Clause 11.5 (Interim Payment Application).
- 1.1.20 Key Date
"Key Date" means any dates so described in the Master Time Schedule;
- 1.1.21 Master Time Schedule
"Master Time Schedule" means the programme for the Works as set out in Schedule 2 (Master Time Schedule) and Schedule 1 (Specification), as the same may be adjusted in accordance with the Contract.
- 1.1.22 Materials
"Materials" means things of all kinds (other than Plant) intended to form or forming a permanent part of the Works.
- 1.1.23 Milestone Activity
"Milestone Activity" means a milestone activity identified as such in the tender documents.
- 1.1.24 Milestone Payment
'Milestone Payment' means the payment due to the Contractor for achieving a Milestone Activity as set out in Milestone Payment Schedule.
- 1.1.25 Milestone Payment Schedule
"Milestone Payment Schedule" means the milestone payment schedule set out in Schedule 3 (Milestone Payment Schedule).
- 1.1.26 Non-applicable
The term "N/A" means "non-applicable" is applied on the chapters where the conditions in the chapter are non-relevant for this contract.
- 1.1.27 Party
"Party" means either the Employer or the Contractor.
"Plant" means the machinery and apparatus intended to form or forming a permanent part of the Works.
- 1.1.28 Programme
"Programme" not used.
- 1.1.29 Project
"Project" means [insert project name].
- 1.1.30 Provisional Sum
"Provisional Sum" means a sum (if any) which is specified as a provisional sum in the Schedule of Rates, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 11.2 (Advance Payment).
- 1.1.31 Schedule
"Schedule" means a schedule referred to in and appended to these Conditions.

- 1.1.32 Schedule of Rates
“Schedule of Rates” means the schedule of rates set out in Schedule 4 (Schedule of Rates).
- 1.1.33 Section
“Section” means a given part of the Works (if any).
- 1.1.34 Site
“Site” means the places specified in the Specifications where the Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Specifications as forming part of the Site.
- 1.1.35 Specifications
“Specification” means the document set out in Schedule 1 (Specification), including the Employer’s requirements in respect of design to be carried out by the Contractor (if any), as the same may be amended pursuant to any Variation.
- 1.1.36 Time of Completion
“Time for Completion” means the time for completing the Works or Section or a Milestone Activity, as stated (or as extended under Sub-Clause 7.3 (Rate of Progress)), calculated from the Commencement Date.
- 1.1.37 Variation
“Variation” means any change to the Specification which is instructed by the Employer under Sub-Clause 10.1 (Right to Vary).
- 1.1.38 Works
“Works” means all the work and design (if any) to be performed by the Contractor including temporary work and any Variation.
“Reasonable Profit” shall mean a percentage of the Costs (or a percentage of the actual costs exclusive of overhead and similar charges) as stated.

1.2 Interpretation

- (a) Words importing persons or parties must include firms and organizations. Words importing singular or one gender must include plural or the other gender where the context requires.
- (b) The Parties agree that the legal principle generally known as the 'contra proferentem' rule does not apply.
- (c) The documents which together comprise the Contract constitute the complete, entire and exclusive statement of the agreement between the Parties relating to the subject matter of this Contract, superseding all previous negotiations and understandings.
- (d) In construing the Contract, the rule known as the 'ejusdem generis rule' shall not apply nor shall any similar rule or approach to the construction of this Contract and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning, because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

1.3 Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found within or between the documents, the Employer shall issue any necessary instructions to the Contractor, provided that the priority of the documents must be in accordance with the following sequence:

- (a) the contract/Agreement
- (b) the corrections announcement or answers to questions
- (c) 12 - these Conditions (Conditions of contract)
- (d) 11 - the Specifications
- (e) 13 - description of BOQ
- (f) 14 - The Bill of Quantities
- (g) the Contractor's offer

The Contractor shall comply with any such instruction at its own cost and without any entitlement to an Extension of Time under Sub-Clause 7.1 (Execution of the Works).

The Employer's instructions must be reasonable.

- 1.3.1 Law (N/A)
The law of the Contract is stated.

1.4 Communications

Wherever provision is made for the giving or issue of any notice, instruction, consent, approval or other communication by any person, unless otherwise specified, such communication shall be written in the language stated and shall not be unreasonably withheld or delayed.

Furthermore, such communication shall follow the communication procedures as described in Schedule 16. All communication with the Employer must thereby be based on the templates listed in Schedule 16. Templates will be provided upon a kick-off meeting succeeding the Commencement Date. If the Contractor wishes so, the templates can be provided prior to the Commencement Date.

1.5 Statutory Obligations

- (a) The Contractor shall comply with all applicable laws and shall give all notices and pay all taxes, duties and fees as required by the laws in relation to the execution and completion of the Works and the remedying of any defects.
- (b) Notwithstanding Sub-Clause 1.6(a), the Contractor shall comply with all applicable safety regulations including - if applicable - the German health and safety legislation.

1.6 Transfer

The Employer shall be entitled to transfer or novate the whole or any part of its rights and obligations under the Contract to:

- (a) any third party providing finance to the Employer in connection with the project of which the Works form part; or
- (b) any third party acquiring the whole or any part of the Employer's interest in the Project; or
- (c) the holder, for the time being, of an offshore transmission license.

Other than an assignment to the holder for the time being of an offshore transmission license, any such Assignee shall not be a direct competitor of the Contractor operating in the same industry.

Save as set out above, neither Party shall transfer the whole or any part of the Contract or any benefit or interest under the Contract without the other Party's consent, which consent shall not be unreasonably withheld or delayed.

1.7 Confidentiality

- (a) The Contractor shall disclose all such confidential and other information as the Employer's Representative may reasonably require in order to verify the Contractor's compliance with the Contract.
- (b) The Parties shall keep confidential all confidential information received by one Party from the other Party relating to this Contract or the Project and shall use reasonable endeavors to prevent their employees and agents from making disclosure to any person of such confidential information, provided always that this obligation must not apply to:
 - i. Any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Contract for the performance of those obligations;
 - ii. Any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Sub-Clause;

- iii. Any disclosure required by legislation or law or any relevant stock exchange or other competent regulatory authority;
 - iv. Any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - v. Any provision of information to a Party's own professional advisers or insurance advisers;
 - vi. Any provision of information to any bona fide potential purchaser of an interest (whether direct or indirect) in the Employer or the Project and its professional advisers or insurance advisers or to any bona fide potential provider of finance to the Employer in connection with the Project and its professional advisers or insurance advisers (but, in either case, only to the extent necessary to enable a decision to be taken on the proposal)
 - vii. Any disclosure by the Employer of this Contract, e.g. as part of a data room, to any potential future partner on a Project. However, those potential future partners shall be obliged to sign a confidentiality agreement to ensure the confidentiality of this Contract prior to disclosure
 - viii. Any disclosure by the Employer of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new contractor, its advisers and lenders, should the Employer decide to re-tender the Contract; or
 - ix. Any disclosure to enable a determination to be made under Clause 15 (Resolution of Disputes) or in connection with a dispute between the Employer and any of its other contractors appointed in relation to the Project;
 - x. Any provision of information to the holder for the time being of an offshore transmission license which has acquired an interest in the Project or to a party bidding to acquire such a license and/or interest and, in each case, to their professional advisers and/or insurance advisers;
- (c) The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the Employer's prior written consent which it may withhold in its absolute discretion. The provisions of this Sub-Clause 1.8 must survive termination of the Contract or the Contractor's employment under the Contract.

1.8 Ownership of Plant and Materials

Each item of Plant and Materials must, to the extent consistent with applicable law, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

(a) When it is delivered to the Site;

(b) When the Contractor is entitled to payment of the value of the Plant and Materials under Sub-Clause 11.6 (Interim Payment) and in respect of such Plant and Materials, payment has been made.

The Contractor shall ensure that no materials or equipment that are the property of the Employer are removed from the Site.

Where the property in materials and equipment that have not yet been delivered on, to or adjacent to the Site has passed to the Employer under sub-paragraph (b) above, the Contractor shall not, except for use upon the Works, remove or cause or permit the same to be moved or removed from the premises where they are, but the Contractor shall nevertheless be responsible for any loss thereof or damage thereto (unless such loss or damage is not caused by any fault or negligence of the Contractor or the Contractor's Personnel) and for the cost of storage, handling and insurance of the same and any additional monitoring costs incurred by the Employer or the Employer's Representative in relation thereto until such time as they are delivered to and placed on or adjacent to the Site.

The Contractor shall indemnify the Employer against all liability, claims, losses or damage arising from or in relation to any defects in title or encumbrance or charge upon any Plant, Materials or equipment supplied to the Employer pursuant to this Contract unless such liability, claims, losses or damage are not caused by any fault or negligence of the Contractor or the Contractor's Personnel. 'Encumbrance or charge' for the purposes of this Sub-Clause 1.10 shall not include any form of a reasonable restriction on use of any proprietary material subject to any copyright or other intellectual property rights provided always that the same does not oblige the Employer to incur additional expense or interfere with or prevent the Employer from using the Works (including but not limited to any related financing or selling thereof) for the purposes set out in the Contract.

1.9 Anti-Bribery Warranty

The Employer is committed to observe the highest standards of legal and ethical behavior in the conduct of its worldwide business dealings. The Employer has a zero-tolerance policy towards activities of a corrupt or dishonest nature as further described in the Employer's policy regarding good business conduct, which is available on www.Companyenergy.com/businessconduct. The policy applies to all the Employer's employees and the Employer expects the Contractor to abide by this policy in connection with the Agreement.

The Contractor will not in connection with the Agreement engage in any activity, practice or conduct in any part of the world which would contravene applicable anti-corruption laws, rules or regulations applicable to the Contractor and the Employer's business operations.

The Contractor has and will maintain in place adequate procedures designed to prevent any of its employees and sub-contractors who perform services for or on behalf of the Contractor, from undertaking any conduct that in any way would give rise to an offense under applicable anti-corruption laws, rules and regulations applicable to the Contractor and the Employer's business operations.

The Contractor shall from time to time, at the reasonable request of the Employer, confirm in writing that it has complied with its undertakings under Sub-Clause 1.11.1 and Sub-Clause 1.11.3 and will provide any information reasonably requested by the Employer in support of such compliance.

2 THE EMPLOYER

2.1 Provisions of Site

The Employer shall provide the Site and right of access thereto at the times stated in the Master Time Schedule, but subject to the restrictions (if any) set out in Schedule 13 (Site Restrictions).

2.2 Permits and Licenses

The Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor:

- (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 Contractor's application for any permits, licenses or approvals required by the Laws of the Country:
 - (i) which the Contractor is required to obtain under Sub-Clause 1.6 [Statutory Obligations],
 - (ii) for the delivery of Goods, including clearance through customs, and for the export of the Contractor's Equipment when it is removed from the Site.

2.3 Employer's Instructions

The Contractor shall comply with all instructions reasonably given by the Employer in respect of the Works including the suspension of all or part of the Works.

2.4 Approvals

No approval or consent or absence of comment by the Employer or the Employer's Representative shall affect the Contractor's obligation.

2.5 Right to Set Off

The Employer reserves the right to set off any amount owed to it by the contractor under this Contract, which has fallen due and is payable against any amount that the Employer owes to the Contractor under this Contract or otherwise.

2.6 Employer's Entitlement to Terminate for Convenience

- (a) The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience by giving seven (7) days prior written notice of such termination to the Contractor,
- (b) After such termination, the Contractor shall promptly:
 - (i) cease all further work, except for such work as may have been instructed by the Employer's Representative for the protection of life or property or for the safety of the Works,
 - (ii) hand over the Contractor's Documents, Plant, Material and other work for which the Contractor has received payment and the Installation Items, and
 - (iii) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

3 EMPLOYER'S REPRESENTATIVE

The Employer may nominate one of its personnel or any third party as its representative under the Contract (the 'Employer's Representative').

Unless otherwise notified in writing to the Contract, the Employer's Representative shall have authority to carry out the duties assigned to him in the Contract, but shall have no authority to amend or terminate the Contract. The Employer's Representative shall be as stated, or as otherwise notified by the Employer to the Contractor from time to time.

4 THE CONTRACTOR

4.1 General obligations

The Contractor shall:

- (a) Carry out the Works in accordance with the Contract so that, when completed, the Works comply with the requirements set out in the Specification and are fit for the purposes for which the Works are intended, as defined in the Contract.
- (b) Carry out the Works in a proper workmanlike (referee to Specifications and Bill of Quantities and other tender documents) and careful manner and in accordance with the degree of skill and care reasonably to be expected of a qualified and competent contractor, experienced in carrying out works similar to the Works in relation to projects of a similar nature to the Project.
- (c) Provide all supervision, labor, Materials, Plant and Contractor's Equipment which may be required.
- (d) Provide, for his own personnel and Plant, all permits, licenses or approvals which are necessary for the Contractor to carry out the Works.
- (e) Provide, on or before the dates set out in the Master Time Schedule, the key interface information referred to therein.

4.2 Contractor's Representative

The Contractor shall nominate one of its personnel as its representative under the Contract (the 'Contractor's Representative'). The Contractor's Representative shall have full authority to act for the Contractor under the Contract. The Contractor's Representative shall be as stated or as otherwise notified by the Contractor to the Employer from time to time.

4.3 Subcontracting

The Contractor shall not subcontract the whole of the Works. The Contractor shall not subcontract any part of the Works without the consent of the Employer, which shall not be unreasonably withheld or delayed.

The Contractor shall be responsible for the acts or defaults of any subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor.

4.4 Performance Security (N/A)

- (a) The Contractor shall, if so required, and as a condition precedent to the operation of the Employer's obligations under the Contract, provide to the Employer:
 - (i) An on demand advance payment bond in the form of the draft set out in Schedule 8 (the 'Advance Payment Bond'), duly executed by the Surety no later than the earlier of (1) the day falling twenty-eight (28) days after the Commencement Date or (2) the day on which the advance payment covered by the said Advance Payment Bond is scheduled to be made;
 - (ii) An on demand performance bond in the form of the draft set out in Schedule 9 (the 'Performance Bond'), duly executed by the Surety no later than twenty-eight (28) days after the Commencement Date; and

- (iii) A parent company guarantee in the form of the draft set out in Schedule 10 (the 'Parent Company Guarantee'), duly executed by the guarantor no later than twenty-eight (28) days after the Commencement Date.
The Contractor shall deliver to the Employer, during the period in which any such performance security subsists, updated accounts for the Contractor, the guarantor and the Surety providing any such bond.
- (b) The Contractor shall ensure that the Parent Company Guarantee remains in full force and effect from the date of its provision until the completion of the Contractor's obligations pursuant to Sub-Clause 9.1. If the Contractor fails to maintain the Parent Company Guarantee in accordance with this Sub-Clause, the Contractor shall, within thirty (30) days of the Parent Company Guarantee ceasing to be in full force and effect, provide to the Employer a replacement parent company guarantee (in the form set out in Schedule 10 (Parent Company Guarantee)) duly executed by a guarantor with a credit rating.
- (c) Without prejudice to the Employer's right to terminate the Contractor's employment under this Contract pursuant to Sub-Clause 12.1 (Default by Contractor), if the Contractor fails to maintain the Parent Company Guarantee in accordance with this Sub-Clause, the Contractor shall not be entitled to any further payment under this Contract until such time as the replacement guarantee, duly executed by the guarantor, is provided to the Employer.
- (d) If the credit rating assigned to the provider of the Performance Bond and/or the Advance Payment Bond (the 'Surety') (or the long term unsecured and unsubordinated debt of such Surety) is downgraded to less than that specified, the Contractor shall procure a replacement bond promptly (and in any event within twenty-eight (28) days of such downgrading), in the form of the Advance Payment Bond or the Performance Bond (as the case may be) and issued by a bank or insurance company previously approved by the Employer and with a credit rating not less than that specified.
- (e) Failure by the Contractor to maintain the Advance Payment Bond and/or the Performance Bond in full force and effect until the Expiration Date (as such term is defined therein) or to replace the same in accordance with this Sub-Clause must entitle the Employer to withhold a sum equivalent to the value of the Advance Payment Bond or the Performance Bond (as the case may be) from the Contract Price unless and until a suitable replacement bond is provided by the Contractor or, if there are not sufficient sums due to the Contractor against which the Employer can exercise such right of set off, the Employer may terminate the Contractor's employment under this Contract forthwith by notice, in which event the provisions of Sub-Clause 12.1 (Default by Contractor) must apply.
- (f) If the taking over notice has not been issued in accordance with Sub-Clause 8.2 on or before the date being twenty-eight (28) days prior to the expiry of the Performance Bond, the Contractor shall, on or before such date, procure that the date of expiry of the Performance Bond is extended to a date on or after the

date being three (3) months after the then programmed date for the issue of the taking over notice, failing which the Contractor acknowledges that the Employer may make a demand under the Performance Bond in accordance with its terms or may withhold a sum equivalent to the outstanding value of the Performance Bond from the Contract Price, in either case until the condition referred to above has been satisfied.

4.5 Inspection and Testing

- (a) The Employer's Representative shall at all reasonable times:
 - (i) Have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
 - (ii) During production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.
- (b) The Contractor shall give the Employer's Representative full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.
- (c) The Contractor shall give notice to the Employer's Representative whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Employer's Representative shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Employer's Representative does not require to do so. If the Contractor fails to give notice, he shall, if and when required by the Employer's Representative, uncover the work and thereafter reinstate and make good, all at the Contractor's cost, unless such failure is not caused by any fault or negligence of the Contractor or the Contractor's Personnel.
- (d) The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labor, materials, and suitably qualified and experienced staff, as are necessary to carry out the tests set out in the Specification. The Contractor shall agree, with the Employer's Representative, the time and place for the specified testing of any Plant, Materials and other parts of the Works.
- (e) The Employer's Representative may, under Clause 10 (Variations), vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

- (f) The Employer's Representative shall give the Contractor not less than twenty-four (24) hours' notice of the Employer's Representative's intention to attend the tests. If the Employer's Representative does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Employer's Representative, and the tests must then be deemed to have been made in the Employer's Representative's presence.
- (g) If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give notice to the Employer's Representative and shall be entitled subject to Sub-Clause 6.3 (Contractor's Claims) to:
 - (i) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 6.2 (Right to Claim), and
 - (ii) Payment of any such Cost plus reasonable profit, which must be included in the Contract Price.
- (h) The Contractor shall promptly forward to the Employer's Representative duly certified reports of the tests. When the specified tests have been passed, the Employer's Representative shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Employer's Representative has not attended the tests, he shall be deemed to have accepted the readings as accurate

4.6 Health and Safety

- (a) If, in the reasonable opinion of the Employer's Representative (and without prejudice to Sub-Clause 12.1 (Default by Contractor)), the Contractor fails to meet its health and safety obligations under the Contract, the Employer's Representative shall be entitled to issue a safety improvement notice and the Parties shall follow the safety improvement procedure as set out in this Sub-Clause. On receipt of the safety improvement notice, the Contractor shall at his own cost as soon as is reasonably practicable, but in no event more than seven (7) days after receipt of such notice, provide the Employer's Representative with full supporting details of the steps taken to address the issues raised in the safety improvement notice.
- (b) The Employer's Representative shall audit the actions taken by the Contractor to determine any additional actions that the Contractor needs to take or whether the safety improvement notice has been satisfactorily handled by the Contractor. Where, in the reasonable opinion of the Employer's Representative, the Contractor has failed to act on a safety improvement notice, the Contractor shall pay liquidated damages to the Employer in an amount of two thousand (EURO 2,000) Euros per commenced day (or part thereof) until the safety improvement notice has been satisfactorily handled and rectified by the Contractor.

tor. The Contractor's payment of such liquidated damages must not deprive the Employer from:

- (i) Claiming damages in excess of the paid/payable liquidated damages, if the Employer, due to the Contractor's failure to comply with its health and safety obligations, has caused the Employer to suffer a greater loss than the amount of such liquidated damages; or
 - (ii) Making use of other remedies for breach of contract available to it under the Contract. The amount(s) due under this Sub-Clause shall be set off against the next payment due to the Contractor in accordance with Clause 11 (Contract Price and Payment) after the safety improvement notice has been complied with by the Contractor.
- (c) If the contractor fails to or appears to perform inadequately according to contract Employer reserves the right to impose an intensified "QHSE inspection/surveillance" until performance is satisfactory.
- (d) The Parties agree that the rate of damages referred to in this Sub-Clause is a genuine pre-estimate of the Employer's losses in the event of the Contractor's failure to comply with its health and safety obligations in relation to the Works. However, in the event that any of the provisions for payment of such liquidated damages are held to be unenforceable in whole or in part, the Employer shall be entitled to recover from the Contractor general damages suffered by the Employer.

4.7 Progress Reports (N/A)

Monthly progress reports shall be prepared by the Contractor and submitted to the Employer's Representative in 2 copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within seven (7) days after the last day of the period to which it relates.

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

Each report shall be in the form and with the content set out in Schedule 14 (Monthly Progress Reports).

In addition to the monthly Progress Reports described above, daily progress reports covering all offshore activities related to the execution and completion of the Works shall be prepared and signed by an inspector (to be appointed by the Employer's Representative) and counter-signed by the Contractor's Representative, on a daily basis.

If the inspector is temporarily absent from the Works, the Contractor's Representative shall prepare, sign and submit the progress reports to the Employer's Representative for counter-signature, on a daily basis.

Any such daily progress reports shall be in a form approved by the Employer's Representative and based upon the form set out in Schedule 15 (Form of Daily Progress Report) and the level of detail in the daily progress reports shall be sufficient for the Employer's Representative to monitor the progress of any such Contractor offshore activities in order to coordinate the work with any other contractors employed by the Employer.

If the Contractor fails to provide a monthly progress report and/or any daily progress report for which it is responsible, the Employer shall be entitled to retain 10% from any future payments due to the Contractor in accordance with Sub-Clause 11 (Contract Price and Payments).

When the Contractor has remedied such breach, he shall be entitled to be paid the sums so retained less the amount of any loss, claim, expense and/or liability suffered or incurred by the Employer as a result of such breach. The balance of the retained amount(s) (if any) shall be released without interest to the Contractor with the next payment due to the Contractor in accordance with Sub-Clause 11 (Contract Price and Payment).

If the Contractor fails to provide a monthly progress report and/or any daily progress report for which the Contractor is responsible, the Contractor shall pay liquidated damages in an amount of EUR 4,000 per commenced day for each report which is outstanding until the report has been provided. The Employer shall in accordance with Sub-Clause 2.5 (Right to Set Off) be entitled to set off such liquidated damages against any future payments due to the Contractor in accordance with Sub-Clause 11 (Contract Price and Payment). The Contractor agrees that such liquidated damages constitute a genuine pre-estimate of the Employer's loss.

5 DESIGN BY THE CONTRACTOR (N/A)

5.1 Contractor's Design

The Contractor shall carry out design to the extent specified in the Specification. The Contractor shall promptly submit to the Employer all designs prepared by him. Within fourteen (14) days of receipt, the Employer shall notify any comments or, if the design submitted is not in accordance with the Contract, shall reject it stating the reasons. The Contractor shall not construct any permanent element of the Works designed by him within thirty (30) days after the design has been submitted to the Employer or where the design for that element has been rejected in accordance with this Sub-Clause. Design that has been so rejected shall be promptly amended and re-submitted. The Contractor shall resubmit all designs commented on taking these comments into account as necessary and the process referred to in this Sub-Clause shall be repeated.

5.2 Responsibility for Design

The Contractor shall remain responsible for his tendered design and the design under this Clause, both of which shall be fit for the intended purposes defined in the Contract and he shall also remain responsible for any infringement of any patent or copyright in respect of the same.

6 EMPLOYER'S LIABILITIES

6.1 Employer's Liabilities

In this Contract, Employer's Liabilities mean:

- (a) War, hostilities (whether war be declared or not), invasion and/or act of foreign enemies, in each case within the Country;
- (b) Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country;
- (c) Riot, commotion or disorder by persons other than the Contractor's or any of its sub-contractors' personnel and other employees, affecting the Site and/or the Works;
- (d) Ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly, except to the extent to which the Contractor may be responsible for the use of any radio-active material;
- (e) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (f) Natural disasters and acts of god such as landslides, floods, fires, explosions, lightning and induction caused by lightning causing damage to equipment (but only if reasonable protection devices have been installed and connected upon installation of any Plant and/or Materials as set out in the Specification), earthquakes, subsidence, storms, cyclones, typhoons, hurricanes, tornados, tsunamis, perils of sea, volcanic activity, and other extreme weather conditions (such as excessive wind during erection above 20 m/s) and any other extraordinary operation of the forces of nature;
- (g) Not used;
- (h) Not used;
- (i) Not used;
- (j) A suspension under Sub-Clause 2.3 (Employer's Instructions) unless it is attributable to the Contractor's breach of the Contract;
- (k) Any breach of the Contract by the Employer;
- (l) Physical obstructions or physical conditions, other than climatic conditions, encountered on the Site during the performance of the Works, which obstructions or condi-

tions were not reasonably foreseeable by an experienced contractor and which the Contractor immediately notified to the Employer;

(m) Any delay or disruption caused by any Variation;

(n) Any change to the law of the Contract after the date of signing the Agreement which was not reasonably foreseeable to an experienced contractor as at such date; and

(o) Not used;

(p) Not used.

6.2 Right to Claim

If the Contractor suffers delay in the carrying out and/or completion of the Works as a result of any one of the Employer's Liabilities and/or incurs Cost as a result of any of the Employer's Liabilities set out in paragraphs (j) - (n) of Sub-Clause 6.1 (Employer's Liabilities), the Contractor shall be entitled to an appropriate adjustment to the Master Time Schedule and extension to the Time for Completion and to payment of the amount of any such Cost.

6.3 Claims Procedure

- (a) If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under this Clause 6 or otherwise in connection with the Contract, the Contractor shall give notice to the Employer's Representative, describing the event or circumstance giving rise to the claim. The notice must be given as soon as practicable, and no later than twenty-eight (28) days after the Contractor became aware of the event or circumstance.
- (b) If the Contractor fails to give notice of a claim within such period of twenty-eight (28) days, the Time for Completion must not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim unless such failure is not caused by any fault or negligence of the Contractor or the Contractor's Personnel. Otherwise, the following provisions of this Sub-Clause must apply.
- (c) The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- (d) The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Employer's Representative. Without admitting the Employer's liability, the Employer's Representative may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further con-

temporary records. The Contractor shall permit the Employer's Representative to inspect all these records, and shall (if instructed) submit copies to the Employer.

- (e) Within sixty (60) days from the date of receipt by the Employer's Representative of a notice submitted pursuant to Sub-Clause 6.3(a), or within such other period as may be proposed by the Contractor and approved by the Employer's Representative, the Contractor shall send to the Employer's Representative such full details of the claim as are then available to it, including all available supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
 - (i) This fully detailed claim must be considered as interim;
 - (ii) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Employer's Representative may reasonably require; and
 - (iii) The Contractor shall send a final claim within twenty-eight (28) days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Employer's Representative.
- (f) Within forty-two (42) days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer's Representative and approved by the Contractor, the Employer's Representative shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

7 TIME FOR COMPLETION

7.1 Execution of the Works

The Contractor shall commence the Works on or after the Commencement Date and shall proceed expeditiously and without delay and shall complete the Works within the Time for Completion.

The Contractor shall also complete each Milestone Activity stated by the Key Date identified in the Master Time Schedule contained in Schedule 2.

7.2 Not used

7.3 Rate of Progress

(a) If, at any time:

- (i) Actual progress of the Works or any Section is too slow to complete within the Time for Completion or to complete a Milestone Activity by the relevant Key Date; and/or
- (ii) Progress has fallen (or will fall) behind the current Master Time Schedule other than as a result of an Employer Liability, then the Employer's Representative may instruct the Contractor to submit a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete the Works and/or Section within the Time for Completion and/or the Milestone Activity by the relevant Key Date.

(b) Unless the Employer's Representative notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of the Contractor's personnel and/or equipment, at the risk and cost of the Contractor, unless such delay in progress is not caused by any fault or negligence of the Contractor or the Contractor's Personnel. If these revised methods cause the Employer to incur additional costs, the Contractor shall pay or allow such costs to the Employer, in addition to delay damages (if any) under Sub-Clause 7.4(a) (Late Completion) below, unless the delay in progress is not caused by any fault or negligence of the Contractor or the Contractor's Personnel.

7.4 Late Completion (and milestones)

(a) If the Contractor fails to complete the Works or any Section within the Time for Completion and/or a Milestone Activity by the relevant Key Date (and without prejudice to the Contractor's liability on any termination of the Contractor's appointment under the Contract as a result of a delay in carrying out and/or completing the Works), the Contractor's only liability to the Employer for such failure must, subject to Sub-Clause 7.4(d), be to pay the amount stated for each day or part thereof for which he fails to complete the Works or Section.

- (b) The Parties agree that the rates of delay damages referred to in Sub-Clause 7.4(a) are genuine pre-estimates of the Employer's losses in the event of the Contractor's failure to comply with Sub-Clause 7.1 (Execution of the Works). However, in the event that any of the provisions for payment of delay damages are held to be unenforceable in whole or in part, the Employer shall be entitled to recover from the Contractor general damages suffered by the Employer, provided that such general damages must not exceed the amount of the liquidated delay damages that would otherwise have been payable by the Contractor.
- (c) The aggregate amounts payable by the Contractor pursuant to Sub-Clause 7.4(a) may be invoiced weekly by the Employer and the Contractor shall pay such invoice within thirty (30) days from the receipt of the invoice. The Employer may set off the amounts payable against any future payments in accordance with Sub-Clause 2.5 (Right to Set Off).
- (d) If the maximum amount of delay damages payable by the Contractor pursuant to Sub-Clause 7.4(a) becomes due, the Employer may, without prejudice to its rights under Sub-Clause 12.1 (Default by Contractor) by written notice to the Contractor and at the Contractor's cost, take such steps as are reasonably necessary to complete the Works.

8 TAKING OVER

8.1 Completion (N/A)

The Contractor shall notify the Employer when he considers that the Works or any Section is or are complete.

8.2 Taking-Over Notice (N/A)

The Employer shall notify the Contractor when he considers that the Contractor has completed the Works or any Section in accordance with the Contract, stating the date accordingly. Alternatively, the Employer may notify the Contractor that the Works or Section, although not fully complete, is or are ready for taking over, stating the date accordingly.

The Employer shall take over the Works or Section upon the issue of this notice. The Contractor shall promptly complete any outstanding work and, subject to Clause 9 (Remedying Defects), clear the Site.

8.3 Operation and Maintenance Manual (N/A)

- (a) Prior to the issue of the Taking-Over Notice, the Contractor shall supply to the Employer's Representative provisional as-built records and operation and maintenance manuals in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Plant.
- (b) The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 8.2 (Taking-Over Notice) until the Employer's Representative has received final as built records and operation and maintenance manuals in such detail, and any other manuals specified in the Specification for these purposes.

9 REMEDYING DEFECTS (N/A)

9.1 Remediating Defects

- (a) The Employer may at any time prior to the expiry of the period stated (the 'Defects Liability Period'), notify the Contractor of any defects or outstanding work. The Contractor shall remedy any such defects within an agreed fixed date (at no cost whatsoever to the Employer if the defect is due to the Contractor's failure to comply with its obligations in accordance with the Contract).
- (b) The cost of remediating defects attributable to any other cause shall be valued as a Variation. Failure to remedy any defects or complete outstanding work within a reasonable time of the Employer's notice shall entitle the Employer to carry out all necessary work at the Contractor's cost. If the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, the Employer may terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor, unless the defect or damage was not caused by any fault or negligence of the Contractor or the Contractor's Personnel.

9.2 Uncovering and Testing

The Employer may give instruction as to the uncovering and/or testing of any work. Unless as a result of any uncovering and/or testing it is established that the Contractor's design, Materials, Plant or workmanship are not in accordance with the Contract, the Contractor shall be paid for such uncovering and/or testing as a Variation in accordance with Sub-Clause 10.2 (Valuation of Variations).

9.3 Extension of the Defects Liability Period (N/A)

The provisions of Sub-Clause 9.1 (Remediating Defects) shall apply to any replacement or renewal carried out by the Contractor at its own cost, as if such replacement or renewal had been taken over on the day of its completion provided always that the Defects Liability Period must not be extended by more than one (1) year.

9.4 Latent Defects (N/A)

For the period commencing on the expiry of the Defects Liability Period and expiring five (5) years after the date of the notice of completion issued pursuant to Sub-Clause 8.2 (Taking-Over Notice), the Contractor shall remain responsible for the rectification of defects attributable to:

- (a) The design of the Works;
- (b) Plant, Materials or workmanship not being in accordance with the Contract;
- (c) Improper operation or maintenance which was attributable to matters for which the Contractor is responsible; or
- (d) Failure by the Contractor to comply with any other obligation;

and which the Parties did not discover and detail in an inspection report to be signed by or on behalf of both Parties following an ordinary and reasonably thorough inspection of the Works undertaken jointly by the Parties not more than two (2) weeks prior to the expiry of the Defects Liability Period.

10 VARIATIONS

10.1 Right to Vary

The Employer may instruct Variations.

10.2 Valuation of Variations

Variations shall be valued as follows:

- (a) At a lump sum price agreed between the Parties; or
- (b) At the rates (if any) set out in the Schedule of Rates; or
- (c) In the absence of any such rates, at appropriate new rates, as may be agreed or which the Employer considers appropriate; or
- (d) Not used
- (e) If the Employer so instructs, at the day work rates (if any) set out in the Schedule of Rates for which the Contractor shall keep records of hours of labour and Contractor's Equipment, and of Materials used.

10.3 Not used

10.4 Not used

10.5 Variation Procedure

The Contractor shall submit to the Employer an itemised make-up of the value of Variations within twenty-eight (28) days of the instruction or of the event giving rise to the claim. Thereafter, the procedure set out in Sub-Clause 6.3 (Claims Procedure) must apply.

11 CONTRACT PRICE AND PAYMENT

11.1 Payment of Contract Price

In consideration for the full and proper performance by the Contractor of its obligations under this Contract, the Employer shall pay the Contract Price (and any other amount properly due and owing by the Employer) to the Contractor in accordance with this Clause 11 and the provisions of Schedules 3 (Milestone Payment Schedule) and 4 (Schedule of Rates).

11.2 Advance Payment

The Employer shall, subject to receipt of any performance security which the Contractor is obliged to provide in accordance with Sub-Clause 4.4 (Performance Security), pay to the Contractor, by electronic transfer within sixty (60) days of receipt of the Contractor's invoice any advance payment stated, on account of the works to be carried out by the Contractor under the Contract.

11.3 Provisional Sums

Each Provisional Sum must only be used, in whole or in part, in accordance with the Employer's instructions, and the Contract Price must be adjusted accordingly. The Contract Price must include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Employer shall have instructed. For each Provisional Sum, the Employer may instruct:

- (a) Work to be executed by the Contractor and valued in accordance with the Schedule of Rates; and/or
- (b) Plant, Materials or services to be purchased by the Contractor, for which the following must be included in the Contract Price:
 - (i) The actual amounts paid (or due to be paid) by the Contractor; and
 - (ii) A sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any).

The Contractor shall, when required by the Employer's Representative, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

11.4 Milestone Payment Schedule

(a) Schedule 3 (Milestone Payment Schedule) sets out in respect of the Works, the Contract Price broken down into Milestone Payments against specified Milestone Activities.

(b) The Milestone Payment against each Milestone Activity must become due only when the Milestone Activity has been achieved in full.

11.5 Interim Payment Application

In respect of each Milestone Activity for which the Contractor considers it is entitled to payment (but on not more than one occasion each Month), the Contractor may apply to the Employer's Representative, for payment in respect of the Milestone Activities completed to date (but not yet paid for) and/or any other amounts due and payable under the Contract (an 'Interim Payment Application'). Such Interim Payment Application must state the total amount claimed to be payable in accordance with Sub-Clause 11.6 (Interim Payments) and must separately identify (including full and itemized particulars):

- (a) The value claimed in accordance with the Milestone Payment Schedule by the Contractor to be attributable to the achievement of each Milestone Activity which has been achieved since the previous payment application; and
- (b) Any additional sums to which the Contractor considers itself entitled or deductions to be made under any other provision of this Contract,

and must be accompanied by complete and detailed documentary evidence to confirm that amounts included in the application have been properly calculated, that the relevant Milestone Activities have occurred and that the Contractor is entitled to any additional sums or deductions claimed.

Invoice must be send electronical.

For Danish companies the invoice must be send to CVR: 3187 5544 and EAN: 579 800 515 5607.

For other companies the invoice must be send in pdf-format to IBNI@sonfor.dk

11.6 Interim Payments (N/A)

- (a) The Employer's Representative shall, within twenty-eight (28) days after receiving an Interim Payment Application and supporting documents, issue to the Contractor an Interim Payment Certificate which must state the amount which the Employer's Representative fairly determines to be due, with supporting particulars.
- (b) Following the issue of an Interim Payment Certificate, the Contractor shall submit a valid VAT invoice to the Employer for the sum due in accordance with that Certificate. The invoice must include a reference to the purchase order number and must set out the Contractor's name, address, company number and VAT registration number (if any) and must be sent to the address referenced. The due date for payment of such amount must be the date of receipt of the Contractor's invoice submitted in accordance with this Sub-Clause 11.6(b) (the 'Due Date for Payment') and the Employer shall pay the amount due to the Contractor within sixty (60) days of the Due Date for Payment (the 'Final Date for Payment').
- (c) Without prejudice to any other remedy which the Employer may have, the Employer shall be entitled to deduct from any payment due to the Contractor under the Contract any retention which is stated and any sums which are due from the Contractor to the Employer under and in accordance with the Contract.

(d) Where the Employer intends to withhold payment of any amount stated in an invoice written notice must be given to the Contractor no later than seven (7) days before the Final Date for Payment and the notice must state the amount to be withheld and the ground(s) for withholding payment (and where there is more than one ground, each ground and the amount attributable to it).

11.7 Payment of First Half of Retention (N/A)

One half of any retention which is stated to apply shall be paid by the Employer to the Contractor within fourteen (14) days after issuing the notice under Sub-Clause 8.2 (Taking-Over Notice).

11.8 Payment of Second Half of Retention (N/A)

The remainder of any retention which is stated to apply shall be paid by the Employer to the Contractor within fourteen (14) days after the later of the expiry of the Defects Liability Period, or the remedying of defects or the completion of outstanding work notified during the Defects Liability Period, whichever is the later.

11.9 Final Payment

Within forty-two (42) days of the latest of the events listed in Sub-Clause 11.8 (Payment of Second Half of Retention), the Contractor shall submit a final account to the Employer together with any documentation reasonably required to enable the Employer to ascertain the final contract value. The due date for payment of any outstanding amount must be the date of receipt by the Employer of the Contractor's final account and an invoice in respect of any amount due and the final date for payment must be sixty (60) days after the due date for payment. Where the Employer intends to withhold payment of any amount due, a written notice must be given to the Contractor no later than seven (7) days before the Final Date for Payment and the notice must state the amount to be withheld and the ground(s) for withholding payment (and where there is more than one ground, each ground and the amount attributable to it).

11.10 Currency

Payment in Danish kr.

11.11 Delayed Payment

Without prejudice to any other rights under the Contract, which the Contractor may have, the Contractor shall be entitled to interest at the rate stated for each day the Employer fails to pay beyond the final date for payment.

12 DEFAULT

12.1 Default by Contractor

If the Contractor abandons the Works, refuses or fails to comply with a valid instruction of the Employer or fails to proceed expeditiously and without delay, or is, despite a written complaint, in breach of the Contract, the Employer may give notice referring to this Sub-Clause and stating the default.

If the Contractor has not taken all practicable steps to remedy the default within fourteen (14) days after the Contractor's receipt of the Employer's notice, the Employer may by a second notice given within a further twenty-one (21) days, terminate the Contract. The Contractor shall then demobilise from the Site leaving behind Materials and Plant and any Contractor's Equipment which the Employer instructs in the second notice is to be used until the completion of the Works.

12.2 Default by Employer

If the Employer fails to pay an amount agreed or determined as due under and in accordance with the Contract, the Contractor may give notice referring to this Sub-Clause and stating the default. If the default is not remedied within twenty-one (21) days after the Employer's receipt of this notice, the Contractor may suspend the execution of all or parts of the Works.

If the amount due for payment exceeds the amount stated and the default is not remedied within twenty-eight (28) days after the Employer's receipt of the Contractor's notice, the Contractor may by a second notice given within a further thirty-two (32) days, terminate the Contract. The Contractor shall then demobilize from the Site.

12.3 Substantial Deterioration of Financial Situation and Insolvency

If the Contractor or the Employer encounters or is likely to encounter a substantial deterioration of its financial situation which seriously puts at risk the fulfilment of its obligations under the Contract or if the Contractor or the Employer is declared insolvent under any applicable law, the other Party may by notice terminate the Contract immediately. The Contractor shall then demobilize from the Site leaving behind, in the case of the Contractor's insolvency; any Contractor's Equipment which the Employer instructs in the notice is to be used until the completion of the Works.

12.4 Payment upon Termination

After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- (a) Any sums to which the Contractor is entitled under Sub-Clause 6.2 (Right to Claim);
- (b) Any sums to which the Employer is entitled;
- (c) If the Employer has terminated under Sub-Clause 12.1 (Default by Contractor) or Sub-Clause 12.3 (Insolvency), the compensation payable to the Employer in accordance with Sub-Clause 12.5 (Contractor Default Compensation);

- (d) If the Contractor has terminated under Sub-Clause 12.2 (Default by Employer) or 12.3 (Insolvency), the Contractor shall be entitled to the Cost of his suspension and demobilization together with a sum equivalent to five per cent (5%) of that part of the unpaid balance of the Contract Price which would have fallen due for payment in the three (3) month period after the termination date, if termination had not occurred; and
- (e) If the Employer has terminated under Sub-Clause 2.6 (Employer's Entitlement to Termination for Convenience), the Employer's Representative shall determine the value of the Work done and issue a Payment Certificate which shall include:
 - (i) The amounts payable for any work carried out for which a price is stated in the Contract;
 - (ii) The Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
 - (iii) Any other Cost or liability which in the circumstances was reasonable incurred by the Contractor in the expectation of the completing the Works;
 - (iv) The Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
 - (v) The Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

The net balance due shall be paid or repaid within sixty (60) days of receiving the termination balance. This Sub-Clause shall not prejudice any other rights of the Contractor under the Contract.

12.5 Contractor Default Compensation

- (a) If the Employer, after a termination in accordance with Sub-Clause 12.1 (Default by Contractor), has elected to complete the Works and/or arrange for any other entities to do so, the Contractor shall be liable to the Employer for the additional costs incurred by the Employer in procuring completion of the Works, including delay damages for any associated delay at the rate set out and all other costs thereby incurred by the Employer and the Employer may withhold any further payment to the Contractor under the Contract pending ascertainment of the sums due to the Employer pursuant to this Sub-Clause 12.5(a) and may set off any sums so ascertained against any such further payment unless the Contractor's default justifying the Employer's termination was not caused by any fault or negligence of the Contractor or the Contractor's Personnel.

- (b) If the Employer, after a termination in accordance with Sub-Clause 12.1 (Default by Contractor), has not elected to complete the Works and/or arrange for any other entities to do so, the Contractor shall be liable for the reimbursement to the Employer of such part of the Contract Price as has been paid to the Contractor as at the termination date and for any direct costs incurred by the Employer (including the cost of reinstating the Site to its former condition prior to commencement of the Works, any costs incurred in returning Goods to the Contractor and any financing costs incurred as a result of such termination) unless the Contractor's default justifying the Employer's termination was not caused by any fault or negligence of the Contractor or the Contractor's Personnel.
- (c) If the Employer intends to complete the Works, he shall, as soon as practicable following the termination date, prepare an initial account (the 'Initial Account') setting out reasonable estimates of any costs, expenses, loss, damage and liabilities referred to in Sub-Clause 12.5(a) and shall provide such Initial Account to the Contractor together with such supporting evidence as is available justifying the relevant amount claimed and including a breakdown of each individual element of such Initial Account.
- (d) If the Employer has served notice pursuant to Sub-Clause 12.5(c) above, he shall:
 - (i) Prepare further accounts ('Additional Accounts') setting out any additional costs, expenses, losses, damage and liabilities and/or any reduction in any costs, expenses, losses, damages and liabilities where the costs, expenses, losses, damages and liabilities claimed in the Initial Account or any previous Additional Account do not reflect the actual costs, expenses, losses, damages and liabilities incurred by the Employer (but not more or less frequently than once every month) and shall provide such Additional Accounts to the Contractor together with supporting evidence justifying the relevant amount claimed and including a breakdown of each individual elements of such Additional Account; and
 - (ii) Prepare a final termination account (the 'Final Termination Account') within three (3) months of completion of the Works, setting out the total amount payable by the Contractor to the Employer calculated in accordance with Sub-Clause 12.5(a) above, together with supporting evidence justifying the relevant amount and including a breakdown of each individual element of such Final Termination Account.
- (e) The final date for payment by the Contractor of any amount set out in an Initial Account or an Additional Account prepared under and in accordance with this Sub-Clause 12.5 must be thirty (30) days after the date of receipt by the Contractor of the Initial Account or Additional Account (as the case may be).

- (f) If the aggregate of the amounts previously paid by the Contractor pursuant to Sub-Clause 12.5(e) exceeds the amount payable by the Contractor to the Employer as set out in the Final Termination Account prepared under and in accordance with Sub-Clause 12.5(d)(ii), the Employer shall repay such excess to the Contractor within sixty (60) days after the date of receipt by the Contractor of the Final Termination Account, which must be the final date for payment of such amount.
- (g) If the amount payable by the Contractor to the Employer as set out in the Final Termination Account prepared under and in accordance with Sub-Clause 12.5(d)(ii), exceeds the aggregate of the amounts previously paid by the Contractor pursuant to Sub-Clause 12.5(e), the Contractor shall pay the difference to the Employer within thirty (30) days after the date of receipt by the Contractor of the Final Termination Account, which must be the final date for payment of such amount.
- (h) If the Employer has chosen not to complete the Works, he shall submit the Final Termination Account to the Contractor within six (6) months of the Termination Date and the final date for payment of the amount set out there in must be thirty (30) days after the date of receipt by the Contractor of the Final Termination Account.

This Sub-Clause must not prejudice any other rights of the Contractor and/or the Employer under the Contract.

13 RISK AND RESPONSIBILITY

13.1 Indemnities

In this Clause “Contractor Group” means the Contractor and its Affiliates, its and their subcontractors of any tier and for all of the foregoing, its and their partners, co-venturers, joint-venturers, Affiliates, vendors, agents, representatives, directors, officers and employees (including agency personnel), but not the Employer Group. Likewise “Employer Group” means the Employer and its Affiliates, its and their contractors and subcontractors of any tier (including the Engineer) and for all of the foregoing, its and their partners, co-venturers, joint-venturers, Affiliates, vendors, agents, representatives, directors, officers and employees (including agency personnel), but not the Contractor Group.

- (a) The Contractor shall be responsible for and shall save, indemnify, defend and hold harmless the Employer Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
- (i) loss of or damage to property of the Contractor Group whether owned, hired, leased or otherwise provided by the Contractor Group arising from, relating to or in connection with the performance or non-performance of the Contract; and
 - (ii) personal injury, including death or disease, to any person employed by the Contractor Group arising from, relating to or in connection with the performance or non-performance of the Contract; and
 - (iii) personal injury, including death or disease, or loss of or damage to the property of any third party arising from, relating to or in connection with the performance or non-performance of the Contract. For the purposes of this Sub-Clause 13.1(a)(iii) "third party" shall mean any party which is not a member of the Employer Group or Contractor Group.
- (b) The Employer shall be responsible for and shall save, indemnify, defend and hold harmless the Contractor Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
- (i) loss of or damage to property of the Employer Group whether owned, hired, leased or otherwise obtained by the Employer Group, which is located at the Site and which arises from, relates to or is connected with the performance or non-performance of the Contract, but excluding:
 - 1. the Works;
 - 2. any Employer's Equipment and/or Installation Items; and
 - 3. any port and/or harbor areas and/or facilities that are the subject of a lease entered into by the Employer and/or an Employer Company,

and provided always that the Employer's liability pursuant to this indemnity shall be limited to the cost of repair or replacement of the relevant Employer Group property and this indemnity shall not extend to and cover any of the Contractor's costs incurred and/or liability arising under this Contract in respect of any consequent delay to the completion of the Works and/or the rectification of any defects therein; and

- (ii) personal injury, including death or disease, to any person employed by the Employer Group arising from, relating to or in connection with the performance or non-performance of the Contract; and
 - (iii) personal injury, including death or disease, to any third party to the extent that any such injury is caused by the negligence or breach of duty (whether statutory or otherwise) of the Employer Group. For the purposes of this Sub-Clause 13.1(b)(iii) "third party" shall mean any party which is not a member of the Contractor Group or Employer Group.
- (c) Except as provided by Sub-Clause 13.1(a)(i) and Sub-Clause 13.1(a)(ii), the Employer shall save, indemnify, defend and hold harmless the Contractor Group from and against any claim of whatsoever nature arising from pollution emanating from the property of the Employer Group arising from, relating to or in connection with the performance or non-performance of the Contract.
 - (d) Except as provided by Sub-Clause 13.1(b)(i) and Sub-Clause 13.1(b)(ii), the Contractor shall save, indemnify, defend and hold harmless the Employer Group from and against any claim of whatsoever nature arising from pollution emanating from the property and equipment of the Contractor Group (including but not limited to marine vessels) arising from, relating to or in connection with the performance or non-performance of the Contract.
 - (e) Subject to Sub-Clause 13.1(f), the Contractor shall be responsible for the recovery or removal and when appropriate the marking or lighting of any wreck or debris arising from or relating to the performance of the Work or the property, equipment, vessels or any part thereof provided by the Contractor Group in relation to the Contract, when required by law, or governmental authority, or where such wreck or debris is interfering with Employer operations or is a hazard to fishing or navigation and shall, except as provided for in Sub-Clause 13.1(b) and Sub-Clause 13.1(c), save, indemnify, defend and hold harmless the Employer Group in respect of all claims, liabilities, costs (including legal costs), damages or expenses arising out of such wreck or debris, whether or not the negligence or breach of contract of the Employer Group caused or contributed to such wreck or debris.
 - (f) Notwithstanding the provisions of Sub-Clause 13.1(a), where the Employer provides transportation for the property of the Contractor Group to the offshore Site, and the Employer elects to, or is required by law or governmental authority to recover or remove or mark or light any wreck or debris of such property, the Employer shall, except as hereinafter provided, save, indemnify, defend,

and hold harmless the Contractor Group from and against any claim of whatever nature relating to the costs of such recovery, removal, marking or lighting. Provided, however, that the foregoing indemnity and hold harmless shall not apply to the extent that the recovery, removal, marking or lighting arises as a result of the negligence or breach of contract of the Contractor Group.

- (g) Notwithstanding the foregoing provisions of this Sub-Clause 13.1, the Contractor shall save, indemnify, defend and hold harmless the Employer Group from and against any costs, losses, expenses or liability incurred in connection with the loss of or damage to property of the Employer Group, up to the level of any deductible for which the insured is responsible pursuant to the terms of any of the insurance policies to be maintained by the Employer in accordance with Schedule 12 (Required Insurances) to the extent that the same arises from, relates to or is connected with the performance or non-performance by the Contractor of its obligations under the Contract.
- (h) The indemnities given under this Sub-Clause 13.1 and the liability exclusion set out in Sub-Clause 13.4 shall not apply to the extent that the loss or damage is caused by the willful misconduct and/or gross negligence of the indemnified party.
- (i) If either Party becomes aware of any incident likely to give rise to a claim under the above indemnities, it shall notify the other and both Parties shall cooperate fully in investigating the incident.
- (j) Where applicable and if requested by Contractor in writing, the Employer shall make available to the Contractor details of its other contractors to be present at the Site.

13.2 Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued for the Works, when responsibility for the care of the relevant part of the Works shall pass to the Employer. If a Taking-Over Certificate is issued for any Section of the Works, responsibility for the care of the Section shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage occurs to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, the Contractor shall, without prejudice to its rights and remedies under the Contract, rectify the loss or damage at the Contractor's risk and cost so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

13.3 Intellectual and Industrial Property Rights

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

The Employer acknowledges that (subject only to the license granted to the Employer under this Sub-Clause 13.3) all rights and interests in, and title to, and all past, present and future intellectual property rights of all kinds in the Contractor's Documents shall remain the sole property of the Contractor or the third parties from whom the Contractor has obtained rights but the Contractor hereby grants to the Employer a non-exclusive royalty free license (carrying the right to grant sub-licenses) to use the Contractor's Documents to the extent necessary for completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works.

The Contractor acknowledges that (subject only to the license granted to the Contractor under this Sub-Clause 13.3) all right and interests in, and title to, and all past, present and future intellectual property rights of all kinds in the information specified (the "Employer's Documents") shall remain the sole property of the Employer or the third parties from whom the Employer has obtained rights but the Employer hereby grants to the Contractor a non-exclusive royalty free license (carrying the right to grant sub-licenses) to use the Employer's Documents to the extent necessary for carrying out and completing the Works and rectifying any defects therein.

The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- (a) the unavoidable result of the Contractor's exercise of its rights under and in accordance with the copyright license granted by the Employer pursuant to this Sub-Clause 13.3, or
- (b) a result of any Works being used by the Employer:
 - (i) for a purpose other than that licensed pursuant to this Sub-Clause, or
 - (ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Commencement Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the Contractor's design, manufacture, construction or execution of the Works, (ii) the use of Contractor's Equipment, or (iii) the proper use of the Works.

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

13.4 Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under an express provision of the Contract, including Sub-Clause 13.1 [*Indemnities*].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 13.1 [*Indemnities*] and Sub-Clause 13.3 [*Intellectual and Industrial Property Rights*], shall not exceed the sum stated.

This Sub-Clause shall not limit liability in any case of Insured Loss, fraud, deliberate default or reckless misconduct by the defaulting Party. For the purposes of this Sub-Clause "Insured Loss" means any loss recovered by the Contractor under any insurance policy maintained by the Employer or losses recovered by the Employer under any such insurance policy and paid to the Contractor and losses which would have been recovered under any such insurance policy but for a failure by the Contractor to comply with the terms of the relevant insurance, or to take reasonable steps to pursue a claim under the relevant insurance.

13.5 Force Majeure

- (a) '**Force Majeure**' means any of the events referred to in Sub-Clauses 6.1(a), (b), (c), (d), (e) and (f) (Employer's Liabilities) which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; which is not substantially attributable to the other Party and which prevents the relevant Party from complying with its obligations under the Contract.
- (b) If a Party is or will be prevented from performing any of its obligations by Force Majeure, the Party affected shall notify the other Party immediately. If necessary, the Contractor shall suspend the execution of the Works and, to the extent agreed with the Employer, demobilise the Contractor's Equipment.
- (c) If the event continues for a period of one hundred and eighty-two (182) days, either Party may then give notice of termination which must take effect twenty-eight (28) days after the giving of the notice.

14 INSURANCE

14.1 Extent of Cover (N/A)

In this Clause "Insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

The Insuring Party shall at the time stated in Schedule 12, Required Insurances, effect and thereafter maintain insurances in the joint names of the Parties or provide for (by means of endorsement or otherwise) that the insurers shall expressly waive any rights of subrogation (or the equivalent) in favour of the Employer or Contractor respectively and any of their Affiliates:

- (a) for loss and damage to the Works, Materials, Plant and the Contractor's Equipment;
- (b) for liability of both Parties for loss, damage, death or injury to third parties or their property arising out of the Contractor's performance of the Contract, including the Contractor's liability for damage to the Employer's property other than the Works; and
- (c) for liability of both Parties and of any Employer's representative for death or injury to the Contractor's personnel except to the extent that liability arises from the negligence of the Employer, any Employer's representative or their employees.

With regard to Sub-clause 14.1(a) the insurance period and the time of inception must be in accordance with the "Period of Insurance" in Schedule 12 [Required Insurances].

14.2 Arrangements

All insurances shall conform to any requirements detailed in Schedule 12 (Required Insurances). The policies must be issued by insurers and in terms approved by the Employer. The Contractor shall provide the Employer with evidence that any policy which it is obliged to affect and maintain is in force and that the premiums have been paid.

All payments received from insurers relating to loss or damage to the Works shall be held jointly by the Parties and used for the repair of the loss or damage or as compensation for loss or damage that is not to be repaired.

14.3 Failure to insure

If the Contractor fails to effect or keep in force any of the insurances which it is obliged to effect and maintain, or fails to provide satisfactory evidence, policies or receipts, the Employer may, without prejudice to any other right or remedy, set a reasonable time limit to the Contractor and after expiry of the set time limit effect insurance for the cover relevant to such default and pay the premiums due and recover the same as a deduction from any other amount due to the Contractor.

15 RESOLUTION OF DISPUTES

The Parties shall seek to settle any disagreements in accordance with the basis of contract and the documented course of events.

All disputes or disagreements arising in connection with the Contract, its interpretation, validity, effectiveness, rescission and termination shall, if possible, be finally settled amicably by negotiation between the Employer and the Contractor. If any such dispute is not so settled within thirty (30) days after it has arisen, either Party may, by giving written notice making express reference to this Sub-Clause cause the dispute to be referred to a meeting of higher management of the Parties. Such meeting shall be held within ten (10) days following the giving of written notice at a place to be agreed by the Parties.

If the dispute or disagreement cannot be solved through negotiations between the Parties, such dispute or disagreement shall be referred to mediation.

If the Parties have not agreed on a mediator within fourteen (14) days after one of the Parties has requested mediation, the mediator shall upon request of any of the Parties be appointed by the institution as set out in ('Mediator Institution').

The mediation shall be subject to the standard agreement issued by the Mediator Institution, from time to time, its ethical rules and applicable lawyers' code of conduct.

If the dispute has not been solved by mediation within fifty-six (56) days from one of the Parties' request for mediation, either of the Parties may require that the dispute is finally settled by arbitration and any dispute arising out of or in connection with this Contract, including any question regarding the existence, validity or termination, shall be referred to and finally resolved by arbitration arranged by The Danish Institute of Arbitration in accordance with the Rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced which Rules are deemed to be incorporated by reference into this clause save that such rules shall be amended so as to permit Joinder of a Dispute with a Related Dispute (as defined below) in accordance with the rules set out herein. In event of a conflict between the Rules of arbitration procedure adopted by The Danish Institute of Arbitration and the terms set out herein the terms set out herein shall prevail.

The number of Arbitrators shall be three.

The seat or legal place shall be Copenhagen or Sønderborg, Denmark.

The language to be used in the arbitral proceedings shall be English.

The governing law of the Contract shall be Danish law.

Where a Dispute has been referred to arbitration under this Sub-Clause, and the Employer has a related dispute with (i) another contractor in relation to this wind farm project and which other contractor agrees to similar joinder and consolidation obligations as set out herein, or (ii) either party has any claims against a guarantor under a guarantee issued in relation to this Contract (each, a 'Related Dispute'), notwithstanding that an arbitral tribunal may already have been agreed or appointed in relation to the Dispute and/or the Related Dispute, the Employer or the Contractor may give written notice ('Related Dispute Notice') requiring, as appropriate:

- (a) the joinder of the parties to the Related Dispute to the Dispute under this Contract;
- (b) the concurrent hearing of the Dispute under this Contract and the Related Dispute by the same arbitral tribunal; or
- (c) the consolidation of the Dispute under this Contract and the Related Dispute before the same arbitral tribunal.

Such Related Dispute Notice must be served on: any arbitral tribunal already agreed or appointed in relation to the Dispute and/or the Related Dispute; the other Party and all parties to the Related Dispute.

In the event of all concerned parties not having agreed upon joinder, the concurrent hearing of disputes or consolidation as required in the Related Dispute Notice within fourteen (14) days after receipt of such notice, any party to the Dispute or a Related Dispute may request any arbitral tribunal appointed in respect of such dispute to make a ruling on the matter and the Parties agree that any such arbitral tribunal shall have the power to:

- (d) determine whether a dispute is a Related Dispute;
- (e) order joinder, consolidation or concurrent hearings as they consider appropriate, to give effect to the Related Dispute Notice; and
- (f) make all such other orders as if the parties to the Related Dispute were a party to this arbitration agreement.

In the event of inconsistent decisions by different arbitral tribunals relating to joinder, concurrent hearings or consolidation (including which arbitral tribunal should preside over any concurrent hearings or consolidated dispute), the decision of the arbitral tribunal appointed first in time must prevail. Any decision by an arbitral tribunal in relation to a matter raised in a Related Dispute Notice shall be determined taking into account:

- (g) the likelihood and consequences of inconsistent decisions if joinder, concurrent hearings or consolidation is not allowed;
- (h) the extent of any delay on the part of the party that served the Related Dispute Notice;
- (i) the extent of any delay on the part of any party objecting to the approach required in the Related Dispute Notice;

- (j) how far the arbitration or any other dispute resolution process in relation to the Dispute and/or the Related Dispute has progressed; and
- (k) the likely consequences of joinder, concurrent hearings or consolidation in terms of cost and time.

In the event that the parties agree on, or an order is made for, joinder, concurrent hearings or consolidation of the Dispute and the Related Dispute ('Unified Dispute'), the arbitral tribunal with jurisdiction over the Unified Dispute in accordance with this Sub-Clause ('Tribunal') shall then have discretion to revise any procedural directions, timetables or time limits that may have been agreed or ordered in relation to the Dispute or the Related Dispute and give any order in respect of the joinder, concurrent hearings or consolidation of the Dispute and the Related Dispute as may be necessary. Any such award, decision or order of the Tribunal shall be binding on all parties to the Unified Dispute.

The Tribunal shall have jurisdiction to resolve finally the Unified Dispute to the exclusion of any other arbitral tribunal and any appointment of another arbitral tribunal in relation to the Unified Dispute will be deemed to be functus officio. Any such termination of an arbitral tribunal's appointment shall be without prejudice to:

- (l) (subject to the foregoing provisions) the validity of any act done or order made by that arbitral tribunal or by the court in support of that arbitration before the termination of its appointment;
- (m) its entitlement to be paid its proper fees and disbursements; and
- (n) the date when any claim or defense was raised for the purpose of applying any limitation bar or any similar rule or provision.

The Parties hereby waive any objections they may have as to the validity and/or enforcement of any arbitral awards made by the arbitral tribunal following the joinder of parties, concurrent hearings or consolidation of disputes or arbitral proceedings in accordance with this Sub-Clause where such objections are based solely on the fact that joinder, concurrent hearing or consolidation has occurred.

Performance of the Works under the Contract shall continue during any dispute resolution process referred to in this Sub-Clause, unless the Employer orders suspension.

16 MISCELLANEOUS

16.1 Third Party Rights

Nothing in the Contract must confer or purport to confer any right to enforce any of its terms on any person who is not a party to it provided that this clause must not affect any right or action of a person to whom the Contract is lawfully assigned or otherwise transferred.

16.2 No Agency

Nothing in the Contract must be construed or deemed to:

(a) Establish or imply a partnership or joint venture or any other legal entity between the Employer and the Contractor (save where expressly stated otherwise);

(b) Constitute the Contractor as the agent of the Employer; and/or

(c) Allow the Contractor to hold itself out as acting on behalf of the Employer.

16.3 No Waiver (N/A)

None of the terms, provisions or conditions of the Contract will be considered waived by a Party unless a waiver is given in writing by the relevant Party. Save where expressly stated otherwise, a waiver by a Party of any breach of any term, provision or conditions of Contract will not constitute a waiver of:

(a) Any preceding breach; or

(b) Any future breach,

of the same or any other term, provision or condition of the Contract.

16.4 Entire Agreement

The Contract represents the entire agreement between the Employer and the Contractor in relation to the performance of the Works and supersedes all prior negotiations, representations and agreements relating thereto, whether written or oral except to the extent that they are expressly incorporated into the Contract.

16.5 Severance

If any term in or provision of the Contract is held to be illegal, void or unenforceable in whole or in part under any enactment of law, such term or provision will be deemed not to form part of the Contract and the enforceability of the remainder of the Contract will not be affected. In the event that any term in or provision of the Contract is held to be illegal, void or unenforceable in whole or in part under any enactment of law, the Parties shall negotiate in good faith to reach an equitable agreement which reflects the intent of the Parties as set out in the Contract.

16.6 Amendments in Writing

No amendment or other change of or to the Contract must be effective unless it is in writing, is dated, specifically refers to the Contract and is signed by both Parties.

16.7 Counterparts

This Contract may be executed in any number of counterparts and by each of the parties on separate counterparts each of which, when executed and delivered, must be deemed to be an original, but all the counterparts together must constitute one and the same agreement.