

**CONDITIONS OF CONTRACT FOR  
CONSTRUCTION**

**FOR BUILDING AND ENGINEERING WORKS  
DESIGNED BY THE EMPLOYER**

**GENERAL CONDITIONS**

## Table of Contents

	Page
1. General Provisions .....	6
1.1 Definitions .....	6
1.2 Interpretation .....	<del>14</del> <u>13</u>
1.3 Communications .....	14
1.4 [Not Used] .....	<del>15</del> <u>14</u>
1.5 Priority of Documents .....	<del>15</del> <u>14</u>
1.6 [Not used] .....	<del>15</del> <u>14</u>
1.7 Assignment .....	<del>15</del> <u>14</u>
1.8 Care and Supply of Documents .....	15
1.9 Errors in the Employer's Requirements .....	<del>16</del> <u>15</u>
1.10 Employer's Use of Contractor's Documents .....	16
1.11 Contractor's Use of Employer's Documents .....	<del>17</del> <u>16</u>
1.12 Confidential Details .....	<del>17</del> <u>16</u>
1.13 Compliance with Laws .....	17
1.14 Joint and Several Liability .....	<del>18</del> <u>17</u>
2. The Employer .....	<del>18</del> <u>17</u>
2.1 Right of Access to the Site .....	<del>18</del> <u>17</u>
2.2 Permits, Licences or Approvals .....	18
2.3 Employer's Personnel .....	<del>19</del> <u>18</u>
2.4 [Not used] .....	19
2.5 Employer's Claims .....	19
3. The Employer's Administration .....	<del>20</del> <u>19</u>
3.1 The Employer's Representative .....	<del>20</del> <u>19</u>
3.2 Other Employer's Personnel .....	20
3.3 Delegated Persons .....	20
3.4 Instructions .....	<del>21</del> <u>20</u>
3.5 Determinations .....	<del>21</del> <u>20</u>
4. The Contractor .....	21
4.1 Contractor's General Obligations .....	21
4.2 Performance Security .....	<del>22</del> <u>21</u>
4.3 Contractor's Representative .....	<del>23</del> <u>22</u>
4.4 Subcontractors .....	23
4.5 Assignment of Benefit of Subcontract .....	<del>25</del> <u>24</u>
4.6 Co-operation .....	<del>25</del> <u>24</u>
4.7 Setting Out .....	<del>26</del> <u>25</u>
4.8 Safety Procedures .....	<del>26</del> <u>25</u>
4.9 Quality Assurance .....	26
4.10 Site Data .....	26
4.11 Sufficiency of the Contract Price .....	<del>27</del> <u>26</u>
4.12 Unforeseeable Physical Conditions .....	27
4.13 Rights of Way and Facilities .....	28
4.14 Avoidance of Interference .....	28
4.15 Access Route .....	<del>29</del> <u>28</u>
4.16 Transport of Goods .....	29
4.17 Contractor's Equipment .....	<del>30</del> <u>29</u>
4.18 Protection of the Environment .....	<del>30</del> <u>29</u>
4.19 Electricity, Water and Gas .....	30
4.20 Employer's Equipment and Free-Issue Material .....	30
4.21 Progress Reports .....	32

4.22	Security of the Site	33
4.23	Contractor's Operations on Site	33
4.24	Fossils	34
4.25	Operative Logbook	34
4.26	Orders of Plant and Materials	34
<u>4.27</u>	<u>Works During Low Temperature</u>	<u>35</u>
5.	Design	35
5.1	General Design Obligations	35
5.2	Contractor's Documents	35
5.3	Contractor's Undertaking	36
5.4	Technical Standards and Regulations	37
5.5	Training	37
5.6	As-Built Documents	37
5.7	Operation and Maintenance Manuals	38
5.8	Design Error	38
6.	Staff and Labour	38
6.1	Engagement of Staff and Labour	38
6.2	Rates of Wages and Conditions of Labour	38
6.3	Persons in the Service of Employer	38
6.4	Labour Laws	39
6.5	Working Hours	39
6.6	Facilities for Staff and Labour	39
6.7	Health and Safety	39
6.8	Contractor's Superintendence	41
6.9	Contractor's Personnel	41
6.10	Records of Contractor's Personnel and Equipment	<del>41</del> <u>42</u>
6.11	Disorderly Conduct	42
6.12	Prohibited Acts	42
6.13	Alcoholic Liquors or Drugs	42
6.14	Arms and Ammunition	42
6.15	Commissions and Conflict of Interest	42
7.	Plant, Materials and Workmanship	43
7.1	Manner of Execution	43
7.2	Samples	43
7.3	Inspection	43
7.4	Testing	44
7.5	Rejection	45
7.6	Remedial Work	45
7.7	Ownership of Plant and Materials	<del>45</del> <u>46</u>
7.8	Royalties	46
7.9	Spare Parts	46
8.	Commencement, Delays and Suspension	<del>46</del> <u>47</u>
8.1	Commencement of Works	<del>46</del> <u>47</u>
8.2	Time for Completion	<del>46</del> <u>47</u>
8.3	Programme	47
8.4	Extension of Time for Completion	48
8.5	Delays Caused by Authorities	<del>48</del> <u>49</u>
8.6	Rate of Progress	49
8.7	Delay Penalties	49
8.8	Suspension of Work	<del>49</del> <u>50</u>
8.9	Consequences of Suspension	50

8.10	Payment for Plant and Materials in Event of Suspension	50
8.11	Prolonged Suspension	<del>50</del> 51
8.12	Resumption of Work	<del>50</del> 51
8.13	Mitigation and Delay	51
8.14	Advance Warning	51
9.	Tests on Completion	<del>51</del> 52
9.1	Contractor's Obligations	<del>51</del> 52
9.2	Delayed Tests	52
9.3	Retesting	52
9.4	[Not used]	53
9.5	Punch List	53
10.	Employer's Taking Over	53
10.1	Preliminary Taking Over of the Works and Final Taking Over of the Works	53
10.2	Taking Over of Parts of the Works	<del>54</del> 55
10.3	Interference with Tests on Completion	55
10.4	Surfaces Requiring Reinstatement	<del>55</del> 56
10.5	Concealed Work	<del>55</del> 56
11.	Defects Liability	56
11.1	Completion of Outstanding Work and Remedying Defects	56
11.2	Cost of Remedying Defects	<del>56</del> 57
11.3	Extension of Defects Notification Period	57
11.4	Failure to Remedy Defects	57
11.5	Removal of Defective Work	58
11.6	Further Tests	58
11.7	Right of Access	<del>58</del> 59
11.8	Contractor to Search	<del>58</del> 59
11.9	Performance Certificate	<del>58</del> 59
11.10	Unfulfilled Obligations	59
11.11	Clearance of Site	59
12.	Nominated Subcontractors	59
12.1	Definition of "nominated Subcontractor"	59
12.2	Objection to Nomination	<del>59</del> 60
12.3	Payments to nominated Subcontractors	60
12.4	Evidence of Payments	60
13.	Variations and Adjustments	<del>60</del> 61
13.1	Right to Vary	<del>60</del> 61
13.2	Value Engineering	61
13.3	Variation Procedure	<del>61</del> 62
13.4	[Not used]	<del>62</del> 63
13.5	[Not used]	<del>62</del> 63
13.6	[Not used]	<del>62</del> 63
13.7	Adjustments for Changes in Legislation	<del>62</del> 63
13.8	Adjustments for Changes in Cost	63
13.9	Acceleration Bonus	<del>63</del> 65
14.	Contract Price and Payment	<del>63</del> 65
14.1	The Contract Price	<del>63</del> 65
14.2	Advance Payment	<del>63</del> 65
14.3	Application for Interim Payment Certificates	<del>64</del> 66
14.4	Schedule of Payments	<del>65</del> 66
14.5	[Not used]	<del>65</del> 67

14.6	Issue of Interim Payment Certificates	<del>65</del> 67
14.7	Payment	<del>66</del> 67
14.8	Delayed Payment	<del>66</del> 68
14.9	Special Payment Arrangements	<del>67</del> 68
14.10	Statement at Completion	<del>67</del> 69
14.11	Application for Final Payment Certificate	<del>67</del> 69
14.12	Discharge	<del>68</del> 69
14.13	Issue of Final Payment Certificate	<del>68</del> 69
14.14	Cessation of Employer's Liability	<del>68</del> 70
14.15	Currencies of Payment	<del>68</del> 70
14.16	Taxes and Duties	<del>68</del> 70
15.	Termination by Employer	<del>69</del> 71
15.1	Notice to Correct	<del>69</del> 71
15.2	Termination by Employer	<del>70</del> 71
15.3	Valuation at Date of Termination	<del>71</del> 73
15.4	Payment after Termination	<del>71</del> 73
15.5	Employer's Entitlement to Termination	<del>71</del> 73
16.	Suspension and Termination by Contractor	<del>72</del> 74
16.1	Contractor's Entitlement to Suspend Work	<del>72</del> 74
16.2	Termination by Contractor	<del>73</del> 74
16.3	Cessation of Work and Removal of Contractor's Equipment	<del>74</del> 75
16.4	Payment on Termination	<del>74</del> 75
17.	Risk and Responsibility	<del>74</del> 76
17.1	Indemnities	<del>74</del> 76
17.2	Contractor's Care of the Works	<del>75</del> 76
17.3	Employer's Risks	<del>75</del> 77
17.4	Consequences of Employer's Risks	<del>76</del> 77
17.5	Intellectual and Industrial Property Rights	<del>76</del> 78
17.6	Limitation of Liability	<del>77</del> 79
18.	Insurance	<del>77</del> 79
18.1	Contractor Insurance Obligations	<del>77</del> 79
18.2	Employer Insurance Obligations	<del>78</del> 80
18.3	Period of Insurance	<del>79</del> 81
18.4	Notice of Potential Claim	<del>79</del> 81
18.5	Failure to Insure	<del>79</del> 81
18.6	No Limitation	<del>80</del> 81
19.	Force Majeure	<del>80</del> 81
19.1	Definition of Force Majeure	<del>80</del> 81
19.2	Notice of Force Majeure	<del>81</del> 83
19.3	Duty to Minimise Delay	<del>82</del> 83
19.4	Consequences of Force Majeure	<del>82</del> 84
19.5	Force Majeure Affecting Subcontractor	<del>82</del> 84
19.6	Optional Termination, Payment and Release	<del>82</del> 84
19.7	Release from Performance under the Law	<del>83</del> 85
20.	Claim, Disputes and Arbitration	<del>83</del> 85
20.1	Contractor's Claims	<del>83</del> 85
20.2	[Not used]	<del>85</del> 86
20.3	[Not used]	<del>85</del> 86
20.4	[Not used]	<del>85</del> 86
20.5	Amicable Settlement	<del>85</del> 86

20.6	Dispute Resolution.....	<del>85</del> <u>87</u>
20.7	[Not used].....	<del>85</del> <u>87</u>
20.8	[Not used].....	<del>85</del> <u>87</u>
Annex 1	– EMPLOYER’S REQUIREMENTS.....	<del>86</del> <u>88</u>
Annex 2	– SPRQ AND SCHEDULE OF HOURLY RATES.....	<del>87</del> <u>89</u>
Annex 3	– TERMINATION PAYMENT TABLE.....	<del>88</del> <u>90</u>
Annex 4	– FORM OF GUARANTEES.....	<del>89</del> <u>91</u>
Annex 5	– FORM OF CERTIFICATES AND NOTICES.....	<del>97</del> <u>99</u>
Annex 6	– INSURANCE.....	<del>111</del> <u>113</u>
Annex 7	– CODE OF CONDUCT.....	5
Annex 8	– LIST OF INTERNAL DOCUMENTS FOR PERFORMANCE OF SERVICE.....	6
Annex 9	– CONTRACTOR’S PROPOSAL.....	7
Annex 10	– ROW REQUIREMENTS.....	8
Annex 11	– REQUIREMENTS WITH RESPECT TO THE PERSONAL DATA PROCESSING.....	9
Annex 12	– CONSTRUCTION DOCUMENTATION – C4G <del>PROJECTS</del> <u>PROJECT</u> .....	11

## General Conditions

### 1. General Provisions

#### 1.1 Definitions

In the Conditions of Contract (“**these Conditions**”), ~~which include Particular Conditions and these General Conditions~~, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

##### 1.1.1 The Contract

1.1.1.1 “**Contract**” means the Contract Agreement, these Conditions, the SPRQ, the Employer’s Requirements, the Contractor’s Proposal and the further documents (if any) which are listed in the Contract Agreement.

1.1.1.2 “**Contract Agreement**” means the main contractual document so named containing signatures of the Employer and the Contractor.

1.1.1.3 “**Employer's Requirements**” means the documents [in Annex 1](#) forming part of the set entitled “Employer’s Requirements”, which for the purpose of this Contract also include the set entitled “Design Documents”, “Surveys”, “Long Lead Packages Purchased by Employer (for info)” and “NDT Package (for info)”, [the list of amendments](#), and any additions and modifications to such documents in accordance with the Contract. Such documents specify the purpose, scope, design and other technical criteria of the Works.

1.1.1.4 “**Contractor's Proposal**” means the document entitled proposal, which the Contractor submitted during the Tender, as included in ~~the Contract~~[Annex 9](#).

1.1.1.5 “**Scope of Work**” means the document entitled “Scope of Work for General Contractor – LOT II” forming part of the Employer’s Requirements, and any additions and modifications to such document in accordance with the Contract.

1.1.1.6 “**Drawings**” means the set entitled “Design Documents” forming part of the Employer’s Requirements, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.

1.1.1.7 “**SPRQ**” means the document entitled “Schedule of Prices, Rates and Quantities” forming Annex No. 2 to the Contract.

1.1.1.8 “**Schedule of Hourly Rates**” means the document entitled “Schedule of Hourly Rates” forming Annex No. 2 to the Contract.

1.1.1.9 “**Tender**” means the “~~{}HP PIPELINE DN1400 CONSTRUCTION WORKS, NODE KATEŘINSKÝ POTOK - LINE VALVE STATION MALMĚŘICE (LOT I.), LINE VALVE STATION MALMĚŘICE – NODE PŘIMDA (LOT II.), (“CAPACITY4GAS” PROJECT)~~” tender procedure, ID No. ~~{}T2019-001264~~, Ref. No. ~~{}VZ0064189~~, announced by the Employer on ~~{}February 15, 2019~~.

1.1.1.10 “**Inspection and Test Plan**” means the document to be elaborated by the Contractor in accordance with the Inspection Requirements for General

Contractor, and the Requirements on Quality Management for General Contractor, both forming part of the Employer's Requirements, and pursuant to Clause 2.5 of the Contract Agreement and is subject to Employer's approval pursuant to Sub-Clause 5.2 [*Contractor's Documents*].

1.1.1.11 "**General Technical Requirements**" means the document so named which is comprised in the Employer's Requirements, providing an overall description of the Project, its execution and summarize the key data of the Project, all in particular in relation to the Pipeline.

1.1.1.12 "**Interface Report**" means the document so named which is comprised in the Employer's Requirements, setting out the various interfaces between the Contractor and the Employer, other Pipeline construction works contractors or other suppliers of equipment.

## 1.1.2 Parties and Persons

1.1.2.1 "**Party**" means the Employer or the Contractor, as the context requires.

1.1.2.2 "**Employer**" means the person named as employer in the Contract Agreement and the legal successors in title to this person.

1.1.2.3 "**Contractor**" means the person(s) named as contractor in the Contract Agreement and the legal successors in title to this person(s).

1.1.2.4 "**Employer's Representative**" means the person named by the Employer in the Contract or appointed from time to time by the Employer under Clause 3 [*The Employer's Representative*], who acts on behalf of the Employer.

1.1.2.5 "**Contractor's Representative**" means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [*Contractor's Representative*], who acts on behalf of the Contractor.

1.1.2.6 "**Employer's Personnel**" means the Employer's Representative, the assistants referred to in Sub-Clause 3.2 [*Other Employer's Personnel*] and all other staff, labour and other employees of the Employer, [Other Employer's Contractors](#) and any other personnel notified to the Contractor, by the Employer, as Employer's Personnel.

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

1.1.2.8 "**Subcontractor**" means any person named in the Contractor's Proposal as a subcontractor, or any person appointed by the Contractor as a subcontractor and approved by the Employer, for a part of the Works; and the legal successors in title to each of these persons.

1.1.2.9 "**Site Manager**" means person appointed under Sub-Clause 4.3 [*Contractor's Representative*].

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



1.1.2.11 “**Key Personnel**” means specific Contractor’s Personnel who are so named in the Contractor’s Proposal.

### 1.1.3 Dates, Tests, Periods and Completion

1.1.3.1 “**Base Date**” means the date of signature of the Contract Agreement.

1.1.3.2 “**Commencement Date**” means the date notified in the Notice to Proceed under Clause 3.2 of the Contract Agreement.

1.1.3.3 “**Time for Completion**” means the times for completing the Works under Sub-Clause 8.2 [*Time for Completion*], as stated in Clause 3.1 of the Contract Agreement (with any extension under Sub-Clause 8.4 [*Extension of Time for Completion*]).

1.1.3.4 “**Tests on Completion**” means the tests which are specified in the Contract, the Inspection and Test Plan or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [*Tests on Completion*] before the Works are taken over by the Employer.

1.1.3.5 “**Preliminary Taking-Over Certificate**” means the certificate issued under Clause 5.1(c) of the Contract Agreement and Sub-Clause 10.1 [*Preliminary Taking Over of the Works and Final Taking Over of the Works*].

1.1.3.6 “**Taking-Over Certificate**” means a certificate issued under Clause ~~10~~ 5.1(d) of the Contract Agreement and Clause 10.1 [*Preliminary Taking Over of the Works and Final Taking Over of the Works*].

1.1.3.7 “**Notice to Proceed**” means each notice from the Employer to the Contractor under Clause 3.2 of the Contract Agreement specifying the Commencement Date for the relevant Works.

1.1.3.8 “**Defects Notification Period**” means the period for notifying defects in the Works under Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*], as stated in Clause 6.1 of the Contract Agreement (with any extension under Sub-Clause 11.3 [*Extension of Defects Notification Period*]).

1.1.3.9 “**Performance Certificate**” means the certificate issued under Sub-Clause 11.9 [*Performance Certificate*].

1.1.3.10 “**day**” means a calendar day and “**year**” means 365 days.

1.1.3.11 “**Punch List**” means a document containing type A and type B defects as more closely specified in Section 2.17.2 of the General Technical Requirements.

1.1.3.12 “**Prohibited Act**” means any of:

(a) offering, accepting, giving or agreeing to give, receiving or agreeing to receive (directly or indirectly) to or from any official or other third party any gift, payment or consideration of any kind as an inducement or reward for the purpose of:

(1) influencing any act or decision of an official in that person’s official capacity,

- (2) inducing an official to do or omit to do any act in violation of that person's lawful duty,
- (3) securing any improper advantage in relation to the project or the Contract, or
- (4) showing favour or disfavour to any person in relation to the project or the Contract,
- (b) committing any offence under any applicable Laws concerning fraudulent acts, and
- (c) activity in relation to the Project that could result in a violation of any applicable Laws, including being party to any anti-competitive activities, kickbacks or bribery, and any activities prohibited under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or any applicable anti-bribery laws that prohibit such activities.

1.1.3.13 **"Spare Parts"** means the spare parts, consumables, re-agents, catalysts and/or other items specified in the Employer's Requirements, and any optional or additional spare parts under any Variation.

1.1.3.14 **"14-Month Scenario"** means the time schedule for the completion of the Works specified in Clause 3.1 a) of the Contract Agreement, including the mobilization works of the Contractor prior to the commencement of the actual construction of the Pipeline.

1.1.3.15 **"12-Month Scenario"** means the time schedule for the completion of the Works specified in Clause 3.1 b) of the Contract Agreement, including the mobilization works of the Contractor prior to the commencement of the actual construction of the Pipeline.

~~1.1.3.16 **"11-Month Scenario"** means the time schedule for the completion of the Works specified in Clause 3.1 c) of the Contract Agreement, including the mobilization works of the Contractor prior to the commencement of the actual construction of the Pipeline.~~

~~1.1.3.16~~ 1.1.3.17 **"Scenario"** means either the 14-Month Scenario, or 12-Month Scenario ~~or 11-Month Scenario.~~

#### 1.1.4 **Money and Payments**

1.1.4.1 **"Accepted Contract Amount"** means the amount accepted in the Tender for the execution and completion of the Works and the remedying of any defects and stated in Clause 4.1 of the Contract Agreement for the 12-Month Scenario.

1.1.4.2 **"Contract Price"** means the price defined in Clause 4.1 of the Contract Agreement for the Scenario selected by the Employer, and includes adjustments in accordance with the Contract.

- 1.1.4.3 “**Cost**” means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, excluding overhead or similar charges and profit.
- 1.1.4.4 “**Final Payment Certificate**” means the payment certificate issued under Sub-Clause 14.13 [*Issue of Final Payment Certificate*].
- 1.1.4.5 “**Final Statement**” means the statement defined in Sub-Clause 14.11 [*Application for Final Payment Certificate*].
- 1.1.4.6 “**Foreign Currency**” means a currency in which part (or all) of the Contract Price is payable, but not the Local Currency.
- 1.1.4.7 “**Interim Payment Certificate**” means a payment certificate issued under Clause 14 [*Contract Price and Payment*], other than the Final Payment Certificate.
- 1.1.4.8 “**Local Currency**” means the currency of the Country.
- 1.1.4.9 “**Payment Certificate**” means a payment certificate issued under Clause 14 [*Contract Price and Payment*].
- 1.1.4.10 “**Termination Payment Table**” means the table with the pre-agreed termination payments forming Annex No. 3 to the Contract.
- 1.1.4.11 “**Statement**” means a statement submitted by the Contractor as part of an application, under Clause 14 [*Contract Price and Payment*], for a payment certificate.
- 1.1.4.12 “**Payment Milestone**” means any of the payment milestones, as stated in Clause 3.1 of the Contract Agreement.
- 1.1.4.13 “**VAT Act**” means the Czech Act No. 235/2004 Coll., on value added tax, as amended.

#### 1.1.5 **Works and Goods**

- 1.1.5.1 “**Contractor’s Equipment**” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes Temporary Works, Employer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.
- 1.1.5.2 “**Goods**” means Contractor’s Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.
- 1.1.5.3 “**Materials**” means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.
- 1.1.5.4 “**Permanent Works**” means the permanent works of the Pipeline to be executed by the Contractor under the Contract.
- 1.1.5.5 “**Plant**” means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.
- 1.1.5.6 “**Employer’s Plant and Materials**” means the plant and materials listed in Section 2.9 of the General Technical Requirements and further specified in

the set contained in the Employer's Requirements and entitled "Long Lead Packages Purchased by Employer (for info)", which shall be provided by the Employer to the Contractor for the purpose of the execution of the Works and which are intended to form or forming part of the Permanent Works.

1.1.5.7 "**Temporary Works**" means all temporary works of every kind (other than Contractor's Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 "**Works**" mean the whole of the work of the construction of the Pipeline to be executed by the Contractor on Site in accordance with the Contract, which is to be handed over to the Employer, including the Permanent Works and the Temporary Works, or either of them as appropriate, the Services, the Documentation, and all other related work, as more closely specified in Clause 2.1 of the Contract Agreement and the Employer's Requirements.

1.1.5.9 "**Early Works**" means all the activities concerning the design works, prefabrication, procurement of Goods, mobilisation of machinery and equipment, welding qualifications and all other activities within the Scope of Work not requiring the issuance of the Joint Permit, provided that with respect to communication and other dealings with landowners affected by the Works a consent by the Employer is required.

1.1.5.10 "**Project**" means the project named "Capacity4Gas - DE/CZ", which includes a pipeline between the Distribution Node Kateřinský potok and the Distribution Node Přimda (excluding this station), Czech Republic, comprising of two lots.

1.1.5.11 "**Pipeline**" means a pipeline between the Line Valve Station TU53S – Malměřice (excluding this station) ~~and~~ to the Distribution Node Přimda (excluding this station), Czech Republic, which corresponds to lot II of the Project.

1.1.5.12 "**Detail Design**" means the complete set of the part of the technical documentation developed by the Contractor on the basis of basic design of the Employer which is contained in the Employer's Requirements and which fulfils the requirements of Annex No. 12, and approved by the Employer for implementation in the Works performance as the operative design (documentation) and shop drawings of the Pipeline.

1.1.5.13 "**Other Employer's Contractors**" means, primarily, the contractor performing the inspection and testing (such as NDT testing) and the suppliers of the Employer's Plant and Materials.

1.1.5.14 "**Line Valves Stations**" mean all the line valves stations specified in the Employer's Requirements.

1.1.5.15 "**Crossings**" mean all the crossings specified in the Employer's Requirements.

#### 1.1.6 Other Definitions

1.1.6.1 "**Contractor's Documents**" means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

- 1.1.6.2 “**Country**” means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.
- 1.1.6.3 “**Employer’s Equipment**” means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Employer’s Requirements; but does not include Plant which has not been taken over by the Employer.
- 1.1.6.4 “**Force Majeure**” is defined in Clause 19 [*Force Majeure*].
- 1.1.6.5 “**Laws**” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.6.6 “**Performance Security**” means the security under Sub-Clause 4.2 [*Performance Security*].
- 1.1.6.7 “**Site**” means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.
- 1.1.6.8 “**Unforeseeable**” means not reasonably foreseeable by an experienced contractor by the date for submission of the Tender.
- 1.1.6.9 “**Variation**” means any change to the Works, which is instructed or approved as a variation under Clause 13 [*Variations and Adjustments*].
- 1.1.6.10 “**Services**” means any or all of the Services to be performed by the Contractor under the Contract, including inspection, technical representation, erection, installation and commissioning of Employer’s Plant and Materials, supervision, construction, training, assistance with trial operation and other services described in the Employer’s Requirements.
- 1.1.6.11 “**Recognised Good Practice**” means the skill, care and diligence of a contractor seeking in good faith to perform his contractual obligations and in so doing and in the general conduct of his undertakings observing and/or exercising the degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be exercised by a skilled and experienced international contractor in relation to his practices, methods, techniques, specifications and/or standards (whether in respect of design, engineering, performance, safety, workmanship, equipment or otherwise) engaged in the same type of undertaking under the same or similar circumstances and conditions to the Works.
- 1.1.6.12 “**Affiliate**” means any entity controlled by a Party, controlling a Party or controlled by the same entity which also controls a Party. The term control shall mean the situation whereby the controlling entity can effectively exercise a decisive influence over the controlled entity.
- 1.1.6.13 “**Advance Payment Guarantee**” means a guarantee specified in Sub-Clause 14.2 [*Advance Payment*].
- 1.1.6.14 “**Joint Permit**” means in Czech “*společné územní rozhodnutí a stavební povolení*” or other permits required by the Czech authorities to perform the Works.

- 1.1.6.15 **“Delivery Plan”** means a time plan for the delivery and hand-over of the Employer’s Plant and Materials to be agreed between the Contractor, third-party suppliers and Employer under Sub-Clause 4.20[*Employer’s Equipment, Free-Issue Material and Employer’s Plant and Materials*] and approved by the Employer.
- 1.1.6.16 **“Mechanical Completion Certificate”** means the certificate issued under Clause 5.1(a) of the Contract Agreement and Sub-Clause 9.1 [*Tests on Completion*].
- 1.1.6.17 **“Ready for Commissioning Certificate”** means the certificate issued under Clause 5.1(b) of the Contract Agreement and Sub-Clause 9.1 [*Tests on Completion*].
- 1.1.6.18 **“Trial Operation Permit”** means in Czech “*povolení zkušebního provozu*” or other permits required by the Czech authorities to commence the trial operation of the Works in accordance with the applicable Laws.
- 1.1.6.19 **“Final Operation Permit”** means in Czech “*kolaudační souhlas*” or other permits required by the Czech authorities to operate the Works in standard business operation mode in accordance with the applicable Laws.
- 1.1.6.20 **“Start-Up Committee”** means the committee composed by the Employer’s Personnel and other parties (if applicable), as specified in the Employer’s Requirements.
- 1.1.6.21 **“TOZA”** means in Czech “*technicko-organizační zajištění akce*” to be provided by the Employer to the Contractor in due course before the commencement of the Works on the pipeline system.
- 1.1.6.22 **“Project Execution Plan”** means the programme to be elaborated by the Contractor and submitted under Sub-Clause 8.3 [*Programme*];
- 1.1.6.23 **“PHSE Plan”** means the project health and safety plan to be elaborated by the Contractor in accordance with Clause 2.6 of the Contract Agreement.
- 1.1.6.24 **“Existing Authorities’ Statements”** means documentation and other information obtained by the Employer from public authorities and other stakeholders, as contained in the ROW Requirements on or before ~~1-1~~<sup>1</sup>[March 26, 2019](#).
- 1.1.6.25 **“New Authorities’ Statements”** means documentation and other information obtained by the Employer from public authorities and other stakeholders, as provided by the Employer to the Contractor for the purposes of this Contract starting from ~~1-1~~<sup>1</sup>[March 27, 2019](#).
- 1.1.6.26 **“ROW Requirements”** mean the summary requirements made by land owners and occupiers, public authorities and other stakeholders of the land plots where the Site is located or adjoining land plots, which is contained in Annex No. 10.
- ~~1.1.6.27 **“Vendor List”** means the long list of possible vendors and/or suppliers of the Contractor for the purposes of this Contract approved by the Employer or provided in the Contractor’s Proposal.~~

<sup>1</sup>-Currently provided as of the day of the publication of the Tender. These statements will be updated during the Tender.

~~1.1.6.28 “List of Clarifications” means the list of clarifications provided by the Employer before the Base Date and attached as [●] to the Employer’s Requirements.~~

1.1.6.27~~1.1.6.29~~ “Employer’s Site Data” means that data concerning the Site detailed in the surveys forming part of the Employer’s Requirements.

## 1.2 Interpretation

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (e) “including” means “including without limitation”, and the terms “include”, “includes” and “included” have a corresponding meaning;
- (f) references to persons include firms, corporations and any other organisation having legal capacity; and
- (g) any reference in this Contract to any other agreement or contract, is deemed to include a reference to that other agreement, as amended or restated from time to time.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

Where the Contract refers to payment of profit to the Contractor or includes the expression “Cost plus reasonable Profit”, such profit shall be the profit stated in Clause 4.7 of the Contract Agreement.

## 1.3 Communications

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party.

## 1.4 [Not Used]

## 1.5 Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement,
- (b) these Conditions,

- (c) ~~Appendix A to the Annex No. 1 – List of Clarifications~~[List of Amendments to the Employer's Requirements](#);
- (d) Annex No. 1 – Employer's Requirements;
- (e) Annex No. 2 – SPRQ and Schedule of Hourly Rates;
- (f) Annexes No. 3 – 8 and 10 – 12, and
- (g) Annex No. 9 – Contractor's Proposal and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Employer shall issue any necessary clarification or instruction.

#### 1.6 [Not used]

#### 1.7 Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

Notwithstanding the above, the Employer may transfer its rights and obligations under the Contract to any of its Affiliates and without further Contractor consent at any moment so long as the assignee provides a sufficient payment security (such as a contract on the transfer of profit and loss concluded between the Affiliate and the Employer or a holding company).

Further, the Contractor shall inform the Employer in advance of any change of control of the Contractor, together with the identification of relevant parties. For the avoidance of doubt, the aforementioned does not apply to changes of control over the Contractor in case the newly controlling entity would qualify as Contractor's Affiliate before the change of control occurs.

#### 1.8 Care and Supply of Documents

Each of the Contractor's Documents shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Employer four hardcopies of each of the Contractor's Documents and one copy on a CD/DVD/USB.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Employer's Requirements, the Contractor's Documents, and Variations, operative logbooks, health and safety and fire safety documents, overview of types and quantities of chemical substances and their security logbooks, overview of types and quantities of waste produced, and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.



## 1.9 Errors in the Employer's Requirements

~~Notwithstanding the below, by signing of the Contract, the Contractor shall be deemed to have scrutinized the Employer's Requirements (including the basic design) as existing as of the Base Date and it shall not be entitled to claim for an extension to the Time for Completion or an adjustment to the Contract Price in the event that any errors, omissions, discrepancies or non-compliances are subsequently discovered.~~

The Contractor shall scrutinise the Employer's Requirements. At the latest thirty (30) days from the Base Date, the Contractor shall give notice to the Employer of any error, omission, discrepancy or non-compliance found in the Employer's Requirements. After receiving this notice, the Employer shall determine whether Clause 13 [Variations and Adjustments] shall be applied, and shall give notice to the Contractor accordingly. For the avoidance of doubts, the Contractor shall not be entitled to claim extension of the Time for Completion and payment of Costs in relation to any error, omission, discrepancy or non-compliance in the Employer's Requirements not identified within thirty (30) days from the Base Date. The Contractor shall not be required to verify the specification of the Employer's Plant and Materials.

If the Contractor suffers delay and/or incurs Cost as a result of requirements stated in the Joint Permit or requirements stated in the New Authorities' Statements, which materially deviate from the Existing Authorities' Statements or the Contract, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus reasonable ~~profit~~Profit, which shall be included in the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (x) whether and (if so) to what extent the error could not reasonably have been so discovered, and (y) the matters described in sub-paragraphs (a) and (b) above related to this extent.

## 1.10 Employer's Use of Contractor's Documents

As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

The Contractor gives to the Employer by executing the Contract a non-terminable, transferable, non-exclusive licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. The Parties agree that the fee for the license is 0.01% of the Payment Milestone "*Delivery of Detail Design Documentation*", as defined in Clause 3.1 of the Contract Agreement, and shall be deemed included in the Contract Price.

This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of

completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and

- (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Sub-Clause.

#### 1.11 Contractor's Use of Employer's Documents

As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Employer's Requirements and other documents made by (or on behalf of) the Employer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

#### 1.12 Confidential Details

The Contractor shall disclose all such confidential and other information as the Employer may reasonably require in order to verify the Contractor's compliance with the Contract.

The Contractor shall treat the details of the Contract as confidential, except to the extent necessary to carry out his obligations under the Contract or to comply with applicable Laws. The Contractor shall not publish, permit to be published or disclose any particulars of the Contract in any trade or technical paper or elsewhere without the prior consent of the Employer. ~~The, unless such information is disclosed to the Contractor's Affiliates. The~~ Contractor may use confidential information only in respect of the preparation for, and the providing of, the Works, including in negotiations with proposed Subcontractors. The Contractor must ensure that none of his or his Subcontractor's current or former shareholders, directors, officers, partners, members, representatives, agents and advisors or any of the Contractor's Personnel or any other Person for whom the Contractor or any Subcontractor is responsible at law will use any of the confidential information for any purposes other than those set out in this Sub-Clause.

Should the Contractor breach the confidentiality obligation, it shall pay to the Employer contractual penalty in the amount of EUR ~~100,000.00~~ 50,000.00.

#### 1.13 Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws. For this purpose:

- (a) the Employer shall have obtained the Joint Permit, and any other permissions described in the Employer's Requirements as having been (or being) obtained by the Employer; and the Employer shall indemnify for the consequences of any failure to do so; and
- (b) Subject to Sub-Clause 14.16 [*Taxes and Duties*], the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the

Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

Personal data protection shall be governed by the provisions of Annex No. 11.

#### **1.14 Joint and Several Liability**

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

- (a) these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;
- (b) these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and
- (c) the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

## **2. The Employer**

### **2.1 Right of Access to the Site**

The Employer shall give the Contractor right of access to, and possession of, specified parts of the Site in accordance with this Sub-Clause and shall evidence such taking-over by a protocol. The Contractor is solely responsible for any other additional or provisional areas it wishes to use provided that the Contractor may use the land plots specified in the Employer's Requirements as pipe yards. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Employer's Requirements. However, the Employer may withhold any such right or possession until the Performance Security has been received. The Contractor shall also be responsible for taking over all infrastructure crossings, whether above or sub-surface (e.g. electricity lines, crossing), from third-parties and shall evidence such taking-over by a protocol.

Upon being granted access to, and possession of, the parts of the Site, the Contractor shall agree on the utilisation of the woods on the parts of the Site and shall ensure the woods are processed (incl. logging and replacement planting) in accordance with the conditions of the Joint Permit, other permits (if required) and ROW Requirements.

The Parties acknowledge that the access to the Site will be provided by the Employer to the Contractor on the date specified in the Notice to Proceed. If the Employer fails to give the Contractor right of access to, and possession of, specified parts of the Site (other than as a consequence of the Contractor having failed to provide the Performance Security), provisions of Clause 3.2 (c), (e) and (f) of the Contract Agreement shall apply.

### **2.2 Permits, Licences or Approvals**

Except for (x) the Joint Permit which will be provided by the Employer for which the Contractor shall (where he is in a position to do so) provide reasonable assistance and except for (y) other documents to be provided to the Employer by third party suppliers for Employer's Plant and Materials under Clause 2.2(e) and 2.2(f) of the Contract Agreement, the Contractor shall be solely responsible for obtaining other permits, licences or approvals required under the Laws of the Country for undertaking of the Works.

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 applications for any permits, licences or approvals required by the Laws of the Country:
  - (i) which the Contractor is required to obtain under Sub-Clause 1.13 [*Compliance with Laws*],
  - (ii) for the delivery of Goods, including clearance through customs, and
  - (iii) for the export of Contractor's Equipment when it is removed from the Site; and
- (b) by granting specific power of attorney, when and if necessary for the submission and handling of the application for such permits and approvals by the Contractor.

The Contractor shall elaborate and submit them to the Employer for review in accordance with this Sub-Clause 5.2 [*Contractor's Documents*] draft applications for the Trial Operation Permit and Final Operation Permit, as well as all supporting documentation for these permits prior to their submission to the Czech authorities. The Contractor may not submit any application for the Trial Operation Permit and Final Operation Permit, unless approved by the Employer in accordance with this Sub-Clause 5.2 [*Contractor's Documents*].

### 2.3 Employer's Personnel

The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors on the Site:

- (a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [*Co-operation*], and
- (b) take actions similar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (d) of Sub-Clause 4.8 [*Safety Procedures*] and under Sub-Clause 4.18 [*Protection of the Environment*].

### 2.4 [Not used]

### 2.5 Employer's Claims

If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Employer ~~or the Employer~~ shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [*Electricity, Water and Gas*]; and under Sub-Clause 4.20 [*Employer's Equipment and Free-Issue Material*]; ~~under Sub-Clause 8.7 [*Delay Penalties*], under Sub-Clause 11.4 [*Failure to Respond and Failure to Remedy Defects*]~~ or for other services requested by the Contractor.

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

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Employer shall then proceed in accordance with

Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [*Extension of Defects Notification Period*].

This amount may be included as a deduction in the Contract Price and Payment Certificates. The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

### **3. The Employer's Administration**

#### **3.1 The Employer's Representative**

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

The Employer's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him by the Employer. The Employer's Representative shall be a suitably qualified engineer competent to carry out his duties. Unless and until the Employer notifies the Contractor otherwise, the Employer's Representative shall be deemed to have the full authority of the Employer under the Contract, except in respect of Clause 15 [*Termination by Employer*] and the power to amend the Contract.

If the Employer wishes to replace any person appointed as Employer's Representative, the Employer shall give the Contractor not less than 14 days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

#### **3.2 Other Employer's Personnel**

The Employer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall not take effect until a copy of it has been received by the Contractor.

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority. For the avoidance of doubt, the assistants have no authority to act on behalf of the Employer under Clause 15 [*Termination by Employer*] and have no power to amend the Contract.

#### **3.3 Delegated Persons**

All these persons, including the Employer's Representative, assistants and health and safety coordinator, engineer, construction supervisor and architect supervisor to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation, if such scope of delegation is known to Contractor. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a delegated person, in accordance with the delegation, shall have the same effect as though the act had been an act of the Employer. However:

- (a) unless otherwise stated in the delegated person's communication relating to such act, it shall not relieve the Contractor from any responsibility he has under the

Contract, including responsibility for errors, omissions, discrepancies and non-compliances;

- (b) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Employer to reject the work, Plant or Materials by issuing certificate of rejection; and
- (c) if the Contractor questions any determination or instruction of a delegated person, the Contractor may refer the matter to the Employer, who shall promptly confirm, reverse or vary the determination or instruction.

### 3.4 Instructions

The Employer may issue to the Contractor instructions which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. Wherever the Contractor opposes to an instruction and provides reasonable evidence supporting its position and the Employer subsequently insists on or upholds the instruction, the responsibility for the effects of the instruction remains at the Employer. Each instruction shall be given in writing and shall state the obligations to which it relates and the Sub-Clause (or other term of the Contract) in which the obligations are specified. If any such instruction constitutes a Variation, Clause 13 [*Variations and Adjustments*] shall apply.

The Contractor shall take instructions from the Employer or an assistant to whom the appropriate authority has been delegated under this Clause 3.

### 3.5 Determinations

Whenever these Conditions provide that the Employer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Employer shall consult with the Contractor in an endeavour to reach agreement. If agreement is not achieved, the Employer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Employer shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [*Claims, Disputes and Arbitration*].

## 4. The Contractor

### 4.1 Contractor's General Obligations

The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract, and shall remedy any defects in the Works.

The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

~~The~~ Without prejudice to the review of the Employer's Requirements by the Contractor under Sub-Clause 1.9 [*Errors in the Employer's Requirements*], the Works shall include any work which is necessary to satisfy the Employer's Requirements, ~~Contractor's Proposal and SPRQ, or is implied by the Contract, and all works which (although even if~~ not mentioned in the ~~Contract) are~~ SPRQ, and which are at the same time necessary for the completion, or safe and proper operation, of the Works.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction.

The Contractor shall, whenever reasonably required by the Employer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Employer.

#### 4.2 Performance Security

The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount and currencies stated in the Contract Agreement.

The Contractor shall deliver the Performance Security to the Employer within 28 days after the issuance of the partial Notice to Proceed concerning the Early Works. The Performance Security shall be irrevocable, first demand and shall be issued by an entity with a minimum rating of Standard & Poors rating of “BBB-” or greater, Moody’s rating of “Baa3” or Fitch’s rating of “BBB-” or the closest equivalent from another ratings agency and from within a EU country or other country approved by the Employer. The Performance Security shall be in the form contained in the Annex No. 4 or in another form approved by the Employer. The Contractor shall ensure that the Performance Security is valid and enforceable until the issuance of the Performance Certificate. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security.

Every time the Contract Price increases by more than EUR 5,000,000, the Contractor shall promptly (in Czech : *ihned*) procure a proportional increase of the amount of the Performance Security.

The Performance Security shall be reduced ~~upon~~at the earliest two (2) months after the issuance of the Preliminary Taking-Over Certificate by fifty percent (50 %).

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:

- (a) failure of the Contractor to repay the advance payment in accordance with Sub-Clause 14.2 [*Advance Payment*],
- (b) failure by the Contractor to extend the validity or increase the amount of the Performance Security as described in the preceding paragraphs, or failure by the Contractor to extend the validity of the Advance Payment Guarantee under Sub-Clause 14.2 [*Advance Payment*], in which event the Employer may claim the full amount of the Performance Security. The Employer may make deductions against amounts so held in respect of any claim it would have been entitled to bring in relation to the Performance Security which should have been provided until the Performance Security is duly provided (whereupon the Employer shall return the remaining balance without any interest to the Contractor),
- (c) failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under Sub-Clause 2.5 [*Employer’s Claims*] or Clause 20 [*Claims, Disputes and Arbitration*], within 42 days after this agreement or determination,



- (d) failure by the Contractor to remedy a default within 42 days after receiving the Employer's notice requiring the default to be remedied, or
- (e) circumstances which entitle the Employer to termination under Sub-Clause 15.2 [*Termination by Employer*], irrespective of whether notice of termination has been given.

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

The Employer shall return the Performance Security to the Contractor within 21 days after ~~receiving a copy of~~ issuing the Performance Certificate.

All fees, taxes and expenses associated with procuring, preparing, completing, extending, replacing and stamping (if applicable) of the Performance Security shall be borne by the Contractor.

#### 4.3 Contractor's Representative

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Employer for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is reasonably withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of the Employer, revoke the appointment of the Contractor's Representative or appoint a replacement.

The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Employer's prior consent, and the Employer shall be notified accordingly.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.4 [*Instructions*].

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Employer has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative and all these persons shall be fluent in the language for communications defined in Clause 11.2 of the Contract Agreement.

#### 4.4 Subcontractors

With the exception of works subcontracted to the Contractor's Affiliates, the Contractor shall ensure that the construction and installation works forming part of the Works are subcontracted only to first (a Subcontractor with a direct contractual relationship with the



Contractor) and second (a Subcontractor with a direct contractual relationship with the first-level Subcontractor) level Subcontractors, provided that:

- i. the Contractor shall not subcontract to the first-level Subcontractor the Works concerning main line lowering-in and main line welding (except for welders); and
- ii. the Contractor shall ensure that the first-level Subcontractor does not subcontract to a second-level Subcontractor works in the value of more than 50% of the price of works under the Contract relating to the execution of a part of the Works subcontracted to it by the Contractor.

In case one or more companies establishes a special purpose company which acts as the Contractor and such companies perform the Works instead of such special purpose company, such companies shall not be considered as subcontractors on the first level but instead their subcontractors shall be considered subcontractors on the first level for the purposes of this Sub-Clause.

Upon Employer's request, the Contractor must without undue delay prove to the Employer that any given Subcontractor has all permits, authorizations and qualifications required to duly carry out its tasks under the respective subcontract.

The Contractor shall pay the Employer a contractual penalty in the amount of EUR 500,000 for every breach of the above provision; this is without prejudice to the Employer's right to request that the Subcontractor obtains the missing permits, authorizations and qualifications.

The Subcontractors must be companies or sole entrepreneurs with proven history of participation on constructions projects corresponding to the scope of tasks under the respective subcontract.

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.

Unless otherwise stated in the Conditions:

- (a) the Contractor shall not be required to obtain consent to a subcontract for which the Subcontractor is named in the Contract;
- (b) the prior consent of the Employer shall be obtained to other proposed Subcontractors, including the proposed Contractor's Affiliates;
- (c) the Contractor shall give the Employer not less than 28 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and
- (d) each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under

The Contractor shall obtain, coordinate, and submit to the Employer for his information and in a timely manner details of all work to be carried out by any Subcontractors, including work off-Site.

The Contractor shall ensure that corresponding requirements imposed on the Contractor by Sub-Clause 1.12 [*Confidential Details*] are included in each Subcontract.

Before each payment, the Employer may request the Contractor to supply reasonable evidence that the Subcontractor has received all amounts due in accordance with the subcontracts, less applicable deductions or retentions or otherwise.

#### 4.5 **Assignment of Benefit of Subcontract**

In case of a termination of this Contract under Sub-Clause 15.2 [*Termination by Employer*], the Employer shall have the right to instruct the Contractor to assign to it the rights and obligations of the Contractor under the subcontracts specified by the Employer. The Contractor shall use best efforts to ensure that the subcontracts allow for such assignment to the Employer, including the provisions on liability of subcontractor as contained in the subcontract and shall provide evidence thereof when demanded by the Employer.

Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

#### 4.6 **Co-operation**

The Contractor shall, as specified in the Contract or as instructed by the Employer, allow appropriate opportunities for carrying out work to:

- (a) the Employer's Personnel,
- (b) any other contractors employed by the Employer, and
- (c) the personnel of any legally constituted public authorities,

who may be employed in the execution on or near the Site of any work not included in the Contract.

Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.

The coordination of the Contractor's activities and the Employer's or other suppliers' activities on Site shall be discussed in the project management meetings.

The Contractor shall be responsible for his assembly activities on the Site, and shall co-ordinate his own activities with those of other contractors and organisations to the extent required for the Works or otherwise made known to the Contractor by the Employer.

Except as approved by the Employer in writing, the Contractor shall conduct its work and cooperate with such other parties so as to minimise interference with normal and continuous business activities and such other works as may be undertaken at the same time to the extent practicable and reasonable, including by attending (at its cost) regular and ad hoc co-ordination meetings, and seeking to agree with such other contractors access routes, schedules for delivery of Goods and co-ordination of work activities, in order to avoid impeding the work of such other contractors or causing delays to the Works.

If there is a conflict or difference of opinion as to the respective rights of the Contractor and other contractors undertakings work within the limits of or adjacent to the Site, the Employer shall determine the various parties' rights to access, and priority of access, to the Site in accordance with Sub-Clause 3.5 [*Determinations*] so as to secure the completion of the Works in general harmony and in a manner satisfactory to the Employer, and the Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*]):

- (a) an extension of time for any delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus reasonable Profit, which shall be included in the Contract Price.

The Contractor shall comply with the Employer's decision.

#### 4.7 **Setting Out**

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract, Joint Permit or notified by the Employer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

#### 4.8 **Safety Procedures**

The Contractor shall:

- (a) comply with all applicable safety Laws, especially those listed in the lists forming part of the Employer's Requirements,
- (b) comply with health and safety rules set out in Annex 8,
- (c) take care for the safety of all persons entitled to be on the Site,
- (d) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
- (e) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [*Employer's Taking Over*],
- (f) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land, and
- (g) submit in writing to the Employer a summary of the safety risks at the Site which may arise during the execution of the Works.

#### 4.9 **Quality Assurance**

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Employer shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Employer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Employer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

The Contractor shall submit the project quality plan with details of the quality assurance programme (certifications), including any project quality manual required by the quality assurance system within 3 weeks after the issuance of the partial Notice to Proceed

concerning the Early Works and proceed in accordance with Section 2.6 of the General Technical Requirements.

#### 4.10 Site Data

The Contractor confirms that by receiving the Employer's Site Data it received all necessary Site data from the Employer. The Employer shall make available to the Contractor all additional Site data which it acquires after the Base Date. The Contractor shall be responsible for interpreting all such data, correctness and completeness of design works under Sub-Clause 5.1 [*General Design Obligations*].

Without prejudice to [Clause 4.1 of the Contract Agreement \(with respect to soil classes\)](#) and Sub-Clause 1.9 [[Errors in the Employer's Requirements](#)], to the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained also all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Contractor's Proposal as to all relevant matters, including (without limitation):

- (a) the form and nature of the Site, ~~including sub-surface conditions,~~
- (b) the hydrological and climatic conditions,
- (c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,
- (d) the Laws, procedures and labour practices of the Country, and
- (e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

#### 4.11 Sufficiency of the Contract Price

The Contractor shall be deemed to:

- (a) have satisfied himself as to the correctness and sufficiency of the Contract Price (as specified for various Scenarios in Clause 4.1 of the Contract Agreement), and
- (b) have based the Contract Price (as specified for various Scenarios in Clause 4.1 of the Contract Agreement) on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [*Site Data*] and any further data relevant to the Contractor's design.

Unless otherwise stated in the Contract, the Contract Price (as specified for various Scenarios in Clause 4.1 of the Contract Agreement) covers all the Contractor's obligations under the Contract and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

#### 4.12 Unforeseeable Physical Conditions

In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding

climatic conditions. This is without prejudice to the rules set out in Clause 19 [*Force Majeure*].

If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable despite the contents of the Employer's Site Data and any additional data acquired by the Contractor or by the Employer and provided to the Contractor, the Contractor shall give notice to the Employer as soon as practicable.

This notice shall describe the physical conditions, so that they can be inspected by the Employer, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Employer may give. If an instruction constitutes a Variation, Clause 13 [*Variations and Adjustments*] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving such notice and inspecting and/or investigating these physical conditions, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Employer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Contractor's Proposal. If and to the extent that these more favourable conditions were encountered, the Employer may proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

The Employer may take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Contractor's Proposal, which may be made available by the Contractor, but shall not be bound by any such evidence.

#### **4.13 Rights of Way and Facilities**

The Contractor shall bear all costs and charges for special and/or temporary rights-of-way which he may require, including those for access to the Site, as specified in more detail in the Scope of Work. The Contractor shall perform any technical condition inventory using visual documentation in particular if so requested by the state authorities. The Contractor shall also obtain, at his risk and cost, any additional facilities outside the Site which he may require for the purposes of the Works. In case the Contractor requires any additional special and/or temporary rights-of-way, it shall consult with the respective state authorities and obtain related permissions.

#### 4.14 Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

- (a) the convenience of the public,
- (b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others,
- (c) normal and continuous operations on the Site, or
- (d) the activities conducted by the Other Employer's Contractors on Site.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference-, provided the Employer promptly notified the Contractor of any claim by a third party and provided all relevant information thereabout. In such case, the Contractor may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The Employer shall, at the request and cost of the Contractor, reasonably assist in contesting the claim. The Employer (and its personnel) shall not make any admission which might be prejudicial to the Contractor, unless the Contractor failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by the Employer.

The Contractor shall define planned interferences and limitations in the Project Execution Plan elaborated under Sub-Clause 8.3 [*Programme*].

#### 4.15 Access Route

~~The~~As of the day of submitting the Contractor's Proposal, the Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The access routes contained in the Drawings are provided by the Employer for information purposes only. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel and to proceed in accordance with the conditions of the Joint Permit. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- (a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
- (b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
- (c) the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route;
- (d) the Employer does not guarantee the suitability or availability of particular access routes; and
- (e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

#### 4.16 Transport of Goods

Unless otherwise stated in ~~the Particular~~these Conditions:

- (a) the Contractor shall give the Employer not less than 21 days' notice of the date on which any Plant, Employer's Plant and Materials or a major item of other Goods will be delivered to the Site;
- (b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works;
- (c) prior to the commencement of the transport, the Contractor shall perform technical condition inventory of the access routes (including related assets such as bridges, adjacent structures etc.), using visual documentation in particular; and
- (d) the Contractor shall indemnify the Employer for all damages (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport, provided the Employer promptly notified the Contractor of any claim by a third party and provided all relevant information thereabout. In such case, the Contractor may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The Employer shall, at the request and cost of the Contractor, reasonably assist in contesting the claim. The Employer (and its personnel) shall not make any admission which might be prejudicial to the Contractor, unless the Contractor failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by the Employer.

#### 4.17 Contractor's Equipment

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the Employer. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

#### 4.18 Protection of the Environment

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Contractor shall ensure that all conditions set out in applicable environmental permits are complied with (incl. those setting out the handling of woods, logging and replacement planting).

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated in the Employer's Requirements, and shall not exceed the values prescribed by applicable Laws.

#### 4.19 Electricity, Water and Gas

The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require.

Following the issuance of the Ready for Start-Up Certificate, the Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, process gas and other

services as specified in the Employer's Requirements at the risk and cost of the Employer, unless the Contractor caused:

- (a) the non-availability of any of these services, or
- (b) the repetition of any of the Tests on Completion. In such case, the quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Employer in accordance with Sub-Clause 2.5 [*Employer's Claims*] and Sub-Clause 3.5 [*Determinations*]. The Contractor shall pay these amounts to the Employer.

#### 4.20 **Employer's Equipment and Free-Issue Material**

The Employer shall make the Employer's Equipment (if any) available for the use of the Contractor in the execution of the Works in accordance with the details, arrangements and prices (if any) stated in Employer's Requirements. Unless otherwise stated in the Employer's Requirements:

- (a) the Employer shall be responsible for the Employer's Equipment, except that
- (b) the Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.

The appropriate quantities and the amounts due (at such stated prices) for the use of Employer's Equipment shall be agreed or determined by the Employer in accordance with Sub-Clause 2.5 [*Employer's Claims*] and Sub-Clause 3.5 [*Determinations*]. The Contractor shall pay these amounts to the Employer.

The Employer shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Employer's Requirements. The Employer shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them, and shall promptly give notice to the Employer of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Employer shall immediately rectify the notified shortage, defect or default.

The Employer shall further make available the Employer's Plant and Materials to the Contractor for the use by the Contractor in the execution of the Works. The Employer's Plant and Materials shall be handed over to the Contractor in quantities and locations specified in the Employer's Requirements and in times specified in the Delivery Plan.

Unless otherwise stated in the Employer's Requirements:

- (a) the Contractor shall, in cooperation with the Employer, prepare, and negotiate with the third-party supplier(s) notified to it by the Employer, the Delivery Plan, which shall be in accordance with the Project Execution Plan under Sub-Clause 8.3 [*Programme*] and shall be finally approved by the Employer pursuant to Sub-Clause 5.2 [*Contractor's Documents*],
- (b) the Contractor shall be responsible for unloading of the items specified in the Interface Report,
- (c) the third-party supplier shall bear the risk of damage to the Employer's Plant and Materials until the hand-over of the Employer's Plant and Materials to the Contractor,



- (d) the Contractor shall bear the risk of damage to the Employer's Plant and Materials from the moment such items were handed over to it by the third party supplier.

The Contractor shall take-over the Employer's Plant and Materials from the Employer or third-party supplier notified to it by the Employer in accordance with the Delivery Plan. For the avoidance of doubt, the Employer's Plant and Materials shall not become the property of the Contractor at the hand-over.

Upon taking-over of the Employer's Plant and Materials, the Contractor shall perform a visual inspection of the Employer's Plant and Materials for any visible defects and notify to the Employer any visible defects with supporting particulars. If the Contractor is taking-over the Employer's Plant and Materials from a third-party contractor, the Contractor shall ensure that the defects visible on the Employer's Plant and Materials are notified to the third-party contractor, marked in the handing-over protocol, evidence proving the defects (such as photographs) is secured and provided to the Employer.

If the Contractor fails to duly perform the visual inspection of such Employer's Plant and Materials, and any such Employer's Plant and Materials are later found defective and the Employer suffers damage, the Contractor shall be liable for such damage to the Employer and shall not be entitled to any extension of time for the resulting delay or payment of Costs.

If an experienced contractor exercising Recognised Good Practice would not have discovered the defect when taking-over the Employer's Plant and Materials, the Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to an extension of time for any such delay, if completion is or will be delayed as a result of the defects of the Employer's Plant and Materials, under Sub-Clause 8.4 [*Extension of Time for Completion*], provided that the Contractor proves and provides evidence of the defects in Employer's Plant and Materials.

For the purposes of Contractor's obligations under this Sub-Clause, the Contractor may request supporting documentation from the Employer and the Employer shall, to the extent reasonably possible, provide such documentation to the Contractor, provided that the Employer may eliminate (black out) terms which are not necessary for the Contractor to perform its obligations under this Contract.

If any of the Employer's Plant and Materials is damaged, the Contractor shall discuss the removal of the defect with the third-party contractor and shall submit the proposed remedial action to the Employer for approval in accordance with Sub-Clause 5.2 [*Contractor's Documents*].

In case the Contractor cannot duly perform the Contract as a result of any defect of the Employer's Plant and Materials, it shall bear the burden of proof of the existence of such defect towards the Employer and it shall provide sufficient documentary evidence relating to such defect to the Employer.

When handling with the Employer's Plant and Materials, the Contractor shall comply with the Project Execution Plan under Sub-Clause 8.3 [*Programme*] and the requirements set out in TOZA which shall be provided to the Contractor in due course.

#### 4.21 **Progress Reports**

Unless otherwise stated in the Requirements on Project control for General Contractor, forming part of the Employer's Requirements, the following rules shall apply.

Monthly progress reports shall be prepared by the Contractor and submitted to the Employer in six 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 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 include, in addition to any reporting requirements set forth in the Employer's Requirements:

- (a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation,
- (b) photographs showing the status of manufacture and of progress on the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
  - (i) commencement of manufacture,
  - (ii) Contractor's inspections,
  - (iii) tests, and
  - (iv) shipment and arrival at the Site;
- (d) the details described in Sub-Clause 6.10 [*Records of Contractor's Personnel and Equipment*];
- (e) copies of quality assurance documents, test results and certificates of Materials;
- (f) list of notices given under Sub-Clause 2.5 [*Employer's Claims*] and notices given under Sub-Clause 20.1 [*Contractor's Claims*];
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

#### **4.22 Security of the Site**

The Contractor shall be responsible for keeping unauthorized persons off the Site, and authorized persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by the Employer, as authorized personnel of the Other Employer's Contractors on the Site.

#### **4.23 Contractor's Operations on Site**

The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Employer as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land. The Contractor and the Contractor's Personnel shall not enter any areas other than working areas;

the Employer shall proceed in accordance with Sub-Clause 6.9 [*Contractor's Personnel*] in case of breach of aforesaid.

The Contractor shall take care in carrying out any part of the Works in proximity to, or affecting adjoining property, and is responsible for obtaining any consent necessary from adjoining owners and occupiers for entering upon their land and carrying out any activity upon their property. The Contractor shall not enter upon such land or carry out such activity until such consent has been obtained, and shall indemnify the Employer for all damages (including legal fees and expenses) arising from the Contractor's breach of this obligation. ~~In this respect, the Contractor,~~ provided the Employer promptly notified the Contractor of any claim by a third party and provided all relevant information thereabout. In such case, the Contractor may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The Employer shall, at the request and cost of the Contractor, reasonably assist in contesting the claim. The Employer (and its personnel) shall not make any admission which might be prejudicial to the Contractor, unless the Contractor failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by the Employer.

The Contractor shall proceed in accordance with the ROW Requirements. In case the owners or occupiers have different requirements from those stated in the ROW Requirements, the Contractor shall first obtain an approval of such requirement from the Employer and such requirements shall be considered a Variation.

During the execution of the Works, the Contractor shall keep the Site or such additional areas agreed as working areas free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials in accordance with Employer's Requirements. The Contractor shall clear away and remove from the Site or such additional areas agreed as working areas any wreckage, rubbish and Temporary Works which are no longer required and restore the original condition on the Site or such additional areas.

Should the Contractor fail to keep the Site or such additional areas agreed as working areas clear and safe at any time after reasonable notice from the Employer, the Employer may arrange for others to clear the Site or such additional areas agreed as working areas, the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claims*] pay these costs to the Employer.

Within ~~7~~14 days after the issuance of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, and such additional areas agreed as working areas and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material (except as required in Section 2.13 of the General Technical Requirements), wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and such additional areas agreed as working areas and the Works in a clean and safe condition and shall evidence such hand-over by a protocol; this is without prejudice to Contractor's rights to keep certain instruments and spare parts on Site pursuant to Sub-Clause 11.7 [*Right of Access*]. If damage was caused to part of Site owned by third parties, the Contractor shall indemnify the third parties.

#### 4.24 **Fossils**

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Employer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this further notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters. The Contractor shall carry out all obligations related to archaeological findings on Site (incl. conclusion of a contract for archaeological excavation works), as imposed by the applicable Laws, esp. in Act No. 183/2006 Coll., Construction Act, as amended.

#### 4.25 **Operative Logbook**

Since the Commencement Date and until the issuance of the Taking-Over Certificate the Contractor shall keep the operative logbook in Czech and English at the Site. Each entry in the operative logbook should be signed by the Employer and the Contractor's Representative.

The operative logbook shall reflect the progress of the Works, as well as all the facts and circumstances which can affect the final date of the Works completion and its quality. The entries in the operative logbook shall not modify the Contract.

The Contractor shall immediately take appropriate steps towards the rectification of the defects and imperfections pointed out by the Employer.

The instructions of the Employer as to the form (such as an additional electronic form), terms of presentation, and content of the records, if such are issued, are mandatory for the Contractor and shall be in conformity with the Laws and the Contract terms and conditions.

#### 4.26 **Orders of Plant and Materials**

With respect to the purchase orders to be placed by the Contractor with a third-party contractor, the Contractor shall proceed in accordance with Section 2.10 of the General Technical Requirements (or elsewhere in the Employer's Requirements).

For the avoidance of doubt, the Contractor remains solely responsible for the procurement of Plant and Materials, except for the Employer's Plant and Materials.

Breach of the Contractor's obligations under this Sub-Clause shall constitute a material breach and a ground for termination under Sub-Clause 15.2(i).

#### 4.27 **Works During Low Temperature**

Without prejudice to the cases of adverse weather conditions specified in items (a) through (d) in Sub-Clause 19.1 [*Definition of Force Majeure*], in case the maximum air temperature during continuous 72 hours does not rise above minus ten (-10) °C the Contractor shall be entitled, from the first day of such period until the last day of such period, to the Costs needed to implement measures which enable the Contractor to continue with the Works.

## 5. Design

### 5.1 General Design Obligations

The Contractor shall carry out, and be responsible for, the elaboration of the detail design of the Works pursuant to the Employer's Requirements, in particular the Drawings. Design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the Employer's Requirements. Unless otherwise stated in the Contract, the Contractor shall submit to the Employer for consent the name and particulars of each proposed designer and design Subcontractor.

The Contractor warrants that he, his designers and design Subcontractors have the experience and capability necessary for the design. The Contractor undertakes that the designers shall be available to attend discussions with the Employer at all reasonable times, until the expiry date of the relevant Defects Notification Period.

~~Without prejudice to Sub-Clause 1.9 and at the latest 30 days before the Payment Milestone "Delivery of Detail Design Documentation", as defined in Clause 3.1 of the Contract Agreement, the Contractor shall give notice to the Employer of any error, omission, discrepancy or non-compliance found in the Employer's Requirements, including the Drawings.~~

~~The Contractor shall not be required to verify the following specification of the Pipeline:~~

~~[•]~~

### 5.2 Contractor's Documents

The Contractor's Documents shall comprise the technical documents specified in the Employer's Requirements, documents required to satisfy all regulatory approvals, and the documents described in Sub-Clause 5.6 [*As-Built Documents*] and Sub-Clause 5.7 [*Operation and Maintenance Manuals*]. The Contractor's Documents shall be written in the language specified in the Employer's Requirements. When relevant, the Contractor's Documents shall be prepared in the language used by the authorities or shall include a certified translation into the language used by the authorities.

The Contractor shall prepare all Contractors' Documents, and shall also prepare any other documents necessary to instruct the Contractor's Personnel. The Employer's Personnel shall have the right to inspect the preparation of all these documents, wherever they are being prepared, provided that such inspection is notified by the Employer reasonably in advance. In case such inspection by the Employer materially disrupts Contractor's performance of the Contract and such disruption is not caused by the breach of the Contract by the Contractor, the Contractor shall be entitled to claim the extension of Time of Completion under Sub-Clause 8.4 [*Extension of Time for Completion*].

If the Employer's Requirements describe the Contractor's Documents which are to be submitted to the Employer for review and/or for approval, they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the Employer for review and (if so specified) for approval, and (ii) "Contractor's Documents" exclude any documents which are not specified as being required to be submitted for review and/or for approval.

Unless otherwise stated in the Employer's Requirements, each review period shall not exceed 10 days, calculated from the date on which the Employer receives a Contractor's Document and the Contractor's notice, except for a complete set of detail design which shall not exceed

21 days. This notice shall state that the Contractor's Document is considered ready, both for review (and approval, if so specified) in accordance with this Sub-Clause and for use. The notice shall also state that the Contractor's Document complies with the Contract, or the extent to which it does not comply. Any additional time of the review period above the time periods specified in this paragraph shall entitle the Contractor to claim the extension of Time of Completion under Sub-Clause 8.4 [Extension of Time for Completion].

The Employer may, within the review period, give notice to the Contractor that a Contractor's Document fails (to the extent stated) to comply with the Contract. If a Contractor's Document so fails to comply, it shall be rectified, resubmitted and reviewed (and, if specified, approved) in accordance with this Sub-Clause, at the Contractor's cost.

The period for review or approval for any resubmitted Contractor's Documents shall be the balance of the initial review period (calculated from the date on which the Employer received the relevant Contractor's Document and Contractor's notice) or 7 days after the date the Employer receives the resubmitted Contractor's Documents, whichever is longer.

For each part of the Works, and except to the extent that the prior approval or consent of the Employer shall have been obtained:

- (a) in the case of a Contractor's Document which has (as specified) been submitted for the Employer's approval:
  - (i) the Employer shall give notice to the Contractor that the Contractor's Document is approved, with or without comments, or that it fails (to the extent stated) to comply with the Contract;
  - (ii) execution of such part of the Works shall not commence until the Employer has approved the Contractor's Document; and
  - (iii) the Employer shall be deemed to have approved the Contractor's Document upon the expiry of the review periods for all the Contractor's Documents which are relevant to the design and execution of such part, unless the Employer has previously notified otherwise in accordance with sub-paragraph (i);
- (b) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Contractor's Documents which are relevant to its design and execution except where approval has been given earlier;
- (c) execution of such part of the Works shall be in accordance with these reviewed (and, if specified, approved) Contractor's Documents; and
- (d) if the Contractor wishes to modify any design or document which has previously been submitted for review (and, if specified, approval), the Contractor shall immediately give notice to the Employer. Thereafter, the Contractor shall submit revised documents to the Employer in accordance with the above procedure.

If the Employer instructs that further Contractor's Documents are reasonably required, the Contractor shall prepare them promptly.

Any such approval, consent or any review (under this Sub-Clause or otherwise) shall not relieve the Contractor from any obligation or responsibility under the Contract.

### 5.3 Contractor's Undertaking

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

- (a) the Laws in the Country, and
- (b) the documents forming the Contract, as altered or modified by Variations.

### 5.4 Technical Standards and Regulations

The design, the Contractor's Documents, the execution and the completed Works shall comply in particular with the technical standards specified in the chapter lists forming part of the Employer's Requirements, the Country's technical standards, building, mechanical engineering, labour safety, fire safety and environmental Laws, Laws applicable to the product being produced from the Works, and other standards specified in the Employer's Requirements, applicable to the Works, or defined by the applicable Laws.

All these Laws shall, in respect of the Works, be those prevailing when the Works are taken over by the Employer under Clause 10 [*Employer's Taking Over*]. References in the Contract to published standards shall be understood to be references to the edition applicable on the Base Date, unless stated otherwise.

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

- (a) the Employer determines that compliance is required, and
- (b) the proposals for compliance constitute a Variation,

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

### 5.5 Training

The Contractor shall carry out the training of Employer's Personnel in the operation and maintenance of the Works as specified in Section 2.16 of the General Technical Requirements, [except for in relation to the Employer's Plant and Materials](#). If the Contract specifies training which is to be carried out before taking-over, the Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Preliminary Taking Over of the Works and Final Taking Over of the Works*] until this training has been completed and the Contractor submitting documentation confirming that the training was carried out, as specified in the Employer's Requirements. The Employer's Personnel to be trained will be given one week notice before this training commences.

### 5.6 As-Built Documents

The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Two copies and an electronic form of such documentation shall be supplied to the Employer prior to the commencement of the Tests on Completion; the Contractor shall further supply such number of as-built documentation to the extent required by public authorities.

In addition, the Contractor shall supply to the Employer as-built drawings of the Works, showing all Works as executed, and submit them to the Employer for review under Sub-Clause 5.2 [*Contractor's Documents*]. The Contractor shall obtain the consent of the Employer as to their size, the referencing system, and other relevant details.

The Contractor shall supply to the Employer the specified numbers and types of copies of the relevant as-built drawings and other supporting documentation in accordance with Section 2.22 of the General Technical Requirements and Annex No. 12. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Preliminary Taking Over of the Works and Final Taking Over of the Works*] until the Employer has received these documents.

Scope and format of the as-built drawings of the Works is defined in Sub-Clause 1.8 [*Care and Supply of Documents*]. Unless otherwise stated therein, the Contractor shall immediately after finalising each drawing submit to the Employer an electronic copy of each drawing and four updated and accurate paper copies. For the purpose of ready identification, the Contractor shall ensure that each drawing and item of data contains the name of the project, the title of the Works to which the drawing belongs, the Employer requisition number and the title of the drawing or data item. The Contractor shall ensure that all such identification is shown in a consistent manner (to the Employer's reasonable satisfaction) in all drawings and data items and in such a manner that it does not cover or obscure any information appearing in a drawing or data item.

## **5.7 Operation and Maintenance Manuals**

Prior to commencement of the Tests on Completion, the Contractor shall supply to the Employer provisional operation and maintenance manuals in sufficient detail for the Employer to operate, maintain, clean, lubricate, dismantle, reassemble, adjust and repair the Works.

The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Preliminary Taking Over of the Works and Final Taking Over of the Works*] until the Employer has received final operation and maintenance manuals in such detail, and any other manuals specified in the Employer's Requirements for these purposes.

## **5.8 Design Error**

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, they and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval under this Clause.

# **6. Staff and Labour**

## **6.1 Engagement of Staff and Labour**

Except as otherwise stated in the Employer's Requirements, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

## **6.2 Rates of Wages and Conditions of Labour**

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and



observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

### 6.3 **Persons in the Service of Employer**

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.

### 6.4 **Labour Laws**

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

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

### 6.5 **Working Hours**

Work may be carried out on the Site in accordance with the Contract anytime, unless:

- (a) Joint Permit stipulates otherwise,
- (b) the Employer does not give consent, or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Employer.

Any work carried out at night shall comply with the Laws of the Country and be carried out without unreasonable noise and disturbance. The Contractor shall indemnify the Employer for any harm (including legal fees and expenses) claimed by any person to the extent that such harm arises out of or in connection with such noise or disturbance, provided the Employer promptly notified the Contractor of any claim by a third party and provided all relevant information thereabout. In such case, the Contractor may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The Employer shall, at the request and cost of the Contractor, reasonably assist in contesting the claim. The Employer (and its personnel) shall not make any admission which might be prejudicial to the Contractor, unless the Contractor failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by the Employer.

### 6.6 **Facilities for Staff and Labour**

Except as otherwise stated in the Employer's Requirements, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Employer's Requirements.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

### 6.7 **Health and Safety**

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel, as further specified in the Employer's Requirements. The Contractor shall appoint a qualified and experienced accident prevention and health and safety officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue

instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall procure that the health and safety officer trains the Contractor's Personnel in safety, fire safety, the protection of the environment, prevention of accidents and the maintaining, reviewing and revising of safety precautions and programs, and shall ensure that the officer is familiar with the provisions of the Laws of the Country that apply to the Works.

The Contractor shall take all necessary precautions (including ensuring that all of the Contractor's Personnel are equipped with, and properly use, all safeguards and personal protective equipment necessary for the performance of the relevant Works) for the safety of, and shall provide the necessary protection to prevent damage, injury or loss resulting from the performance of the project to:

- (a) each person who is at the Site or who may otherwise be affected by the performance of the project;
- (b) any Goods or Plant on the Site;
- (c) any other property on, under, over or near the Site, whether belonging to Employer or to any other Person, including buildings and other structures, fences, gates, pavements, roadways, sidewalks, vegetation, utilities (above and below ground) and the like, unless and until they are designated for removal and disposal in the course of performing the relevant Works.

The Contractor shall submit the PHSE Plan within 3 weeks after ~~the~~ issuance of the partial Notice to Proceed concerning the Early Works and proceed in accordance with Section 2.7 of the General Technical Requirements. The Contractor shall immediately call the safety officer of the Employer or Employer's Representative for the safe proper treatment of the injury and send to the Employer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Employer may reasonably require.

The Employer shall appoint a qualified and experienced accident prevention and health and safety coordinator at the Site. The coordinator shall have the right to instruct the Contractor's accident prevention and health and safety officer and the Contractor's Personnel in accordance with Sub-Clause 3.4 [*Instructions*]. The Contractor's accident prevention and health and safety officer shall communicate exclusively with the Employer's health and safety coordinator.

The Contractor shall pay to the Employer a contractual penalty in the amount of EUR 1,000 per each breach, and EUR 2,000 in case of each repeated breach, of the following obligations:

- (i) failure to implement a HSE Management Program pursuant to Clause 2;
- (ii) failure to stop the Works pursuant to Clause 3.2;
- (iii) failure to perform specific HSE Risk Assessment pursuant to Clause 3.4;
- (iv) failure to address all personnel in the Job Site Safety Briefing pursuant to Clause 3.6;

- (v) failure to prepare all required documents for the HSE Management pursuant to Clause 5.3;
- (vi) failure to report pursuant to Clause 6;
- (vii) failure to implement a system of periodic audits and inspection pursuant to Clause 7.3;
- (viii) failure to carry out a Site induction training, non-occupational or occupational health and safety trainings or safety drills pursuant to Clauses 9.3.1, 9.3.2, 9.3.3 or 9.3.4, respectively;
- (ix) failure to develop a “Permit to Work” system pursuant to Clause 10.2.4.9;
- (x) failure to establish response systems pursuant to Clause 10.3;

all as further specified in the relevant clause of the document “Requirements on HSE Management for General Contractor” which is part of the Employer’s Requirements.

#### **6.8 Contractor’s Superintendence**

Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor’s obligations, the Contractor shall provide all necessary super-intendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Clause 11.2 of the Contract Agreement) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

#### **6.9 Contractor’s Personnel**

The Contractor’s Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Employer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor’s Representative if applicable, who:

- (a) the Employer considers is not appropriately qualified, skilled and experienced to perform the role for which he has been engaged,
- (e) persists in any misconduct or lack of care or whose conduct is, in the reasonable opinion of the Employer, unacceptable,
- (f) carries out duties incompetently or negligently,
- (g) fails to conform with any provisions of the Contract, or
- (h) persists in any conduct which is prejudicial to safety, health, fire safety or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person subject to Employer’s consent. Employer shall approve such person if

such person in the Employer's opinion has the appropriate qualification, skills and experience in its respective trade or occupations.

The Contractor may not remove any Key Personnel without Employer's consent. Employer's consent shall not be required for Key Personnel listed in the Contractor's Proposal when such Key Personnel is no longer capable of carrying out its function through death or illness or when such Key Personnel resigns from the employment with the Contractor in its free will. In any case, the Contractor shall notify the Employer of any change (even future) of Key Personnel immediately when it becomes aware of it. Any new person replacing a position of any member of the Key Personnel must be approved by the Employer.

#### **6.10 Records of Contractor's Personnel and Equipment**

The Contractor shall submit, to the Employer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Employer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

#### **6.11 Disorderly Conduct**

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

#### **6.12 Prohibited Acts**

Neither the Contractor nor any Contractor's Personnel may engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under the Contract.

The Contractor:

- (a) warrants that he, and each of his directors and officers, the Contractor's Personnel and any other person acting on his behalf have not committed and shall not commit, either directly or indirectly, any Prohibited Act, and
- (b) shall indemnify the Employer from and against all damages (including legal fees and expenses) suffered by the Employer or any third party occurring as the result of a Prohibited Act, and may not make any claim or commence any action or proceeding, directly or indirectly, relating to such Prohibited Act; and
- (c) acknowledges the fact that the Employer pursues its business in accordance with the rules set forth in its Ethical Code of Conduct, which forms Annex 7, and undertakes to contribute to compliance with the rules and principles contained therein. The Contractor further undertakes to comply with the principles defined in the United Nations Global Compact concerning human rights, labor conditions, environment and anticorruption ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

#### **6.13 Alcoholic Liquors or Drugs**

The Contractor shall not permit or suffer any Contractor's Personnel bringing to the Site any, or being at the Site under the influence of, alcohol, intoxicants, incapacitating agents or illegal drugs. If any Contractor's Personnel is found with any such substance at the Site or during the carrying out of the Works, the Employer may seize, control and dispose of such substances.

The Contractor acknowledges and agrees that the individual shall be dealt with in accordance with the Employer's security procedures and applicable Laws.

#### **6.14 Arms and Ammunition**

The Contractor shall not possess, give, barter or otherwise dispose of to any person, any arms or ammunition of any kind or permit or suffer Contractor's Personnel to do so.

#### **6.15 Commissions and Conflict of Interest**

The remuneration of the Contractor properly due under the Contract shall constitute the Contractor's sole remuneration in connection with the Contract and, subject to the following sub-paragraph, the Contractor shall not accept for his own benefit any trade commission, discount or similar payment in connection with the Contract. The Contractor shall ensure that the Contractor's Personnel do not receive any such additional remuneration.

The Contractor shall not engage in any activity that might conflict with the interests of the Employer under the Contract, and shall notify the Employer in writing of any matter connected with the Contract which may give rise to any real or apparent conflict of interest at any time during the performance of the Contract.

If the Contractor is obliged as part of the Contract to advise the Employer on the procurement of goods, works or services, the Contractor shall at all times exercise such obligations in the best interest of the Employer. Any discounts or commissions obtained by the Contractor in the exercise of such procurement responsibility will be solely for the account of the Employer.

### **7. Plant, Materials and Workmanship**

#### **7.1 Manner of Execution**

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

- (a) in the manner (if any) specified in the Contract,
- (b) in a proper workmanlike and careful manner, in accordance with Recognised Good Practice and assembly procedures (if any) stated in particular in the Employer's Requirements, and
- (c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

The Contractor shall use only new Plant and Materials for incorporation into the Works, unless the Contract expressly specifies otherwise. For the avoidance of doubts, the aforementioned does not apply to the Contractor's Equipment.

#### **7.2 Samples**

The Contractor shall submit the following samples of Materials, and relevant information, to the Employer for review in accordance with the procedures for Contractor's Documents described in Sub-Clause 5.2 [*Contractor's Documents*]:

- (a) manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost,

- (b) additional samples instructed by the Employer as a Variation, and
- (c) third-party manufacturer's technical documentation concerning the Materials procured by the Contractor for the execution of the Works, all at the Contractor's cost.

Each sample shall be labelled as to origin and intended use in the Works.

### 7.3 **Inspection**

The Employer's Personnel shall at all reasonable times:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained,
- (b) 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, and
- (c) obtain photographs and video recordings showing the status of the execution of the Works and of the progress at the Site.

The Contractor shall give the Employer's Personnel 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.

The Contractor shall give reasonable (and in any event not less than 5 days') notice to the Employer whenever any work is ready and before it is covered up, put out of view, or packaged for storage or transport.

The Employer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Employer does not require doing so. If the Contractor fails to give the notice, he shall, if and when required by the Employer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

The tests necessary to evidence the compliance of the Works with the Employer's Requirements and the Tests on Completion shall be carried out by the Contractor and shall be supervised by means of an independent third party inspection. The Contractor shall be obliged to conclude a subcontract with the entity providing the third party inspection, which shall include the costs for all required activities to supervise and certify the tests and to produce and supply documentation as defined in the Contract.

The Employer may order the third party inspection directly under a separate contract if the Contractor fails to duly procure the third party inspection.

Only reputable certification bodies approved by the Employer may be used for the purposes of performing of the third party inspection.

The Contractor must grant the inspectors performing the third party inspection full access to its premises or the Site and provide all reasonably required facilities to them as required to duly supervise and certify the tests.

The Contractor shall be responsible for coordination of the third party inspection.

The costs for the execution of the tests, the preparation and handing over of this documentation and costs related to giving access to the tests for the third party inspection shall be borne by the Contractor.

#### 7.4 **Testing**

This Sub-Clause shall apply to all tests specified in the Contract.

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Employer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Employer may, under Clause 13 [*Variations and Adjustments*], 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.

The Employer shall give the Contractor not less than 48 hours' notice of the Employer's intention to attend the tests. If the Employer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Employer, and the tests shall then be deemed to have been made in the Employer's presence.

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 and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

The Contractor shall promptly forward to the Employer duly certified reports of the tests. When the specified tests have been passed, the Employer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Employer has not attended the tests, he shall not be deemed to have accepted the readings as accurate, unless the Parties so agree.

#### 7.5 **Rejection**

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Employer may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

If the Employer requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claims*] pay these costs to the Employer.

If, as a result of non-destructive test (NDT), defects are found in excess of 5 % of the total amount of welds for any DN dimension and repeated non-destructive test (NDT) of the corrected defect is carried out, the Contractor shall, subject to Sub-Clause 2.5 [*Employer's Claims*] pay the costs of such repeated non-destructive tests (NDT) to the Employer.

#### 7.6 Remedial Work

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

- (a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
- (b) remove and re-execute any other work which is not in accordance with the Contract, and
- (c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under subparagraph (c).

If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claims*] pay to the Employer all costs arising from this failure.

#### 7.7 Ownership of Plant and Materials

With the exception of the Employer's Plant and Material, each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, 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 8.10 [*Payment for Plant and Materials in Event of Suspension*].

#### 7.8 Royalties

Unless otherwise stated in the Employer's Requirements, the Contractor shall pay all royalties, rents and other payments for:

- (a) natural Materials obtained from outside the Site, and
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

#### 7.9 Spare Parts

The Contractor:

- (a) ~~must, at the times specified in the Contract~~ make available and, subject to Clause 13 [*Variations and Adjustments*], deliver to the Employer at the Site



all Spare Parts identified by the Employer as a deliverable for the Employer's taking over of the Works under Sub-Clause 10.1 [*Preliminary Taking Over of the Works and Final Taking Over of the Works*]; and

- (b) without limiting any other provision of the Contract, warrants that such Spare Parts are:
  - (i) brand new;
  - (ii) capable of being used for their intended purposes; and
- (c) guarantees availability of the Spare Parts for the period specified in Section 3.3 of the General Technical Requirements; and
- (d) shall otherwise comply with its obligations specified in the document "Requirements Spare Parts Philosophy for General Contractor" which is part of the Employer's Requirements.

If any Spare Part supplied by the Contractor contains a defect or needs to be utilised to rectify a defect at any time prior to the date of the Performance Certificate, the Contractor must at its cost promptly replace that Spare Part.

## **8. Commencement, Delays and Suspension**

### **8.1 Commencement of Works**

The Contractor shall proceed with the Works with due expedition and without delay and in accordance with the terms stated in Clause 3.1 and 3.2 of the Contract Agreement.

### **8.2 Time for Completion**

The Contractor shall complete the whole of the Works within the Times for Completion contained in Clause 3.1 of the Contract Agreement, including:

- (a) achieving the passing of the Tests on Completion, and
- (b) completing all work which is stated in the Contract as being required for the Works to be considered to be completed for the purposes of taking over under Sub-Clause 10.1 [*Preliminary Taking Over of the Works and Final Taking Over of the Works*].

### 8.3 Programme

The Contractor shall submit a detailed Project Execution Plan concerning the 14-Month Scenario to the Employer within three (3) weeks after the issuance of the partial Notice to Proceed concerning the Early Works in accordance with Section 2.4 of the General Technical Requirements. In case the Notice to Proceed is not issued by the Expected NTP Date, the Contractor shall within two (2) weeks from the Expected NTP Date also submit a detailed Project Execution Plan concerning the 12-Month Scenario to the Employer. The Project Execution Plan shall conform to the time schedule contained Clause 3.1 of the Contract Agreement and shall integrate the time schedule in accordance with Section 2.3 of the General Technical Requirements. The Contractor shall also submit a revised Project Execution Plan in his monthly progress report prepared under Sub-Clause 4.21 [*Progress Reports*], and whenever the previous Project Execution Plan is inconsistent with actual progress or with the Contractor's obligations. Each Project Execution Plan shall include:

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design, Contractor's Documents, procurement, manufacture, inspection, delivery to Site, construction, erection, factory acceptances, testing, commissioning and trial-operations,
- (b) the periods for reviews under Sub-Clause 5.2 [*Contractor's Documents*] and for any other submissions, approvals and consents specified in the Employer's Requirements,
- (c) the sequence and timing of inspections and tests specified in the Contract, and
- (d) a supporting report which includes:
  - (i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and
  - (ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage, and
  - (iii) details of the dates on which the Contractor reasonably anticipates payment related milestones to be achieved, while respecting the schedule of payments; and
- (e) any other information that may be reasonably required by the Employer to be included in the programme or report from time to time.

The Contractor shall proceed in accordance with the Project Execution Plan, subject to his other obligations under the Contract. The Employer shall have the right to give notice to the Contractor, within 21 days after receiving a Project Execution Plan, stating the extent to which it does not comply with the Contract and the Contractor shall reflect the comments to the largest extent possible. For the avoidance of doubt, compliance of the Contractor with the programme shall not excuse the Contractor from its obligation to pay delay penalties for failure to comply with the Times for Completion under Sub-Clause 8.7 [*Delay Penalties*]. The Employer's Personnel shall be entitled to rely upon the Project Execution Plan when planning their activities. If a Project Execution Plan is not approved by the Employer, the last approved Project Execution Plan shall be binding.

The Contractor shall promptly give notice to the Employer of specific probable future events or circumstances which may adversely affect the work increase the Contract Price or delay the execution of the Works. The Employer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 13.3 [*Variation Procedure*].

If, at any time, the Employer gives notice to the Contractor that a Project Execution Plan fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised Project Execution Plan to the Employer in accordance with this Sub-Clause as soon as reasonably possible.

#### 8.4 Extension of Time for Completion

The Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] and the paragraphs below to an extension of any Time for Completion if the Contractor was delayed and the relevant cause of delay caused a delay to the critical path for the completion for the purposes of Sub-Clause 10.1 [*Preliminary Taking Over of the Works and Final Taking Over of the Works*] whenever there is a specific reference in the Contract, such as in any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [*Variation Procedure*]),
- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions, or
- (c) [Not used],
- (d) ~~[Not used]~~ Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- (e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Other Employer's Contractors on the Site. For the avoidance of doubt, if the delay of the Employer was primarily caused by the Contractor, the Contractor shall not be entitled to any extension of Time for Completion.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Employer in accordance with Sub-Clause 20.1 [*Contractor's Claims*]. When determining each extension of time under Sub-Clause 20.1, the Employer shall review previous determinations and may increase, but shall not decrease, the total extension of time. The Contractor shall be entitled to payment of Costs ~~and/or~~ plus reasonable Profit incurred as a result of the extension of time event under letter (e) or to the extent explicitly provided in the relevant Sub-Clause of the Contract.

#### 8.5 Delays Caused by Authorities

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country or the third-parties handing-over the infrastructure under Sub-Clause 2.1 [*Right of Access to the Site*],

- (b) these authorities or the third-parties handing-over the infrastructure under Sub-Clause 2.1 [*Right of Access to the Site*] delay or disrupt the Contractor's work without due cause, and
- (c) the delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [*Extension of Time for Completion*]. The Contractor shall be entitled to payment of any Costs in accordance with Sub-Clause 20.1 [*Contractor's Claims*].

## 8.6 Rate of Progress

If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen (or will fall) behind the Project Execution Plan under Sub-Clause 8.3 [*Programme*],

other than as a result of a cause listed in Sub-Clause 8.4 [*Extension of Time for Completion*], then the Employer may instruct the Contractor to submit, under Sub-Clause 8.3 [*Programme*], a revised Project Execution Plan and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

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

## 8.7 Delay Penalties

If the Contractor fails to comply with Sub-Clause 8.2 [*Time for Completion*], the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claims*] pay delay penalties defined in Clause 3 of the Contract Agreement to the Employer for this default.

Without prejudice to the Employer's entitlement to additional costs caused by the Contractor's revised methods of working under Sub-Clause 8.6 [*Rate of Progress*], the delay penalties set forth in the Contract Agreement shall be the only penalties due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [*Termination by Employer*] prior to completion of the Works. These delay penalties shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract. For the avoidance of doubt, where a contractual penalty applies, the right to claim damages exceeding the contractual penalties shall be excluded; this is without prejudice to the payment of costs for revised methods of the Contractor under Sub-Clause 8.6 [*Rate of Progress*].

## 8.8 Suspension of Work

The Employer may, for any reason, upon 15 days written notice to the Contractor, direct the Contractor to suspend all or part of the Work (for a period of time not to exceed in aggregate ~~270~~180 days) and, once the suspension has been lifted, to re commence, the carrying out of all or part of the Contractor's activities.

Upon receipt of any such notice, the Contractor shall, unless instructed otherwise:

- (a) discontinue the Work, or part thereof, as detailed in the notice, on the date and to the extent specified; and
- (b) properly protect, store and secure the Goods, Employer's Equipment and Contractor's Equipment, as required by the Employer.

The Employer may, by further notice, instruct the Contractor to resume the Work under the Contract to the extent specified.

#### 8.9 Consequences of Suspension

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

- (a) an extension of time for any such delay (incl. reasonable time for mobilisation), if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of the stand-by costs specified in the SPRQ under item 6.2 "Stand-by costs after the issuance of the Notice to Proceed", which shall be included in the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

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

#### 8.10 Payment for Plant and Materials in Event of Suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than ~~56~~45 days, and
- (b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Employer's instructions.

#### 8.11 Prolonged Suspension

If the suspension under Sub-Clause 8.8 [*Suspension of Work*] has continued for more than ~~270~~180 days, the Contractor may request the Employer's permission to proceed. If the Employer does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Employer, treat the suspension as an omission under Clause 13 [*Variations and Adjustments*] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [*Termination by Contractor*].

#### **8.12 Resumption of Work**

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

#### **8.13 Mitigation and Delay**

The Contractor shall use all reasonable endeavours to minimise any delay in the performance of the Contract if the Contractor is or will be delayed by any cause giving rise to a claim for an extension of the Time for Completion.

If, in respect of any work, there are two or more concurrent events of delay and at least one of those concurrent events of delay is attributable to the Contractor, then (except where the other event is a Variation directing a change to the scope of the Works) to the extent that the delays overlap, the Contractor shall not be entitled to an extension of the Time for Completion. The Contractor shall not be entitled to a separate extension of the Time for Completion for each one of several causes of delay running concurrently.

No entitlement to an extension of time under the Contract shall create any automatic entitlement to any additional payment, and any claim for additional Cost or other payment shall be determined on a case by case basis and subject to Sub-Clause 20.1 [*Contractor's Claims*].

#### **8.14 Advance Warning**

Each Party shall advise the other, in advance of any known or probable future events or circumstances which may:

- (a) adversely affect the work of the Contractor's Personnel;
- (b) adversely affect the performance of the Works when completed;
- (c) increase the Contract Price; and/or
- (d) delay the execution of the Works (if any).

In such case, the Employer may request the Contractor to submit a proposal under Sub-Clause 13.3 [*Variation Procedure*] to avoid or minimize the effects of such event(s) or circumstance(s).

### **9. Tests on Completion**

#### **9.1 Contractor's Obligations**

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [*Testing*], after providing the documents in accordance with Sub-Clause 5.6 [*As-Built Documents*], Sub-Clause 5.7 [*Operation and Maintenance Manuals*] and Inspection and Test Plan.

The Contractor shall give to the Employer not less than 21 days' notice of the date after which the Contractor will be ready to carry out the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Employer shall instruct.

The Tests on Completion shall be carried out in the sequence stated in Clause 5.1 of the Contract Agreement. The Contractor shall ensure that each test from the Tests on Completion is carried out in accordance with the requirements (if any) presented by the Employer's Start-Up Committee. The Contractor cannot commence the commissioning of the Works without the express approval of the Start-Up Committee.

During trial operation, when the Works are operating, the Contractor shall give notice to the Employer that the Works are ready for any other Tests on Completion, including performance tests to demonstrate whether the Works conform with criteria specified in the Employer's Requirements.

Commissioning or trial operation tests shall not constitute any taking-over under Clause 10 [*Employer's Taking Over*]. Anything produced during Tests on Completion shall be the property of the Employer.

In considering the results of the Tests on Completion, the Employer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works has passed each of the Tests on Completion, the Contractor shall, in accordance with the requirements set out in the General Technical Requirements submit a certified report of the results of these Tests to the Employer.

## **9.2 Delayed Tests**

If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 7.4 [*Testing*] (fifth paragraph) and/or Sub-Clause 10.3 [*Interference with Tests on Completion*] shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Employer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Employer.

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

## **9.3 Retesting**

If the Works fail to pass the Tests on Completion, Sub-Clause 7.5 [*Rejection*] shall apply, and the Employer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions as necessary and reasonable considering the principles apparent from the Inspection and Test Plan.

If the Works fail to pass the Tests on Completion for the second time during a three month period after the commencement of Tests on Completion, the Employer may require the Contractor to replace any faulty component, the Contractor must comply with such request and the Contractor shall not be entitled to claim for an extension to the Time for Completion or an adjustment to the Contract Price.

To the extent failure of the Tests on Completion is caused by the

- (a) defect in the Employer's Plant and Materials that a reasonable contractor using Recognised Good Practice could not have discovered or that was notified by the Contractor but confirmed in writing by the Employer;

- (b) installation manuals of the Employer's Plant and Materials provided by the suppliers of Employer's Plant and Materials;

and the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (ii) payment of any such Cost plus reasonable Profit, which shall be included in the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

#### 9.4 [Not used]

#### 9.5 Punch List

Not earlier than 14 days prior to the Contractor's expected date of issuance of the Mechanical Completion Certificate, Ready for Commissioning Certificate, Preliminary Taking-Over Certificate and Taking –Over Certificate, the Contractor must provide to the Employer a draft Punch List, as further specified in the Employer's Requirements. The Employer shall not be obliged to issue any such certificates in case any items A (as per Section 2.17.2 of General Technical Requirements) on the Punch List remain unresolved.

Subject to Sub-Clause 11.4 [*Failure to Respond and Failure Remedy Defects*], should the Punch List items B (as per Section 2.17.2 of General Technical Requirements) not be remedied within the deadlines agreed, the Employer shall have the right to retain 8 % from the Payment Milestone to which the Punch List refers from the issued invoice which immediately follows the deadline agreed for remedying of the Punch List items until the time when such Punch List items are remedied by the Contractor.

### 10. Employer's Taking Over

#### 10.1 Preliminary Taking Over of the Works and Final Taking Over of the Works

##### Issuance of the Preliminary Taking-Over Certificate

The Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters specified in Clause 5.1 (c) of the Contract Agreement and except as allowed in sub-paragraph (a) below, and (ii) a Preliminary Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Employer for a Preliminary Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for preliminary taking over as further specified in Clause 5.1 (c) of the Contract Agreement.

The Employer is entitled to, within 28 days after receiving the Contractor's application:

- (a) issue the Preliminary Taking-Over Certificate to the Contractor, stating the date on which the Works were completed in accordance with the Contract, except for any minor outstanding work and defects identified in the Punch



List which will not substantially affect the use of the Works for their intended purpose (items B as per Section 2.17.2 of General Technical Requirements) (either until or whilst this work is completed and these defects are remedied); or

- (b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Preliminary Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Employer fails either to issue the Preliminary Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works are substantially in accordance with the Contract, the Preliminary Taking-Over Certificate shall be deemed to have been issued on the last day of that period

#### Issuance of the Taking-Over Certificate

Once all activities specified in Clause 5.1 (d) of the Contract Agreement and Section 2.23 of the General Technical Requirements have been completed, including the trial operation and issuance of the Final Operation Permit (in legal force), the Contractor may apply by notice to the Employer for the issuance of a Taking-Over Certificate.

The Employer is entitled to, within 28 days after receiving the Contractor's application:

- (a) issue the Taking-Over Certificate to the Contractor, stating the date of completion of the trial operation and issuance of the Final Operation Permit (in legal force), except for any minor outstanding work and defects identified in the Punch List which will not substantially affect the use of the Works for their intended purpose (items B as per Section 2.17.2 of General Technical Requirements) (either until or whilst this work is completed and these defects are remedied); or
- (b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Employer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

## **10.2 Taking Over of Parts of the Works**

The Employer may, at the sole discretion of the Employer, issue a Preliminary Taking-Over Certificate and/or the Taking-Over Certificate for any part of the Permanent Works.

The Employer shall not (except as expressly provided for in the Employer's Requirements) use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Employer has issued a Preliminary Taking-Over Certificate for this part. However, if the Employer does use any part of the Works before the Preliminary Taking-Over Certificate is issued:

- (a) the part which is used shall be deemed to have been taken over as from the date on which it is used,

- (b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and
- (c) if requested by the Contractor, the Employer shall issue a Preliminary Taking-Over Certificate for this part.

After the Employer has issued a Preliminary Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Employer and (ii) be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to payment of any such Cost plus reasonable Profit, which shall be included in the Contract Price. After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine this Cost.

### 10.3 Interference with Tests on Completion

If the Contractor is prevented, for more than 8460 days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be deemed to have taken over the Works on the date when the Tests on Completion would otherwise have been completed.

The Employer shall then issue a Preliminary Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Employer shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus reasonable Profit, which shall be included in the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

### 10.4 Surfaces Requiring Reinstatement

Except as otherwise stated in a Preliminary Taking-Over Certificate, a certificate for a part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

### 10.5 Concealed Work

All parts of the Work may be put out of view or covered up only according to the procedure stated in the Inspection and Test Plan. The Contractor is to provide reasonable notice (and in

any event not less than 5 days') in order to permit the inspection of any part of the Work which is about to be put out of view or covered up.

The Contractor may not put out of view or cover up any parts of the Works when such event is foreseen in the Inspection and Test Plan as "hold" event unless explicitly allowed by the Employer for such particular inspection event.

The Contractor may put out of view or cover up any parts of the Works when such event is foreseen in the Inspection and Test Plan as "witness".

If the Contractor fails to notify the Employer of the planned inspection event, the Employer shall have the right at any time to require the Contractor to uncover or open up any part of the Work and to reinstate such uncovered or opened part following inspection and testing by the Employer, all at the Contractor's cost.

The Contractor shall further pay the Employer a contractual penalty in the amount of EUR 2,000 for every breach of the procedures set forth in the Inspection and Test Plan with respect to "witness" items and EUR 3,500 for every breach of the procedures set forth in the Inspection and Test Plan with respect to "hold" items.

If the Employer fails to attend a "hold" event despite being duly notified by the Contractor, the Employer shall have the right at any time to require the Contractor to uncover or open up any part of the Work and to reinstate such uncovered or opened part following inspection and testing by the Employer, but the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claim*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

## **11. Defects Liability**

### **11.1 Completion of Outstanding Work and Remedying Defects**

In order that the Works and Contractor's Documents shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

- (a) complete any work identified in the Punch List within the time specified for that item on the Punch List (or where no time is specified, within reasonable time after Preliminary Taking-Over Certificate is issued), or such longer period as the Parties may agree, and
- (b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works.

Without limiting the Contractor's obligations under the Contract, including to remedy defects, if a defect appears or damage occurs, the Contractor shall be notified accordingly, by the Employer, as soon as reasonably practicable after the defect or damage has been discovered.

## 11.2 Cost of Remedying Defects

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- (a) the design of the Works,
- (b) Plant, Materials or workmanship not being in accordance with the Contract, except for the Employer's Plant and Materials (if not caused by improper handling or installation performed by the Contractor),
- (c) improper operation or maintenance which was attributable to matters for which the Contractor is responsible (under Sub-Clauses 5.5 to 5.7 or otherwise), or
- (d) failure by the Contractor to comply with any other obligation.

The costs borne by the Contractor pursuant to the preceding paragraph shall include the Employer's costs reasonably incurred as a result of or in connection with the Contractor's breach of warranty ~~and~~ including Contractor's travel and personnel costs in connection with the warranty defect, costs of third-party inspections etc. ~~and~~.

If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Employer, and Sub-Clause 13.3 [*Variation Procedure*] shall apply.

## 11.3 Extension of Defects Notification Period

The Employer shall be entitled subject to Sub-Clause 2.5 [*Employer's Claims*] to an extension of the Defects Notification Period for the Works if and to the extent that the Works or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage.

If any component of the Works (and in case of the Employer's Plant and Materials as a result of defective installation or disposal by the Contractor) fails for the third time during the last consecutive period of six (6) months, the Employer may require the Contractor to replace such component or construction section, the Contractor must comply with such request at its own risk and cost. The Contractor shall provide new Defects Notification Period with respect to the replaced component.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [*Suspension of Work*] or Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

## 11.4 Failure to Remedy Defects

The Contractor shall commence to remedy the notified defect without unreasonable delay and in any case not later than:

- (i) within 12 hours in case the defect prevents the safe operation of the Works, and
- (ii) within 48 hours in case the defect does not have an impact on the safe operation of the Works,

in each case after the receipt of such notification with email or telephone.

For the purposes of this Sub-Clause, the Contractor shall be deemed to have commenced to remedy the defect when (i) the Contractor's personnel arrived to the Site, or (ii) the Contractor notified the Employer that it commenced to remedy the defect using the remote diagnostics system, or (iii) the Contractor otherwise demonstrates, to the reasonable opinion of the Employer, that it commenced the rectification of the defect.

The Contractor shall continue to remedy the defect as an experienced contractor exercising Recognised Good Practice would after the receipt of first notification of defect.

If the Contractor fails to remedy the defect or damage or complete any outstanding work by this date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Employer may (at his option) and without prejudice to the Employer's rights under Clause 3.3 of the Contract Agreement and Clause 15 [*Termination by Employer*]:

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's risk and cost (unless the Contractor can evidence that the remedial or outstanding work was not performed in a professional manner); and the Contractor shall pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage (incl. costs arising out of remedial or outstanding work and related project management); or
- (b) agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [*Determinations*]; or
- (c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part (or parts) of the Works, or the Works cannot be used in normal operations for a period exceeding 30 days, terminate the Contract as a whole, or in respect of such major part (or parts) of the Works 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 parts (as the case may be), and financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

#### 11.5 Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

#### 11.6 Further Tests

If the work of remedying of any defect or damage may affect the performance of the Works, the ~~Engineer~~Employer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [*Cost of Remedying Defects*], for the cost of the remedial work.

### 11.7 **Right of Access**

Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Employer's reasonable security restrictions.

### 11.8 **Contractor to Search**

The Contractor shall, if required by the Employer, search for the cause of any defect, under the direction of the Employer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Cost of the search plus reasonable Profit shall be agreed or determined by the Employer in accordance with Sub-Clause 3.5 [*Determinations*] and shall be included in the Contract Price.

### 11.9 **Performance Certificate**

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

The Employer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects.

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

### 11.10 **Unfulfilled Obligations**

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

### 11.11 **Clearance of Site**

Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 28 days after the Employer receives a copy of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the [reasonable](#) costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

## 12. **Nominated Subcontractors**

### 12.1 **Definition of "nominated Subcontractor"**

In the Contract, "nominated Subcontractor" means a Subcontractor:

- (a) who is stated in the Contract as being a nominated Subcontractor, or

- (b) whom the Employer, under Clause 13 [*Variations and Adjustments*], instructs the Contractor to employ as a Subcontractor.

## 12.2 **Objection to Nomination**

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Employer as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Employer agrees to indemnify the Contractor against and from the consequences of the matter:

- (a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;
- (b) the subcontract does not specify that the nominated Subcontractor shall indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or
- (c) the subcontract does not specify that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
  - (i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract, and
  - (ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities.

## 12.3 **Payments to nominated Subcontractors**

The Contractor shall pay to the nominated Subcontractor the amounts which the Employer certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price.

## 12.4 **Evidence of Payments**

Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Employer may request the Contractor to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retention or otherwise. Unless the Contractor:

- (a) submits this reasonable evidence to the Employer, or
- (b)
  - (i) satisfies the Employer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and
  - (ii) submits to the Employer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement,

then the Employer may (at his sole discretion) pay, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall then repay, to the

Employer, the amount which the nominated Sub-contractor was directly paid by the Employer.

## **13. Variations and Adjustments**

### **13.1 Right to Vary**

Variations may be initiated by the Employer at any time prior to issuing the Preliminary Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. The Contractor shall execute and be bound by each Variation, unless the Contractor promptly and in any event within ~~7~~<sup>10</sup> days after receiving the Variation gives notice to the Employer stating (with supporting particulars) that (i) the Contractor is objectively technically not capable of executing such Variation, (ii) the Contractor cannot readily obtain the Goods required for the Variation, (iii) it will reduce the safety or suitability of the Works, or (iv) it will have an adverse impact on the achievement of the Inspection and Test Plan. Upon receiving this notice, the Employer shall cancel, confirm or vary the instruction.

Each Variation may include:

- (a) changes to the quality and other characteristics of any item of work,
- (b) changes to the levels, positions and/or dimensions of any part of the Works,
- (c) omission of any work up to a limit of 5% of the Accepted Contract Amount, which, the Employer may, in its discretion, have carried out by others; in case the Contractor is more than thirty (30) days in delay against the Project Execution Plan approved by the Employer, such limit of 5% of the Accepted Contract Amount shall not apply and the Employer may, in its discretion, have any work carried out by others,
- (d) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work,
- (e) changes to the sequence or timing of the execution of the Works, or
- (f) acceleration of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Employer instructs or approves a Variation.

### **13.2 Value Engineering**

The Contractor may, at any time, submit to the Employer a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [*Variation Procedure*].



If a proposal includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

- (a) the Contractor shall design this part, and
- (b) if this change results in a reduction in the contract value of this part, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
  - (i) such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.7 [*Adjustments for Changes in Legislation*] and Sub-Clause 13.8 [*Adjustments for Changes in Cost*], and
  - (ii) the reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

However, if amount (i) is less than amount (ii), there shall not be a fee.

### 13.3 Variation Procedure

If the Employer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable (but not later than within ~~7~~10 days), either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed work to be performed and a programme for its execution,
- (b) the Contractor's proposal for any necessary modifications to the Project Execution Plan according to Sub-Clause 8.3 [*Programme*] and to the Time for Completion, and
- (c) the Contractor's proposal for adjustment to the Contract Price on the basis of the below methods in the following order:
  - (i) hourly rates contained in the Schedule of Hourly Rates and unit rates included in the SPRQ to the greatest extent possible and stand-by costs specified in the SPRQ under item 6.4 "Stand-by costs after the issuance of the Notice to Proceed",  
  
and to the extent not possible under either of the previously listed methods,
  - (ii) on a Cost plus reasonable Profit basis, unless agreed otherwise by the Parties.

The Employer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [*Value Engineering*] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Employer to the Contractor, who shall acknowledge receipt.

Upon instructing or approving a Variation, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] and the paragraphs below to agree or determine adjustments to the Contract Price pursuant to the procedure set out in items (i) through (ii) above, and

shall take account of the Contractor's submissions under Sub-Clause 13.2 [*Value Engineering*] if applicable.

The Contractor shall continue to perform any Variation instructed by the Employer notwithstanding any dispute as to the evaluation of the Variation and pending resolution of the dispute under Clause 20 [*Claims and Disputes*]. The Employer shall pay the undisputed portion of the valuation of the Variation.

If the Employer omits Works under Sub-Clause 13.1 [*Right to Vary*] arising out of a Contractor default, the Employer shall, in determining the deduction from the Contract Price under Sub-Clause 3.5 [*Determinations*], include the additional costs incurred by the Employer in having the work concerned carried out by other contractors.

In case a Variation results in a modification of the text of this Contract (including its Annexes) or the increase or decrease of the Contract Price by more than EUR ~~[-]~~500,000, the Parties shall execute the Variation in a form of a written amendment to the Contract.

13.4 [Not used]

13.5 [Not used]

13.6 [Not used]

#### 13.7 Adjustments for Changes in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws, and/or legislation implementing EU legislation) or in the judicial or official governmental interpretation of such Laws, made after the ~~Base Date~~ date when the Contractor submitted the Contractor's Proposal, which affect the Contractor in the performance of obligations under the Contract and which the Contractor could not have anticipated on the Base Date using Recognised Good Practice. For the avoidance of doubt, changes in tax rates, customs duties or similar charges (other than the VAT) after the Base Date shall not be considered as a change in the Laws of the Country; only newly introduced taxes or ~~Customs~~ customs in the Country after the Base Date shall be considered as a change in the Laws of the Country.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

#### 13.8 Adjustments for Changes in Cost

This Sub-Clause shall apply if referred to in this Contract. The amounts payable to the Contractor shall then be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formula prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Contract Price

shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Interim Payment Certificates, shall be determined from formula for the currency in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formula shall be:

$$C_n = C_0 (0.6 * M_n / M_0 + 0.4 * L_n / L_0)$$

where

- C<sub>n</sub> = the amount to be paid on the basis of the respective invoice;
- C<sub>0</sub> = the relevant Contract Price of the invoiced Works as stated in the SPRQ and measured in accordance with this Contract;
- M<sub>n</sub> = latest index “Industrial domestic output prices – manufacturing” published by EUROSTAT in “Industry, trade and services“ group, category “Short-term business statistics”, subcategory classification NACE Rev. 2 “Industry”, “Industry producer prices index”, base 2005 = 100, geographic area EU (27 countries) on the date 49 days prior to the last day of the period (to which the particular Interim Payment Certificate relates);
- M<sub>0</sub> = Index “Industrial domestic output prices – manufacturing” published by EUROSTAT in “Industry, trade and services“ group, category “Short-term business statistics”, subcategory classification NACE Rev. 2 “Industry”, “Industry producer prices index”, base 2005 = 100, geographic area EU (27 countries) at the base month (December 2019);
- <sup>[2]</sup> L<sub>n</sub> = latest “Labour cost index” published by EUROSTAT in “Population and social conditions” group, category “Labour market (including LFS - Labour Force Survey)“, subcategory “Labour costs“, base 2008 = 100, geographic area EU (27 countries) on the date 49 days prior to the last day of the period (to which the particular Interim Payment Certificate relates);
- L<sub>0</sub> = “Labour cost index” published by EUROSTAT in “Population and social conditions” group, category “Labour market (including LFS - Labour Force Survey)“, subcategory “Labour costs“, base 2008 = 100, geographic area EU (27 countries) at the base calendar quarter (last calendar quarter of 2019).

If the source of cost indices is in doubt, it shall be determined by the Employer. For this purpose, reference shall be made to the values of the indices at stated dates for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.

Until such time as each current cost index is available, the Employer shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

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<sup>2</sup>-To be discussed during the Tender.

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price: whichever is more favourable to the Employer.

The weightings (coefficients) for each of the factors of cost stated above shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

### 13.9 Acceleration Bonus

Subject to the issuance of variation instruction by the Employer pursuant to Sub-Clause 13.1 [*Right to Vary*] ordering an acceleration of the execution of the Works, the Contractor shall accelerate the Works in accordance with such variation instruction. Provided the Contractor achieves earlier Payment Milestone “Issuance of the Preliminary Taking-Over Certificate”, the Contractor shall be entitled to a bonus payment in the amount stated in Clause 4.6 of the Contract Agreement for every 7 days of the difference between the actual date of the Issuance of the Preliminary Taking-Over Certificate and the scheduled date of the Issuance of the Preliminary Taking-Over Certificate, as set out in Clause 3.1 of the Contract Agreement.

## 14. Contract Price and Payment

### 14.1 The Contract Price

With respect to the payment of the Contract Price, the following rules shall apply:

- (a) apart from the progress payments for the Works performed by the Contractor on Site under Sub-Clause 14.3 [*Application for Interim Payment Certificates*] and following Sub-Clauses, a part of the Contract Price for the activities and milestones shall be paid by the Employer to the Contractor in accordance with Clause 4.2 of the Contract Agreement and be subject to adjustments in accordance with the Contract; with respect to the procedure of such milestone payments, Sub-Clause 14.3 [*Application for Interim Payment Certificates*] and following Sub-Clauses shall be used accordingly;
- (b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [*Adjustments for Changes in Legislation*]. The duties arising under Commission Implementing Regulation (EU) 2018/1013, [Commission Implementing Regulation \(EU\) 2019/159](#) or a similar instrument (if any) shall be fully borne by the Contractor and are included in the Contract Price.

### 14.2 Advance Payment

The Employer shall make an advance payment, as an interest-free loan for mobilisation and design works, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the Contract Agreement.

Unless and until the Employer receives this guarantee this Sub-Clause shall not apply.

The Employer shall issue an Interim Payment Certificate for the first instalment after receiving a Statement (under Sub-Clause 14.3 [*Application for Interim Payment Certificates*]) and after the Employer receives (i) the Performance Security in accordance with Sub-Clause

4.2 [*Performance Security*] and (ii) the Advance Payment Guarantee in amounts and currencies equal to the advance payment. The Advance Payment Guarantee shall be irrevocable, first demand and shall be issued by an entity with a minimum rating of Standard & Poors rating of “BBB-” or greater, Moody’s rating of “Baa3” or Fitch’s rating of “BBB-” or the closest equivalent from another ratings agency and from within a country approved by the Employer. The Advance Payment Guarantee shall be in the form contained in the Annex No. 3 or in another form approved by the Employer.

The Contractor shall ensure that the Advance Payment Guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Advance Payment Guarantee until the advance payment has been repaid, otherwise the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

The advance payment shall be repaid by way of set-off upon the Payment Milestone “Issuance of the Preliminary Taking-Over Certificate”. If the Advance Payment Guarantee has not been extended by the date 14 days prior to the expiry date, the Employer may call upon the Performance Security (up to the balance then outstanding).

If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [*Termination by Employer*], Clause 16 [*Suspension and Termination by Contractor*] or Clause 19 [*Force Majeure*] (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

#### 14.3 **Application for Interim Payment Certificates**

The Contractor shall submit a Statement in six copies to the Employer after the end of each month, in a form approved by the Employer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.21 [*Progress Reports*].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- (a) the estimated contract value of the Works executed and the Contractor’s Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (f) below);
- (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [*Adjustments for Changes in Legislation*] and Sub-Clause 13.8 [*Adjustments for Changes in Cost*];
- (c) any amounts to be added and deducted for the advance payment and repayments in accordance with Sub-Clause 14.2 [*Advance Payment*];
- (d) [not used];
- (e) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [*Claims, Disputes and Arbitration*]; and

- (f) the deduction of amounts certified in all previous Payment Certificates.

#### 14.4 Schedule of Payments

If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

- (a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [*Application for Interim Payment Certificates*];
- (b) [not used]; and
- (c) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less than that on which this schedule of payments was based, then the Employer may proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine revised instalments, which shall take account of the extent to which progress is less than that on which the instalments were previously based.

If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

#### 14.5 [Not used]

#### 14.6 Issue of Interim Payment Certificates

No amount will be certified or paid until the Employer has received and approved the Performance Security and (if the advance payment has been provided) the Advance Payment Guarantee and all relevant insurances have been effected in accordance with the Contract. Thereafter, the Employer shall, within ~~28~~<sup>14</sup> days after receiving a Statement and supporting documents, including the certification of the Statement by the inspection company, deliver to the Contractor an Interim Payment Certificate which shall state the amount which the Employer fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Employer on the Statement if any.

An Interim Payment Certificate shall not be withheld for any reason, although:

- (a) if any thing supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
- (b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Employer, the value of this work or obligation may be withheld until the work or obligation has been performed.

The Employer may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Employer's acceptance, approval, consent or satisfaction.

## 14.7 Payment

The Employer shall pay to the Contractor:

- (a) the advance payment within 30 days after receiving the guarantees in accordance with Sub-Clause 4.2 [*Performance Security*] and Sub-Clause 14.2 [*Advance Payment*], whichever is later;
- (b) the amount certified in each Interim Payment Certificate within 30 days after the Employer receives the respective and duly issued invoice and its annexes from the Contractor; and
- (c) the amount certified in the Final Payment Certificate within 30 days after the Employer receives this Payment Certificate.

The payment shall be considered completed as of the moment when the respective amount is credited to the bank account nominated by the Contractor. Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

If the Contractor is a VAT payer, the Contractor shall issue for the Employer the relevant invoice in line with the VAT Act and any other applicable Law. The Contractor shall deliver the invoice to the Employer's registered office. If the Contractor is not a VAT payer, deadlines for issuing the invoices and other essentials as stipulated by the VAT Act and any other applicable law apply accordingly.

The invoice (tax document) must contain the prerequisites stipulated by the VAT Act and any other applicable Law as effective on the date of issue of said invoice and the number of the bank account to which the Employer is supposed to credit the payment.

As concerns invoices issued for recurring supplies covering a particular time period, the Contractor shall clearly identify the billing period and include the date of taxable supply of the recurring supplies determined in line with the VAT Act in the invoice (or any other applicable Law).

If the invoice does not contain the stipulated or agreed prerequisites, the Employer has the right to return the invoice to the Contractor within the maturity period for correction or completion. In such case, the Employer will notify the Contractor of the reason for returning the invoice.

The Contractor must attach to the invoice, in the form of an annex, a copy of the handover protocol evidencing the delivery of the Work to the Employer. If this commitment is breached, the Employer shall not provide payment on the invoice until the Contractor discharges the said duty.

The invoice must be drawn up in A4-size, on standard office paper, with a weight of 80 g/m<sup>2</sup>, printed on one side, with the color of the text on the invoice to be black, and must be delivered in one original counterpart.

## 14.8 Delayed Payment

If the Contractor does not receive any payment in accordance with Sub-Clause 14.7 [*Payment*] or other payment under this Contract which the Employer is obliged to pay to the Contractor, the Contractor shall be entitled to the payment of such amount unpaid and a simple interest on the amount unpaid during the period of delay at the rate specified in Clause



4.4 of the Contract Agreement. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [*Payment*].

The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.

#### **14.9 Special Payment Arrangements**

If the Contractor is a joint venture, consortium or other unincorporated grouping of two or more persons, all invoices and other tax or contractual documents related to payments shall be issued by the leading member. Such leading member shall issue each invoice (tax document) for all members of the Consortium together. Each invoice (tax document) shall include the total amount payable and a split of this amount between the members in proportion agreed between them in the consortium or other agreement, whereas these split amounts shall be declared as supplies made by the respective members to the Employer. Each invoice (tax document) must contain all the prerequisites stipulated by the VAT Act and any other applicable Law with respect to all members. The payment shall be made by the Employer to the bank account stated in the respective invoice (tax document).

#### **14.10 Statement at Completion**

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Employer six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [*Application for Interim Payment Certificates*], showing:

- (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- (b) any further sums which the Contractor considers to be due, and
- (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Employer shall then certify in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*].

#### **14.11 Application for Final Payment Certificate**

Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Employer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Employer:

- (a) the value of all work done in accordance with the Contract, and
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Employer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Employer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Employer the final statement as agreed. This agreed statement is referred to in these Conditions as the “Final Statement”.

However if, following discussions between the Employer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Employer shall deliver to the ~~Employer (with a copy to the~~ Contractor) an Interim Payment



Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Clause 20 [*Claims, Disputes, Arbitration*], the Contractor shall then prepare and submit to the Employer a Final Statement.

#### **14.12 Discharge**

When submitting the Final Statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

#### **14.13 Issue of Final Payment Certificate**

Within 28 days after receiving the Final Statement and written discharge in accordance with Sub-Clause 14.11 [*Application for Final Payment Certificate*] and Sub-Clause 14.12 [*Discharge*], the Employer shall issue to the Contractor the Final Payment Certificate which shall state:

- (a) the amount which is finally due, and
- (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [*Application for Final Payment Certificate*] and Sub-Clause 14.12 [*Discharge*], the Employer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Employer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

#### **14.14 Cessation of Employer's Liability**

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

- (a) in the Final Statement and also
- (b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [*Statement at Completion*].

However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

#### **14.15 Currencies of Payment**

The Contract Price shall be paid in EUR.

#### **14.16 Taxes and Duties**

- (a) The Contractor must:

- (1) subject to the provisions of this Sub-Clause, comply with all taxation laws, national insurance and health surcharge obligations and any other impositions or levies under Laws of the Country;
  - (2) provide the Employer, on a timely basis, with any documentation or information in connection with the project that the Contractor has in his possession that the Employer may reasonably require so as to allow the Employer to comply with his tax obligations in relation to the Contract;
  - (3) duly register to all taxes (e.g. VAT, income tax), as required by the Laws of the Country and provide the proof of such registration to the Employer; and
  - (4) use all reasonable endeavours to assist the Employer to obtain customs and duty exemptions to lawfully minimise his customs duty and levy obligations in relation to the Contract.
- (b) The Contract Price shall include all taxes, duties and levies applicable in the Country. The sum payable by the Employer to the Contractor shall be increased by the applicable VAT under the Laws of the Country, if such VAT is payable by the Contractor and not payable by the Employer (e.g. no increase in case of reverse charge mechanism).
- (c) The Employer shall have no liability for personal income taxes, national insurance and health surcharge contributions in relation to the Contractor's employees, which items shall be incorporated in the Contract Price. Similarly, the Employer shall have no liability for withholding tax imposed on interest that may be borne by the Contractor.
- (d) Corporation tax and business levy applicable to the Contractor or his Subcontractors shall be, as between the Employer and the Contractor, borne by the Contractor.
- (e) The Contractor shall act as importer of all equipment and materials for the Work in the Country, except in case of the Employer's Plant and Materials or the free-issue material, and shall be responsible for the payment of custom duties and VAT imposed or levied on such portion of the Work.
- (f) Where the Employer is obliged by Laws of the Country to make a deduction or withholding in respect of taxes from a payment to the Contractor under the Contract, the Employer shall deduct such taxes and remit them to the relevant authority and provide the Contractor with a proof of payment.
- (g) The Employer is entitled to pay the applicable VAT on behalf of the Contractor directly to the tax authorities as a special way of securing VAT in accordance with Section § 109a of the VAT Act. The Employer shall notify the Contractor in writing of this payment. By making such payment, the Contractor's claim for the outstanding sum by Employer shall be reduced by such amount of VAT paid and the Contractor shall not be entitled to claim such amount from the Employer.

## **15. Termination by Employer**

### **15.1 Notice to Correct**

If the Contractor fails to carry out any obligation under the Contract, the Employer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

### **15.2 Termination by Employer**

The Employer shall be entitled to terminate the Contract if:

- (a) the Contractor fails to comply with Sub-Clause 4.2 [*Performance Security*] or with a notice under Sub-Clause 15.1 [*Notice to Correct*],
- (b) the Contractor abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- (c) the Contractor without reasonable excuse fails:
  - (i) to proceed with the Works in accordance with Clause 8 [*Commencement, Delays and Suspension*], or
  - (ii) to comply with a notice issued under Sub-Clause 7.5 [*Rejection*] or Sub-Clause 7.6 [*Remedial Work*], within 28 days after receiving it,
- (d) the Contractor subcontracts the whole of the Works, subcontracts the Works otherwise than in accordance with Sub-Clause 4.4 [*Subcontractors*] or assigns the Contract without the required agreement,
- (e) the Contractor becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events,

- (f) the Contractor commits a breach of Sub-Clauses 6.12 [*Prohibited Acts*] or 6.15 [*Commissions and Conflict of Interest*],
- (g) judgment, measure, arbitration ruling or order is delivered against the Contractor that ~~could jeopardize~~jeopardizes Contractor's execution of the Works,
- (h) any of the liability limits stated under Clause 8 of the Contract Agreement is reached,
- (i) commits a material breach of the Contract or is persistently in breach of the Contract and fails to remedy such breach within 28 days after receipt of notice requiring the breach to be remedied (or, if such remedy cannot be completed in such time, such longer period as the Employer may determine); such material breach shall include, among others, also a delay of the progress of Works caused by the Contractor of at least two (2) months against the critical path of the Works contained in the approved Project Execution Plan,
- (j) dissolution of the Contractor occurs or otherwise commences,
- (k) in the case specified in Sub-Clause 11.4(c),
- (l) the Contractor fails to effect, have in place or otherwise maintain, or provide evidence of, insurance as required under Clause 18 [*Insurance*], or
- (m) provides false or untrue representations or undertakings in this Contract and such false or untrue representation or undertaking will have a materially adverse effect on the timely and duly completion of the Works.

In any of these events or circumstances, the Employer may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e), (f), (h) or (j), the Employer may by notice terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or under the applicable Laws of the Country.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Employer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then, at its own risk, use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

### 15.3 Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause 15.2 [*Termination by Employer*] has taken effect, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

### 15.4 Payment after Termination

After a notice of termination under Sub-Clause 15.2 [*Termination by Employer*] has taken effect, the Employer may:

- (a) proceed in accordance with Sub-Clause 2.5 [*Employer's Claims*],
- (b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or
- (c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [*Valuation at Date of Termination*]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

The Employer shall return the guarantees it obtained promptly after such termination takes effect, unless there are outstanding calls on the guarantees, in which event, and if applicable, the Employer shall return the guarantees promptly after the last of the outstanding calls have been met.

### 15.5 Employer's Entitlement to Termination

Without prejudice to any of the Contractor's or Employer's other rights or remedies, the Employer may:

- (a) at any time for its sole convenience, and for any reason, by giving 21 days' written notice to the Contractor terminate the Contract in its entirety or with respect to specified part of Works effective from the time stated in the Employer's notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter, at its absolute discretion, complete the uncompleted part of the Work either itself or by engaging other contractors.

The Employer shall return the guarantees it obtained promptly after such termination takes effect, unless there are outstanding calls on the guarantees, in which event, and if applicable, the Employer shall return the guarantees promptly after the last of the outstanding calls have been met.

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*].

If the Employer terminates the Contract under this Sub-Clause, the Employer shall pay to the Contractor the amounts specified in Termination Payment Table with respect to such Works and relating to the date on which such termination occurs, ~~minus any and all amounts paid by the Employer to the Contractor under the Contract prior to the date of such termination,~~

~~provided, that, in the event that the sum of any and all such amounts paid by the Employer prior to the date of such termination are greater than such termination payment specified in Termination Payment Table, then the Contractor shall promptly pay to the Employer, as a debt due and payable, the difference between such two amounts.~~ For the avoidance of doubt, when calculating the termination payment in accordance with Termination Payment Table, the time periods set forth therein shall be reduced by the period of any suspension and/or any period of extension of time in accordance with the Contract.

## **16. Suspension and Termination by Contractor**

### **16.1 Contractor's Entitlement to Suspend Work**

If the Employer fails to certify in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*] or the Employer fails to comply with Sub-Clause 14.7 [*Payment*], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [*Delayed Payment*] and to termination under Sub-Clause 16.2 [*Termination by Contractor*].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of the stand-by costs specified in the SPRQ under item 6.4 "Stand-by costs after the issuance of the Notice to Proceed", which shall be included in the Contract Price.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

Except for the Contractor's right to suspend the Works under first sub-paragraph of this Sub-Clause, the Contractor shall not otherwise suspend execution of the Works, including in the event of any dispute relating to the payment of any amount due to or claimed to be due to him.

### **16.2 Termination by Contractor**

The Contractor shall be entitled to terminate the Contract if:

- (a) [not used],
- (b) the Employer fails, within ~~56~~<sup>45</sup> days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under an Interim Payment Certificate within 60 days after the expiry of the time stated in Sub-Clause

14.7 [*Payment*] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [*Employer's Claims*]),

- (d) the Employer fails to take out or maintain its insurance specified in Annex No. 6 (Item 1),
- (e) the Employer fails to comply with Sub-Clause 1.7 [*Assignment*],
- (f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [*Prolonged Suspension*], or
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

If the Employer fails to carry out its obligations under items (b) through (f) above, the Contractor shall by notice require the Employer to make good the failure and to remedy it within a specified reasonable time which shall be no less than 60 days.

In any of these events or circumstances, the Contractor may, upon giving 60 days' notice to the Employer, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

#### 16.3 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 0 [*Employer's Entitlement to Removal of Contractor's Termination*], Sub-Clause 16.2 [*Termination by Contractor*] or Sub-Clause 19.6 [*Optional Termination, Payment and Release*] has taken effect, the Contractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Employer for the protection of life or property or for the safety of the Works,
- (b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

#### 16.4 Payment on Termination

After a notice of termination under Sub-Clause 16.2 [*Termination by Contractor*] has taken effect, the Employer shall promptly:

- (a) return to the Contractor the guarantees it obtained, unless there are outstanding calls on the guarantees, in which event, and if applicable, the Employer shall return the guarantees promptly after the last of the outstanding calls have been met, and
- (b) pay to the Contractor the ~~amount~~amounts specified in the Termination Payment Table relating to the date on which such termination occurs.

Any claim for payment by the Contractor under this Sub-Clause must be made within 90 days after the effective date of termination. If and to the extent that a claim is not made within the 90 days period, the Employer will have no liability to the Contractor in connection with such termination.

## **17. Risk and Responsibility**

### **17.1 Indemnities**

The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses), including from third parties, in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
  - (i) arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, and
  - (ii) is attributable to any negligence, wilful act or breach of the Contract by the Contractor, the Contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them,
- (c) fines and other penalties attributable to the violation by the Contractor of any permit or applicable Laws of the Country relating to the Works, and
- (d) the violation of any insurance policies due to the Contractor's breach of any representation, declarations or conditions contained in any insurance policy, including the provision of false or misleading information.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in Clause 18[*Insurance*].

### **17.2 Contractor's Care of the Works**

Subject to Clause 5.2 of the Contract Agreement, the Contractor shall take full responsibility for the care of the Works and Goods from the Base Date until the Preliminary Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [*Preliminary Taking-Over of the Works and Final Taking Over of the Works*]) for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Preliminary Taking-Over Certificate is issued (or is so deemed to be issued) for part of the Works, responsibility for the care of the part of the Works 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 Preliminary Taking-Over Certificate, until this outstanding work has been completed.

If any damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [*Employer's Risks*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

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

The responsibility for the care of the Employer's Plant and Materials is specified in Sub-Clause 4.20.

### 17.3 Employer's Risks

The risks referred to in Sub-Clause 17.4 below are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country,
- (c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (f) use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract,
- (g) design of any part of the Works by the Employer's Personnel or by others for whom the Employer is responsible,
- (h) performance of obligations by the Other Employer's Contractors;
- (i) ~~(h)~~ any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions, and
- (j) ~~(i)~~ failure attributable to the Employer to duly make available the Employer's Plant and Materials to the Contractor for the use by the Contractor in the execution of the Works.

### 17.4 Consequences of Employer's Risks

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give

notice to the Employer and shall rectify this loss or damage to the extent required by the Employer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Employer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (f) ~~and (g)~~ through (h) of Sub-Clause 17.3 [*Employer's Risks*], reasonable Profit on the Cost shall also be included.

After receiving this further notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

## 17.5 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.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

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

- (a) an unavoidable result of the Contractor's compliance with the Employer's Requirements, or
- (b) a result of any Works being used by the Employer:
  - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
  - (ii) in conjunction with any thing not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

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.

## 17.6 Limitation of Liability

If a Party breaches its obligations set out in the Contract or in applicable Laws and as a result causes harm to the other Party, the Party in breach shall reimburse such harm subject to the provisions of this Sub-Clause.

The total damages payable by any Party shall not exceed the amount specified in Clause 8.2 of the Contract Agreement. Neither Party shall be liable for any kind of loss of profit or indirect or consequential damages, loss of any contract or loss use of the Works. For the avoidance of doubt, harm (incl. extra work) resulting from a Contractor's design error, as defined in Sub-Clause 5.8 [*Design Error*], shall not be considered indirect or consequential damage.

The aggregate payments payable to the Employer by means of contractual penalties pursuant to the Contract shall not exceed the amounts specified in Clause 8.1 of the Contract Agreement.

The Employer shall not pay damages for the damage caused by the delay with the fulfilment of its payment obligations vis-à-vis the Contractor; the only sanction for non-payment by the Employer shall be the obligation to pay default interest in accordance with Sub-Clause 14.8 [*Delayed Payment*].

The limitations on the penalties shall not apply to any Party in case the obligation of the Contractor was breached by gross negligence, a willful act (such as fraud) or illegal or Prohibited Act under Sub-Clause 6.12 [*Prohibited Acts*].

## 18. Insurance

### 18.1 Contractor Insurance Obligations

The Contractor shall:

- (a) from the Commencement Date or fifteen (15) days after the issuance of a partial Notice to Proceed for the Early Works, whichever occurs earlier (for Item 2 in Annex No. 6), and from the Base Date (for Item 3 in Annex No. 6), procure and maintain, and ensure that its Subcontractors, at no cost to the Employer, procure and maintain (or have procured on their behalf by the Contractor), the insurance specified in Annex No. 6 (Items 2-5) with respect to the Works separately as being required to be effected by the Contractor or its Subcontractors (as the case may be) with insurers and on terms satisfactory to the Employer;
- (b) provide the Employer with a copy of any required insurance certificate (including schedules and endorsements) and evidence satisfactory to the Employer that the policy is current as reasonably required by the Employer from time to time. The form of the insurance certificate as submitted by the Contractor during the tender procedure is acceptable to the Employer;
- (c) ensure that it:
  - (i) insures with carriers whose long-term debt has a credit rating of not less than the Standard & Poors rating of "BBB-" or greater, Moody's rating of "Baa3" or Fitch's rating of "BBB-" on the date of delivery of the relevant insurance;

- (ii) does not do anything that prejudices any insurance policy or coverage;
  - (iii) if necessary, promptly remedies anything that might prejudice any insurance policy or coverage;
  - (iv) reinstates an insurance policy if it lapses;
  - (v) immediately notifies the Employer of any event that may result in an insurance policy lapsing or being cancelled;
  - (vi) gives full, true and specific information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and
- (d) pay all deductible amounts in respect of the insurance policies effected under the Contract.

## 18.2 **Employer Insurance Obligations**

The Employer shall:

- (a) from the commencement of the Site activities or fifteen (15) days after the issuance of a partial Notice to Proceed for the Early Works, whichever occurs earlier, at no cost to the Contractor, procure and maintain (or have procured on their behalf by the Employer), the insurance specified in Annex No. 6 (Item 1) with respect to the Works separately as being required to be effected by the Employer;
- (b) provide the Contractor with a copy of any required insurance certificate (including schedules and endorsements) and evidence satisfactory to the Contractor that the policy is current as reasonably required by the Contractor from time to time;
- (c) ensure that each required insurance policy includes provisions which require the insurer to inform the Contractor whenever:
  - (i) it receives a notice under or in connection with the insurance policy, including any claim; and
  - (ii) it gives any insured a notice under or in connection with the policy, which in the case of a notice of cancellation shall be given to the Contractor 30 days prior to the cancellation of the policy;
- (d) ensure that it:
  - (i) does not do anything that prejudices any insurance policy or coverage;
  - (ii) if necessary, promptly remedies anything that might prejudice any insurance policy or coverage;
  - (iii) reinstates an insurance policy if it lapses;

- (iv) gives full, true and specific information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

### 18.3 **Period of Insurance**

The insurance coverage that the Parties are required to obtain under this Clause 18 [*Insurance*] shall be maintained for the relevant periods specified in Annex No. 6.

### 18.4 **Notice of Potential Claim**

The Party shall:

- (a) as soon as possible inform the other Party in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract;
- (b) keep the other Party informed of subsequent developments concerning the claim; and
- (c) ensure that the Subcontractors similarly inform the Contractor and the Employer in respect of occurrences that may give rise to a claim by them.

### 18.5 **Failure to Insure**

If, after a notification with a remedy period of 15 days, either Party fails to:

- (a) provide copies of any insurance certificate together with evidence satisfactory to the other Party that the policy is current; or
- (b) maintain insurance,

as required by this Clause 18 [*Insurance*], the other Party may, without prejudice to any other rights it may have, obtain and keep in force the required insurance.

Where the Party obtaining and maintaining insurance under this Clause 18 [*Insurance*] is:

- (i) the Contractor, the Costs directly incurred by the Contractor in so doing will be added to the Contract Price; and
- (ii) the Employer, the costs directly incurred by the Employer in so doing will be a debt due and payable by the Contractor to the Employer.

### 18.6 **No Limitation**

Nothing in this Clause 18 [*Insurance*] will limit any Party's obligations under any other provision of the Contract.

## 19. **Force Majeure**

### 19.1 **Definition of Force Majeure**

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,

- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Sub-contractors,
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- (v) strikes, lock-outs or labor disputes in the Country affecting the Contractor or any Subcontractor and/or any Affiliate of any of them, and
- (vi) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

The basis on which either party can claim Force Majeure for weather conditions, other than those specifically stated in sub-paragraph (vi) above, will be decided on a case-by-case basis as the weather conditions arise, but in any case will be based upon the following principles:

- (a) ~~(1)~~ only applicable in any case to extreme temperatures (excluding summer-time highs), frozen ground (except when it occurs between December and February), snow precipitation equivalent to a flood by rainfall and limited visibility sufficient to be considered a safety hazard;
- (b) ~~(2)~~ must be continuous for at least three days;
- (c) ~~(3)~~ the severity of the event must be well beyond any such severity as could reasonably have been predicted;
- (d) ~~(4)~~ it shall be taken into account and the Contractor acknowledges that it has allowed in its programme for downtime due to non-force majeure events of extreme temperatures, frozen ground, snow precipitation and limited visibility.

For the avoidance of doubt and notwithstanding of the preceding provisions of this Clause, it is hereby stipulated that the following cases shall in no case constitute Force Majeure event, and neither Party shall be entitled to relief as contemplated under this Clause 19 [*Force Majeure*] in respect of:

- (1) breakdown of Contractor's Equipment, late delivery or shortages of Goods, Materials, labour or services, except to the extent that such failure was caused by a Force Majeure;
- (2) breakage or malfunction of equipment, except to the extent that such failure was caused by a Force Majeure;
- (3) in respect of the Contractor, late performance by the Contractor caused by: any act or omission of any Subcontractor (except to the extent that such failure was caused by a Force Majeure); the Contractor's failure to hire an adequate number of personnel and/or labor, or inefficiencies on the part of the Contractor;
- (4) lack of funds or change in economic circumstances, including fluctuations in commodity prices, currency exchange rates or interest rates, financial hardship or the inability of the Contractor to make a profit or achieve a satisfactory rate of return in performing obligations under the Contract;
- (5) in respect of the Contractor, economic hardship of the Contractor or the Contractor's inability to pay debts (including insolvency of the Contractor);
- (6) any delay attributable to the denial of or delay in obtaining any visa or satisfying any other requirement for employees (or other persons in a relationship similar to employment) to travel to, enter or work in foreign countries, including the Country;
- (7) in respect of the Contractor, strikes, lock-outs or labor disputes outside the Country affecting the Contractor or any Subcontractor and/or any Affiliate of any of them;
- (8) in respect of the Contractor, delays or disruption caused by third parties, including other contractors, licensors and government or public or local authorities; or
- (9) in respect of the Contractor and without prejudice to Sub-Clause 8.5 [Delay Caused By Authorities], any event or circumstance that could have been reasonably anticipated and prevented or overcome by due compliance with prescribed or recommended practice related to the Goods.

## 19.2 Notice of Force Majeure

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, (or should have become aware), of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

#### **19.3 Duty to Minimise Delay**

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

#### **19.4 Consequences of Force Majeure**

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [*Notice of Force Majeure*], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (v) of Sub-Clause 19.1 [*Definition of Force Majeure*] and, in the case of sub-paragraphs (ii) to (v), occurs in the Country, payment of any such Cost.

After receiving this notice, the Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

#### **19.5 Force Majeure Affecting Subcontractor**

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

#### **19.6 Optional Termination, Payment and Release**

If the execution of substantially all the Works in progress is prevented for a continuous period of 180 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [*Notice of Force Majeure*], or for multiple periods which total more than 180 days due to the same notified Force Majeure, and the Parties have not agreed in writing upon a revised basis for continuing the Works at the end of the applicable period, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*].

Upon such termination, the Employer shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;



- (c) any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- (d) 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
- (e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

Any claim for payment by the Contractor under this Sub-Clause must be made within 90 days after the effective date of termination. If and to the extent that a claim is not made within the 90 days period, the Employer will have no liability to the Contractor in connection with such termination.

The Employer shall return the guarantees promptly after such termination takes effect, unless there are outstanding calls thereon in which event, and if applicable, the Employer shall return the guarantees promptly after the last of the outstanding calls have been met.

#### 19.7 **Release from Performance under the Law**

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [*Optional Termination, Payment and Release*] if the Contract had been terminated under Sub-Clause 19.6.

## 20. **Claim, Disputes and Arbitration**

### 20.1 **Contractor's Claims**

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Employer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

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.

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. The Employer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Employer to inspect all these records, and shall (if instructed) submit copies to the Employer.

Within ~~42~~<sup>28</sup> days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Employer, the Contractor shall send to the Employer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Employer may reasonably require; and
- (c) the Contractor shall send a final claim within 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.

Within 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 and approved by the Contractor, the Employer 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.

Each statement attached to an invoice shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Employer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension of the Time for Completion in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*], and/or (ii) the additional payment to which the Contractor is entitled under the Contract.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

After the date of issue of the Contractor's fully detailed claim, any changes to the amount claimed thereunder shall not be accepted.

20.2 [Not used]

20.3 [Not used]

20.4 [Not used]

20.5 **Amicable Settlement**

Both Parties shall attempt to settle the dispute amicably before the commencement of dispute resolution under Sub-Clause 20.6 [*Dispute Resolution*]. However, unless both Parties agree otherwise, dispute resolution under Sub-Clause 20.6 [*Dispute Resolution*] may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

20.6 **Dispute Resolution**

Unless settled amicably pursuant to Sub-Clause 20.5 [*Amicable Settlement*], all disputes (including those concerning the existence, validity and termination of this Contract, and all non contractual obligations hereto) shall be finally settled ~~by the competent courts of the Country, determined according to the seat of the Employer pursuant to Section 89a of the Act No. 99/1963 Coll., Czech Code of Civil Procedure, as amended, unless mandatory provision of the Laws of the Country stipulate otherwise.~~under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said rules (including disputes concerning the existence, validity and termination of the Agreement, and all non-contractual obligations hereto). The place of the arbitration is Paris and the language of the proceeding shall be English..

20.7 [Not used]

20.8 [Not used]



## **Annex 1– EMPLOYER’S REQUIREMENTS**

**CONTAINED ON DVD**

**HASH:**

**SHA256**

## **Annex 2 – SPRQ AND SCHEDULE OF HOURLY RATES**

### Annex 3 – TERMINATION PAYMENT TABLE

From	To	Fee  (amount or percentage of the Contract Price as of the Base Date)
Base <del>date</del> <u>Date</u>	<u>Issuance of the partial Notice to Proceed</u>	<u>2 %</u>
<u>Issuance of the partial Notice to Proceed</u>	<u>Issuance of the Notice to Proceed</u>	<u>5 %</u>
<u>Issuance of the Notice to Proceed</u>	<u>10 % progress of the construction Works completed</u>	<u>10 %</u>
<u>10 % progress of the construction Works completed</u>	<u>30 % progress of the construction Works completed</u>	<u>13 %</u>
<u>30 % progress of the construction Works completed</u>	<u>50 % progress of the construction Works completed</u>	<u>10 %</u>
<u>50 % progress of the construction Works completed</u>	<u>70 % progress of the construction Works completed</u>	<u>7.5 %</u>
<u>70 % progress of the construction Works completed</u>	<u>Issuance of the Mechanical Completion Certificate</u>	<u>4.5%</u>
<u>Following the issuance of the Mechanical Completion Certificate</u>	<u>Issuance of the Taking-Over Certificate</u>	<u>2%</u>
<p><del>Where the termination amounts are defined as a range (such as for example 25-35%), the exact termination amount shall be calculated pro rata according to the date on which the termination occurs.</del></p> <p><u>The progress of the construction Works shall correspond to the figure contained in the monthly progress report in accordance with Sub-Clause 4.21 (a) of the Conditions.</u></p> <p><u>In addition to the fee specified above, the Contractor shall be entitled to keep any and all amounts paid or to be paid by the Employer to the Contractor in accordance with the payment terms of the Contract prior to the date of termination. Also, the Employer shall pay</u></p>		

to the Contractor the Cost of the Works performed prior to the date of termination of Contract which the Contractor was not yet entitled to invoice under the Contract by that date or which the Employer was liable to accept; such Works shall become the property of the Employer and the Contractor shall place the same at the Employer's disposal.



## Annex 4 – **FORM OF GUARANTEES**

## Form of Advance Payment Guarantee

### FORM OF ADVANCE PAYMENT GUARANTEE

**THIS ADVANCE PAYMENT GUARANTEE** (hereinafter referred to as the “**Guarantee**”) is made on [●DATE].

**NET4GAS, s.r.o.**, with its registered office at Na Hřebenech II 1718/8, Postal Code 140 21 Prague 4 – Nusle, registered in the Commercial Register administered by the Municipal Court in Prague, File No. C 108316, Business ID No. 272 60 364, VAT No. CZ27260364, bank account at Československá obchodní banka, a.s., Radlická 150, Prague 5, Account No. [●], SWIFT: [●], IBAN: [●], represented by [●] (the “**Employer**” which expression shall include its successors and assigns).

#### WHEREAS:

- (A) By the Contract (as amended, varied and supplemented from time to time, the “**Contract**”) concluded on [●] between the Employer and [●], a company organized and existing under the laws of [●], with its registered office at [●], registered in the [●] under Identification Number [●], represented by [●] (the “**Contractor**”), the Contractor has agreed to build LOT II, which comprises a pipeline between the Line Valve Station TU53S – Malměřice (excluding this station) and the Distribution Node Přimda (excluding this station), Czech Republic, for the purpose of the “Capacity4Gas - DE/CZ (TRA-N-752)” Project;
- (B) Pursuant to the Contract, the Advance Payment (as defined by the Contract) in the amount of [EUR of the Contract Price] is to be paid by the Employer upon submission of an irrevocable advance payment guarantee in favor of the Employer for the corresponding amount of the Advance Payment excluding VAT;
- (C) Pursuant to the Contract, the Contractor is obliged to procure, in favor of the Employer, a bank guarantee amounting to sums specified in Clause 9.1 of the Contract Agreement forming part of the Contract; and
- (D) We, [●NAME OF BANK], [●ADDRESS], [●], [●VAT], (the “**Bank**”) have agreed, at the request of the Contractor, to provide this advance payment guarantee in satisfaction of the Contractor’s obligation referred to in Recital (C) to the Employer under the Contract.

#### The Bank declares as follows:

1. The Bank hereby issues this Guarantee in favor of the Employer up to the amount of EUR [●] (say: [●]).
2. Subject to clauses 5 and 6 hereof, the Bank irrevocably and unconditionally undertakes to pay to the Employer any amount (or any portion thereof) up to the maximum amount of the Guarantee amount without delay or objection, against presentation on one or more occasions of the Employer’s written demand for payment executed in English and signed by an authorized representative(s) of the Employer with signatures authenticated by a notary public (the “**Employer’s Demand**”), provided that the Employer’s Demand (a) is in compliance with all terms and conditions hereof, (b) contains the amount in EUR demanded by the Employer for payment hereunder, and (c) contains all written statements of the Employer in

the form of Employer's Demand attached hereto. The payment shall be made within 5 (five) business days from the date of the delivery of the Employer's Demand to the Bank.

3. The Bank is not responsible for the correctness and validity of presented documents.
4. The Employer's Demand shall be addressed to the Bank and shall be delivered not later than on the below-defined Expiration Date and shall, for the purposes of this Guarantee, constitute satisfactory and absolute evidence of the Employer's right to receive payment under this Guarantee. The Employer's Demand shall be binding and conclusive on the Bank to make payment immediately and any reference to or consideration of the Contract (except as required in the Employer's Demand) shall be wholly extraneous to and irrelevant for the determination of the Bank's obligation hereunder.
5. The Employer's Demand shall be delivered to the Bank by registered mail or courier or through [●] or any other bank selected by the Employer (the "**Employer's Bank**"), which will verify to the Bank the validity and authorization of the signature(s) on the Employer's Demand and authorization of the signatories to represent the Employer. The Bank may rely on such verifications as undertaken by the Employer's Bank and any liability of the Bank in this respect shall be hereby excluded.
6. The validity and authorization of signatures on the Employer's Demand and authorization of the signatories to represent the Employer must be simultaneously verified by the Employer's Bank by virtue of an authenticated swift message sent to the Bank.
7. Any payment made by the Bank under the terms of this Guarantee shall reduce the amount of the Guarantee by such payment(s) for the remaining period of its validity.
8. This Guarantee shall become valid and effective as of the date of the Advance Payment receipt on the Contractor's account no.: [●], IBAN [●] held with [●] and shall remain in full force and effect until [●] (the "**Expiration Date**"). The date of the occurrence of either of the events referred to in clause 9 below before the Expiration Date as defined in the previous sentence shall be also understood as the Expiration Date.
9. The Expiration Date is the latest date for receipt by the Bank of the Employer's Demand and after the Expiration Date the Guarantee shall expire and cease to be valid and have any effect, the Bank shall stand discharged and released of any further obligations hereunder and shall not be liable for any Employer's Demand received thereafter, whether the original of this Guarantee is returned to the Bank or not. Such expiration and release will be without prejudice to any Employer's Demand under this Guarantee which was delivered in accordance with the terms and subject to the conditions of this Guarantee prior to the Expiration Date.
10. This Guarantee also ceases to be valid and have any effect upon receipt by the Bank (return to the Bank) of this original Guarantee or upon payment by the Bank to the Employer of sums which in aggregate equal to the Guarantee Amount, whichever of the above events occurs earlier.
11. All payments under this Guarantee shall be in EUR, and shall be made free and clear of, and without any set-off, counterclaim or deduction on account of any liability whatsoever including, without limitation, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.
12. This Guarantee and Employer's rights and obligations hereunder may not be transferred and/or assigned except for the proceeds arising hereunder and except that the Employer may

assign any rights and transfer any obligations under or in relation to this Guarantee to any person to which it assigns any of its rights or transfers any of its obligations under the Contract (a “**Contract Transferee**”). A notification by the Employer identifying the Contract Transferee containing a representation that the Employer assigns any of its rights or transfers any of its obligations under the Contract the Contract Transferee person will be binding on us. We will as soon as practicable, but in any case within 10 days, after our receipt of such notification from the Employer, issue a replacement guarantee in form and contents substantially identical to this Guarantee with the Contract Transferee as beneficiary and all references to the Employer replaced by references to the Contract Transferee.

13. The construction, validity and performance of this Guarantee is subject to Czech law and the parties irrevocably submit to the exclusive jurisdiction of the Czech courts with respect to any dispute or difference arising out of or in connection with this Guarantee. Nothing in this clause shall affect the ability of the Employer to enforce any judgment against the Bank in any jurisdiction.
14. This Advance Payment Guarantee shall be subject to the ICC Uniform Rules for Demand Guarantees, ICC Publication No. 758.
15. The form of Employer’s Demand is attached to this Advance Payment Guarantee.
16. In this Guarantee, words and phrases commencing with capital letters will, unless a contrary intention appears, have the same meaning ascribed to them under the Contract.

**IN WITNESS WHEREOF, this document has been executed on the day and year first written.**

For and on behalf of *[Insert name of Bank]*

---

Name [●]

Position [●]

---

Name [●]

Position [●]

## Form of Performance Security

### FORM OF PERFORMANCE SECURITY

**THIS PERFORMANCE SECURITY** is made on [●DATE].

**NET4GAS, s.r.o.**, with its registered office at Na Hřebenech II 1718/8, Postal Code 140 21 Prague 4 – Nusle, registered in the Commercial Register administered by the Municipal Court in Prague, File No. C 108316, Business ID No. 272 60 364, VAT No. CZ27260364, bank account at Československá obchodní banka, a.s., Radlická 150, Prague 5, Account No. [●], SWIFT: [●], IBAN: [●], represented by [●] (the “**Employer**” which expression shall include its successors and assigns).

#### WHEREAS:

- (A) By the Contract (as amended, varied and supplemented from time to time, the “**Contract**”) concluded on [●] between the Employer and [●], a company organized and existing under the laws of [●], with its registered office at [●], registered in the [●] under Identification Number [●], represented by [●] (the “**Contractor**”), the Contractor has agreed to build LOT II, which comprises a pipeline between the Line Valve Station TU53S – Malměřice (excluding this station) and the Distribution Node Přimda (excluding this station), Czech Republic, for the purpose of the “Capacity4Gas - DE/CZ (TRA-N-752)” Project;
- (B) Pursuant to the Contract, the Contractor is obliged to procure, in favor of the Employer, a bank guarantee amounting to sums specified in Clause 9.2 of the Contract Agreement to the Contract, in satisfaction of the Contractor’s obligation of good performance under the Contract; and
- (C) We, [●NAME OF BANK], [●ADDRESS], [●], [●VAT], (the “**Bank**”) have agreed, at the request of the Contractor, to provide this Performance Security in satisfaction of the Contractor’s obligation referred to in Recital (B).

#### The parties agree as follows:

1. In consideration of aforesaid, the Bank hereby issues this irrevocable Performance Security in favor of the Employer amounting to EUR [●] ([●] euro) (also referred to as “**Maximum Amount**”) and undertakes to pay to the Employer unconditionally any amount (or any portion thereof) up to the Maximum Amount without delay or objection, 5 (five) business days after presentation of the Employer’s first written demand for payment executed in English and signed by an authorized representative(s) of the Employer with signatures authenticated by a notary public (the “**Employer’s Demand**”), provided that the Employer’s Demand (a) is in compliance with all terms and conditions hereof, (b) contains the amount in EUR demanded by the Employer for payment hereunder, and (c) contains all written statements of the Employer in the form of Employer’s Demand attached hereto that (i) the Contractor has failed to fulfill any of its contractual obligations as provided for in the Contract and/or agreed

between the Contractor and the Employer, and (ii) the respect in which the Contractor has breached its obligations under the Contract.

2. The Bank is not responsible for the correctness and validity of presented documents.
3. The Employer's Demand shall be addressed to the Bank and shall be delivered not later than on the below-defined Expiration Date or on any other date on which this Performance Security expires in accordance with the provisions contained herein and shall constitute satisfactory evidence of the Employer's right to receive payment. The Employer's Demand shall be binding and conclusive on the Bank to make immediately and any reference to or consideration of the Contract (except as required in the Employer's Demand) shall be wholly extraneous to and irrelevant for the determination of the Bank's obligation hereunder.
4. The Demand shall be delivered by registered mail or courier and shall be sent through the Employer's bank, which will verify to the Bank the validity and authorization of the signature(s) on the Employer's Demand and authorization of the signatories to represent the Employer.
5. The validity and authorization of signatures on the Employer's Demand and authorization of the signatories to represent the Employer must be simultaneously verified by the Employer's Bank, by virtue of an authenticated swift message sent to the Bank.
6. This Performance Security shall become valid and effective as of the date of its issuance and shall remain in full force and effect until [●] (hereinafter "**Expiration Date**"). The Expiration Date is the latest date for receipt by the Bank of the Employer's Demand and after the Expiration Date the Performance Security shall expire and cease to be valid and have any effect, the Bank shall stand discharged and released of all its obligations hereunder and shall not be liable for any Employer's Demand received thereafter, whether the original of this Performance Security is returned to the Bank or not.
7. Any payment made by the Bank under the terms of this Performance Security shall reduce by the amount of such payment(s) the Bank's liability hereunder for the remaining period of its validity.
8. Prior to the Expiration Date, this Performance Security also ceases to be valid and have any effect upon receipt by the Bank (return to the Bank) of this original Performance Security or upon payment by the Bank to the Employer of sums in aggregate which equal to the Maximum Amount, whichever of the above events occurs earlier.
9. All payments under this Performance Security shall be in EUR, and shall be made free and clear of, and without any set-off, counterclaim or deduction on account of any liability whatsoever including, without limitation, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.
10. This Performance Security and Employer's rights hereunder may not be transferred and assigned except for the proceeds arising hereunder and except that the Employer may assign any rights and transfer any obligations under or in relation to this Guarantee to any person to which it assigns any of its rights or transfers any of its obligations under the Contract (a "**Contract Transferee**"). A notification by the Employer identifying the Contract Transferee containing a representation that the Employer assigns any of its rights or transfers any of its obligations under the Contract the Contract Transferee person will be binding on us. We will as soon as practicable, but in any case within 10 days, after our receipt of such notification from the Employer, issue a replacement guarantee in form and contents substantially identical to this Guarantee with the Contract Transferee as beneficiary and all references to the Employer replaced by references to the Contract Transferee.

11. The construction, validity and performance of this Performance Security is subject to Czech law and the parties irrevocably submit to the exclusive jurisdiction of the Czech courts with respect to any dispute or difference arising out of or in connection with this Performance Security. Nothing in this clause shall affect the ability of the Employer to enforce any judgment against the Bank in any jurisdiction.
12. This Performance Security shall be subject to the ICC Uniform Rules for Demand Guarantees, ICC Publication No. 758.
13. The form of Employer's Demand is attached to this Performance Security.
14. In this Performance Security, words and phrases commencing with capital letters will, unless a contrary intention appears, have the same meaning ascribed to them under the Contract.

**IN WITNESS WHEREOF, this document has been executed on the day and year first written:**

For and on behalf of [Insert name of Bank]

---

Name [●]

Position [●]

---

Name [●]

Position [●]

## Form of Demand

### **Form of Demand under Performance Security / Advance Payment Guarantee**

To: [ the Bank ]<sup>31</sup>

In this demand words shall have the same meaning as in the Performance Security / Advance Payment Guarantee issued by you on [insert date] (the “**Guarantee**”).

In accordance with terms of the Guarantee, we hereby demand that you immediately pay to us the amount of EUR [ ]<sup>42</sup> to the bank account [ ]<sup>53</sup> in accordance with the Guarantee.

Additionally, we declare:

- (i) that our demand is in compliance with all terms and conditions of the Guarantee;
- (ii) that the Contractor has failed to fulfil its contractual obligations arising from the Contract, specifically [●]; and
- (iii) that we invited the Contractor to remedy the reason for calling upon the Guarantee and we sent the written notice to the Contractor to pay the amount due within 15 days from the delivery of the notice to the Contractor and within this time no such payment was made by the Contractor to us; and
- (iv) that we have set off to the maximum extent possible any amounts due to us by the Contractor against any amounts to be paid by us to the Contractor in accordance with the Contract.

Yours sincerely

For and on behalf of [*Insert name of Employer*]

\_\_\_\_\_  
Name [●]

Position [●]

\_\_\_\_\_  
Name [●]

Position [●]

<sup>31</sup> Insert Bank’s details

<sup>42</sup> Insert Amount

<sup>53</sup> Insert Bank account details



## Annex 5 – **FORM OF CERTIFICATES AND NOTICES**

Form of Notice to Proceed

**[EMPLOYER LETTERHEAD/HLAVIČKOVÝ PAPIR OBJEDNATELE]  
NOTICE TO PROCEED/POKYN K ZAHÁJENÍ PRACÍ**

**[Date/Datum]**

To/Komu: **[Contractor/Zhotovitel]**

**PROJECT/PROJEKT:** Capacity4Gas - DE/CZ - Pipeline Construction/Výstavba plynovodu

**WORK PACKAGE/SOUBOR PRACÍ:** **[●]/[●]**

**CONTRACT/SMLOUVA:** Contract No. [●] dated [●] between NET4GAS, s.r.o. as the Employer and [●] as the Contractor / Smlouva č. [●] ze dne [●] mezi NET4GAS, s.r.o. jako Objednatel a [●] jako Zhotovitelem

Hereby, the Employer issues this Notice to Proceed in accordance with Clause 3.2(b) of the Contract Agreement forming part of the Contract No. [●] dated [●] (the “**Contract**”) concerning the Works of Pipeline construction in accordance with the Contract./Objednatel tímto vydává tento Pokyn k zahájení prací v souladu se čl. 3.2 (b) Smlouvy o dílo (Contract Agreement), která je součástí smlouvy č. [●] ze dne [●] (dále jen “**Smlouva**“), ve vztahu k Dílu výstavby Plynovodu.

The Contractor is hereby notified to commence the Works in accordance with the Contract on [●] (Commencement Date)./Zhotoviteli se tímto oznamuje, aby zahájil práce na Díle v souladu se Smlouvou dne [●] (Datum zahájení prací).

Capitalized terms herein shall have the meaning ascribed to them in the Contract./ Výrazy zde uvozené velkým písmenem mají tentýž význam, jaký jim připisuje Smlouva.

On behalf of the Employer/Za Objednatele

NET4GAS s.r.o.

In/V \_\_\_\_\_ on/dne \_\_\_\_\_

**[Signature of Employer’s authorized officer/Podpis pověřeného zástupce Objednatele]**

Signature/Podpis:

Name/Jméno:

**[●]**

In/V \_\_\_\_\_ on/dne \_\_\_\_\_

***[Signature of Contractor's authorized officer/ Podpis pověřeného zástupce Zhotovitele]***

Signature/*Podpis*:

Name/*Jméno*:

Form of Employer's Site Handover Protocol

**[EMPLOYER LETTERHEAD/HLAVIČKOVÝ PAPÍR OBJEDNATELE]  
EMPLOYER'S SITE HANDOVER PROTOCOL/PROTOKOL O PŘEDÁNÍ  
STAVENIŠTĚ**

**[Date/Datum]**

To/Pro: **[Contractor/Zhotovitel]**

**PROJECT/NÁZEV PROJEKTU:** Capacitv4Gas - DE/CZ – Pipeline  
Construction/Výstavba plynovodu

**WORK PACKAGE/SOUBOR PRACÍ:** [●]

**CONTRACT/NÁZEV SMLOUVY:** Contract No./Smlouva č. [●] datum/ze dne [●]

Between/mezi NET4GAS, s.r.o. as the Employer/jakožto Objednatelem and/a [●] as the  
Contractor/jakožto Zhotovitelem

Hereby, the Employer confirms that in accordance with Sub-Clause 2.1 of the Conditions forming part of the contract No. [●] dated [●] (the “**Contract**”) the Site [●] was handed over to the Contractor in accordance with the above mentioned Contract./ *Objednatel tímto potvrzuje, že v souladu s čl. 2.1 Podmínek (Conditions), které jsou součástí smlouvy č. [●] ze dne [●] (dále jen „**Smlouva**“), došlo k předání Staveniště [●] do rukou Zhotovitele v souladu s výše zmíněnou Smlouvou.*

The Contractor confirms that it has no objections to the current condition of the Site and access to the Site./*Zhotovitel potvrzuje, že vůči současnému stavu Staveniště a přístupu na Staveniště nemá námitek.*

The particulars of the handover are contained in the annex hereto./*Specifika předání jsou uvedena v příloze.*

This protocol shall form part of the operative logbook kept at the Site./*Tento protokol bude přiložen ke stavebnímu deníku vedenému na Staveništi.*

Capitalized terms herein shall have the meaning ascribed to them in the Contract./ *Výrazy zde uvozené velkým písmenem mají tentýž význam, jaký jim připsuje Smlouva.*

On behalf of the Employer/Jménem Objednatele

NET4GAS s.r.o.

In/V \_\_\_\_\_ on/dne \_\_\_\_\_

**[Signature of Employer's authorized officer/podpis oprávněného zástupce Objednatele]**

Signature/podpis:

Name/*jméno*:

[●]

In/*V* \_\_\_\_\_ on/*dne* \_\_\_\_\_

***[Signature of Contractor's authorized officer/podpis oprávněného zástupce Zhotovitele]***

Signature/*podpis*:

Name/*jméno*:

Annex/Příloha

Item/Položka	Status/Stav	Notes/Poznámky
Site cleared / <i>Staveniště vyklizeno</i>	YES/ANO – NO/NE	
Site connected to electricity / <i>Na Staveništi zapojena elektroinstalace</i>	YES/ANO – NO/NE	
Electricity connection / <i>El. přípojka</i>	Location/ <i>Umístění:</i>	
Site connected to water and sewerage / <i>Vodovod a kanalizace zapojeny na Staveništi</i>	YES/ANO – NO/NE	
Other connection points / <i>Další přípojky</i>		
Site secured by keys / <i>Staveniště je uzamykatelné</i>	YES/ANO – NO/NE, Keys handed over / <i>Klíče předány</i> YES/ANO – NO/NE	
Accommodation on Site / <i>Ubytování na Staveništi</i>	YES/ANO – NO/NE	
Bathroom and toilet facilities / <i>Umývárna a WC</i>	YES/ANO – NO/NE	
Documents handed over to the Contractor / <i>Dokumenty předané Zhotoviteli</i>		

Form of Mechanical Completion Certificate

**[EMPLOYER LETTERHEAD/HLAVIČKOVÝ PAPÍR OBJEDNATELE]**  
**MECHANICAL COMPLETION CERTIFICATE/POTVRZENÍ O**  
**~~MECHANICKÉM~~MECHANICKÉM DOKONČENÍ DÍLA**

**[Date/Datum]**

To/Pro: **[Contractor/Zhotovitel]**

**PROJECT/NÁZEV PROJEKTU:**

Capacitv4Gas - DE/CZ – Pipeline  
Construction/Výstavba plynovodu

**WORK PACKAGE/SOUBOR PRACÍ:**

**[•]**

**CONTRACT/ ~~SMLOUVA~~NÁZEV SMLOUVY:**  
**[•]**

Contract No./Smlouva č. **[•]** datum/ze dne

Between/mezi NET4GAS, s.r.o. as the Employer/jakožto Objednatelem and/a **[•]** as the Contractor/jakožto Zhotovitelem

Hereby, the Employer certifies in accordance with Clause 5.1(a) of the Contract Agreement forming part of the contract No. **[•]** dated **[•]** (the “**Contract**”) and Sub-Clause 9.1 of the Conditions of the Contract that the Mechanical Completion phase of the Works concernign Pipeline construction was completed by the Contractor on **[•date]** in accordance with the above mentioned Contract (save for the Punch List items in the Annex)./Objednatel tímto v souladu s čl. 5.1(a) Smlouvy o dílo (Contract Agreement), která je součástí smlouvy č. **[•]** ze dne **[•]** (dále jen „**Smlouva**“), a v souladu s čl. 9.1 Podmínek (Conditions) potvrzuje, že dne **[•datum]** Zhotovitel v souladu s výše zmíněnou Smlouvou mechanicky dokončil Dílo výstavby Plynovodu (vyjma položek uvedených v Soupisu vad a nedodělků v příloze).

Hereby, the Employer certifies that the Contractor has fulfilled all requirements set forth in Section 2.18.2 and 2.18.3 of the General Technical Requirements. / Objednatel tímto potvrzuje, že Zhotovitel splnil všechny požadavky, uvedené v bodech 2.18.2 a 2.18.3 Obecných technických požadavků.

Hereby, the Employer duly issues this Mechanical Completion Certificate relating to the Works concerning Pipeline construction./Objednatel tímto řádně vystavuje Potvrzení o mechanickém dokončení Díla výstavby Plynovodu.

Capitalized terms herein shall have the meaning ascribed to them in the Contract./ Výrazy zde uvozené velkým písmenem mají tentýž význam, jaký jim připisuje Smlouva.

Annex I: Punch List/Příloha I: Soupis vad a nedodělků

On behalf of the Employer/Jménem Objednatele

NET4GAS s.r.o.

In/V \_\_\_\_\_ on/dne \_\_\_\_\_

***[Signature of Employer's authorized officer/podpis oprávněného zástupce Objednatele]***

Signature/podpis:

Name/jméno:

[●]

In/V \_\_\_\_\_ on/dne \_\_\_\_\_

***[Signature of Contractor's authorized officer//podpis oprávněného zástupce Zhotovitele]***

Signature/podpis:

Name/jméno:



Form of Ready for Commissioning Certificate

**[EMPLOYER LETTERHEAD/HLAVIČKOVÝ PAPIR OBJEDNATELE]**  
**READY FOR COMMISSIONING CERTIFICATE/POTVRZENÍ O PŘIPRAVENOSTI KE ZKOUŠENÍ**

**[Date/Datum]**

To/Pro: **[Contractor/Zhotovitel]**

**PROJECT/NÁZEV PROJEKTU:** Capacitv4Gas - DE/CZ – Pipeline  
Construction/Výstavba plynovodu

**WORK PACKAGE/SOUBOR PRACÍ:** [●]

**CONTRACT/SMLOUVA:** Contract No./Smlouva č. [●] datum/ze dne [●]

Between/mezi NET4GAS, s.r.o. as the Employer/jakožto Objednatelem and/a [●] as the Contractor/jakožto Zhotovitelem

Hereby, the Employer certify that in accordance with Clause 5.1 (b) of the Contract Agreement forming part of the contract No. [●] dated [●] (the “**Contract**”) and the Sub-Clause 9.1 of the Conditions of the Contract the Readiness for Commissioning of the Works concerning Pipeline construction been reached on [●date] in accordance with the above mentioned (save for the Punch List items in the Annex)./Objednatel tímto potvrzuje, že v souladu s čl. 5.1(b) Smlouvy o dílo (Contract Agreement), která je součástí smlouvy č. [●] ze dne [●] (dále jen „**Smlouva**“) a čl. 9.1 Podmínek (Conditions) Smlouvy bylo dne [●datum] dosaženo Připravenosti ke zkoušení Díla výstavby Plynovodu (vyjma položek uvedených v Soupisu vad a nedodělků v příloze).

Hereby, the Employer certifies that the Contractor has fulfilled all requirements set forth in Section 2.19.1 and 2.19.3 of the General Technical Requirements. / Objednatel tímto potvrzuje, že Zhotovitel splnil všechny požadavky, uvedené v bodech 2.19.1 a 2.19.3 Obecných technických požadavků.

Hereby, the Employers duly issues this Ready for Commissioning Certificate relating to the Works concerning Pipeline construction./Objednatel tímto řádně vystavuje toto Potvrzení o připravenosti ke zkoušení Díla výstavby Plynovodu.

Capitalized terms herein shall have the meaning ascribed to them in the Contract./Výrazy zde uvozené velkým písmenem mají tentýž význam, jaký jim připisuje Smlouva

Annex I: Punch List/Příloha I: Soupis vad a nedodělků

On behalf of the Employer/Jménem Objednatele

NET4GAS s.r.o.

In/V \_\_\_\_\_ on/dne \_\_\_\_\_

***[Signature of Employer's authorized officer/podpis oprávněného zástupce Objednatele]***

Signature/*podpis*:

Name/*jméno*:

[●]

In/*V* \_\_\_\_\_ on/*dne* \_\_\_\_\_

***[Signature of Contractor's authorized officer/podpis oprávněného zástupce Zhotovitele]***

Form of Preliminary Taking-Over Certificate

**[EMPLOYER LETTERHEAD/HLAVIČKOVÝ PAPÍR OBJEDNATELE]**

**PRELIMINARY TAKING-OVER CERTIFICATE /  
POTVRZENÍ O PŘEDBĚŽNÉM PŘEVZETÍ**

**[Date/Datum]**

To/Komu: **[Contractor/Zhotovitel]**

**PROJECT/PROJEKT:** Capacity4Gas - DE/CZ – Pipeline Construction/Výstavba plynovodu

**WORK PACKAGE/SOUBOR PRACÍ:** [●]/[●]

**CONTRACT/SMLOUVA:** Contract No. [●] dated [●] between NET4GAS, s.r.o. as the Employer and [●] as the Contractor / Smlouva č. [●] ze dne [●] mezi NET4GAS, s.r.o. jako Objednatel a [●] jako Zhotovitelem

Hereby, the Employer certify that in accordance with the Clause 5.1 (c) of the Contract Agreement and Sub-Clause 10.1 of the Conditions of the Contract forming part of the contract No. [●] dated [●] (the “**Contract**”) the preliminary taking-over of the Works concerning Pipeline construction has been reached on [●] in accordance with the above mentioned Contract (save for the Punch List items in the Annex)./ *Objednatel tímto osvědčuje, že v souladu se čl. 5.1 (c) Smlouvy o dílo (Contract Agreement, a odst. 10.1 Podmínek (Conditions) Smlouvy, které jsou součástí smlouvy č. [●] ze dne [●] (dále jen “Smlouva”), bylo předběžně převzato Dílo výstavby Plynovodu dne [●] v souladu s výše uvedenou Smlouvou (vyjma položek uvedených v Soupisu vad a nedodělků v příloze).*

Hereby, the Employer certifies that the Contractor has fulfilled all requirements set forth in Section 2.20.3 and 2.20.4 of the General Technical Requirements. / *Objednatel tímto potvrzuje, že Zhotovitel splnil všechny požadavky, uvedené v bodech 2.20.3 a 2.20.4 Obecných technických požadavků.*

Hereby, the Employer duly issues this Preliminary Taking-Over Certificate for the Purposes of Trial Operation relating to the Works concerning Pipeline construction./ *Objednatel tímto řádně vystavuje toto Potvrzení o předběžném převzetí výstavby Plynovodu.*

Both Parties acknowledge that from the date of this Preliminary Taking-Over Certificate, the Defects Notification Periods shall commence, in accordance with Clause 6.1 of the Contract Agreement./*Obě strany berou na vědomí, že od data tohoto Potvrzení o předběžném převzetí počne běžet Lhůta pro oznamování vad v souladu s čl. 6.1 Smlouvy o dílo (Contract Agreement).*

This certificate does not relieve Contractor of any obligations under the Contract./*Toto potvrzení nezprošťuje Zhotovitele žádných jeho povinností vyplývajících ze Smlouvy.*

Capitalized terms herein shall have the meaning ascribed to them in the Contract./ *Výrazy zde uvozené velkým písmenem mají tentýž význam, jaký jim připisuje Smlouva.*

Annex I: Punch List/Příloha I: Soupis vad a nedodělků

On behalf of the Employer/Za Objednatele

NET4GAS s.r.o.

In/V \_\_\_\_\_ on/dne \_\_\_\_\_

***[Signature of Employer's authorized officer/ Podpis oprávněného zástupce Objednatele]***

Signature/*Podpis*:

Name/*Jméno*:

[●]

In/V \_\_\_\_\_ on/dne \_\_\_\_\_

***[Signature of Contractor's authorized officer/ Podpis oprávněného zástupce Zhotovitele]***

Form of Taking-Over Certificate

***[EMPLOYER LETTERHEAD/HLAVIČKOVÝ PAPÍR OBJEDNATELE]  
TAKING-OVER CERTIFICATE/POTVRZENÍ O PŘEVZETÍ***

***[Date/Datum]***

To/Komu: ***[Contractor/Zhotovitel]***

**PROJECT/PROJEKT:** Capacity4Gas - DE/CZ - Pipeline Construction/Výstavba plynovodu

**WORK PACKAGE/SOUBOR PRACÍ:** ***[●]/[●]***

**CONTRACT/SMLOUVA:** Contract No. *[●]* dated *[●]* between NET4GAS, s.r.o. as the Employer and *[●]* as the Contractor / *Smlouva č. [●] ze dne [●] mezi NET4GAS, s.r.o. jako Objednatel a [●] jako Zhotovitelem*

Hereby, the Employer certifies that in accordance with Clause 5.1 (d) of the Contract Agreement and Sub-Clause 10.1 of the Conditions of the Contract forming part of the contract No. *[●]* dated *[●]* (the “**Contract**”) the taking over of the Works concerning Pipeline construction has been reached on *[●]* in accordance with the above mentioned Contract (save for the Punch List items in the Annex)./Objednatel tímto osvědčuje, že v souladu se čl. 5.1 (d) Smlouvy o dílo (Contract Agreement) a odst. 10.1 Podmínek (Conditions) Smlouvy, která je součástí smlouvy č. *[●]* ze dne *[●]* (dále jen “**Smlouva**”), bylo převzato Dílo výstavby Plynovodu dne *[●]* v souladu s výše uvedenou Smlouvou (vyjma položek uvedených v Soupisu vad a nedodělků v příloze).

Hereby, the Employer duly issues this Taking-Over Certificate relating to the Works concerning Pipeline construction./Objednatel tímto řádně vystavuje toto Potvrzení o převzetí ve vztahu k Dílu výstavby Plynovodu.

The Works were completed except for minor defects - punch list items. The punch list items are listed in the Punch List, included as Annex 1 hereto, forming an integral part of this Taking-Over Certificate./Dílo bylo dokončeno vyjma drobných vad – položek uvedených na soupisu vad a nedodělků. Položky ze soupisu vad a nedodělků jsou uvedeny v Soupisu vad a nedodělků, který tvoří Přílohu 1 tohoto Potvrzení o převzetí a je jeho nedílnou součástí.

This certificate does not relieve Contractor of any obligations under the Contract./Tento protokol nezprošťuje Zhotovitele žádných jeho povinností vyplývajících ze Smlouvy.

Capitalized terms herein shall have the meaning ascribed to them in the Contract./ Výrazy zde uvozené velkým písmenem mají tentýž význam, jaký jim připisuje Smlouva.

Annex I: Punch List/Příloha 1: Soupis vad a nedodělků

On behalf of the Employer/Za Objednatele

NET4GAS s.r.o.

In/V \_\_\_\_\_ on/dne \_\_\_\_\_

***[Signature of Employer's authorized officer/ Podpis oprávněného zástupce Objednatele]***

Signature/*Podpis*:

Name/*Jméno*:

[●]

In/V \_\_\_\_\_ on/dne \_\_\_\_\_

***[Signature of Contractor's authorized officer/ Podpis oprávněného zástupce Zhotovitele]***

Signature/*Podpis*:

Name/*Jméno*:



## Annex 6 – INSURANCE

### INSURANCE TO BE PROCURED BY THE EMPLOYER

#### ITEM 1. CONSTRUCTION ALL RISKS INCLUDING CONSTRUCTION LIABILITY AND CROSS LIABILITY

ITEM	DETAILS
<b>INSURED:</b>	<ul style="list-style-type: none"><li>• Employer as the policy holder,</li><li>• the Contractor,</li><li>• Subcontractors and other contractors, and</li><li>• suppliers, professional consultants, architects and any other party engaged by any of the other insured parties for their Site activities only.</li></ul>
<b>PERIOD:</b>	The insurance period begins on the day the Site is handed over to the Contractor <u>or fifteen (15) days after the issuance of a partial Notice to Proceed for the Early Works, whichever occurs earlier</u> , and lasts throughout the construction period until the issuance of the Taking-Over Certificate. The insurance period also applies to the testing and Trial Operation period.
<b>THE PROJECT:</b>	Construction of a pipeline between the Line Valve Station TU53S – Malměřice (excluding this station) and the Distribution Node Přimda (excluding this station), Czech Republic
<b>INTEREST:</b>	<p>Section of property insurance:</p> <p>All risk insurance in case of physical loss, damage to the Works or parts thereof, including material used in the performance of the Works. Additional insurance for the equipment and devices (assembly equipment) of the Contractor / Subcontractor (excluding vehicles with a registration plate and excluding mechanical, electrical and electronic faults)</p> <p>Section of liability insurance:</p> <p>The insured's legal liability for third party health or property damage arising out of the performance of the Project</p>
<b>SUMS INSURED:</b>	<p>Section of property insurance:</p> <p>Limited to the Contract value</p> <p>Section of liability insurance:</p> <p>EUR <del>10 000 000</del> <u>10,000,000</u> any one accident or occurrence and aggregated for all occurrences and accidents limit for period</p>
<b>DEDUCTIBLES:</b>	<p>Section of property insurance:</p> <p>a) EUR <del>100,000</del> <u>250,000</u> any one occurrence during the assembly and construction period, but outside the testing and testing period</p> <p>b) <del>300 000</del> <u>EUR 600,000</u> EUR any one occurrence during hot testing</p>



**ITEM****DETAILS**

and defect liability period (24 months)

- c) 10% of the value of the item subject to a minimum of ~~10-000~~ EUR 50,000 in respect of constructional plant & equipment, Site accomodation, temporary buildings and contents

Section of liability insurance:

~~100-000~~ EUR 100,000 any one occurrence

**GEO-GRAPHICAL  
LIMITS:**

Anywhere in the Czech Republic

**CLAUSES:**

002 Cross Liability  
004 Extended Warranty Period (24 months)  
115 Designer Risk  
119 Existing Property  
200 Supplier risk

## INSURANCE TO BE PROCURED BY THE CONTRACTOR

### ITEM 2. GENERAL LIABILITY AND PRODUCT LIABILITY INSURANCE

ITEM	DETAILS
<b>INSURED:</b>	<p>The Contractor as the policy holder and the insured for bodily injury and/or property damage and to the extent of Contractor's vicarious liability caused by Subcontractors or any other independent contractors engaged by Contractor or Subcontractors for their site activities only.</p> <p>Subcontractors and other contractors, and suppliers, professional consultants, architects and any other party engaged by any of the other insured parties for their Site activities only.</p>
<b>PERIOD:</b>	<p>From the respective Commencement Date (as such term is defined in the Contract) <u>or fifteen (15) days after the issuance of a partial Notice to Proceed for the Early Works, whichever occurs earlier</u>, until the end of the Defects Notification Period (as defined in the Contract).</p>
<b>INTEREST:</b>	<p>To the extent of the limits prescribed below. The Contractor shall provide and maintain insurance for damages arising out of death of or bodily injury to third parties and damage to third party property except to the Works to be performed under the Contract occurring during the period of insurance with the territorial limits and arising out of the project.</p>
<b>THE PROJECT:</b>	<p>Construction of a pipeline between the Line Valve Station TU53S – Malměřice (excluding this station) and the Distribution Node Přimda (excluding this station), Czech Republic</p>
<b>TERRITORIAL LIMITS:</b>	<p>Anywhere in the Czech Republic.</p>
<b>LIMIT OF INDEMNITY:</b>	<p>EUR 4,500,000 any one occurrence for General Liability with total annual aggregate limit of EUR 10,000,000 (or USD equivalent)</p> <p>EUR 8,000,000 any one occurrence for Product Liability and also a total annual aggregate (or USD equivalent)</p>
<b>DEDUCTIBLES:</b>	<p>EUR 40,000 any one accident or occurrence.</p>

### ITEM 3. PROFESSIONAL LIABILITY INSURANCE

ITEM	DETAILS
<b>INSURED:</b>	The Contractor, Subcontractors to the extent they furnish design or engineering services hereunder.
<b>PERIOD:</b>	From the Base Date (as such term is defined in the Contract) until the end of the Defects Notification Period (as defined in the Contract).
<b>INTEREST:</b>	<p>Legal liability of the Contractor for loss that the Contractor is legally liable to pay to a third party arising from any claim resulting from a wrongful act the extent of the limits and project prescribed below.</p> <p>To the extent of the limits prescribed below. The Supplier shall be liable for compensation or damages arising out of death of or bodily injury to third party people and damage to third party property arising out of the rendering professional services occurring during the period of insurance with the territorial limits and arising out of the project. There is no coverage for damages to the Contractor's product or work itself.</p>
<b>THE PROJECT:</b>	Construction of a pipeline between the Line Valve Station TU53S – Malměřice (excluding this station) and the Distribution Node Přimda (excluding this station), Czech Republic
<b>TERRITORIAL LIMITS:</b>	Anywhere in the Czech Republic.
<b>LIMIT OF INDEMNITY:</b>	EUR 7,000,000 per claim (or USD equivalent) and in aggregate: EUR 15,000,000 (or USD equivalent)
<b>DEDUCTIBLES:</b>	EUR 125,000 per any one accident or occurrence.

#### **ITEM 4. TRANSPORT INSURANCE**

<b>ITEM</b>	<b>DETAILS</b>
<b>INSURED:</b>	The Contractor
<b>PERIOD:</b>	Until the delivery of equipment, plant and material on Site.
<b>INTEREST:</b>	Direct physical loss of or damage from external causes to any part of the equipment, plant and material during transport including while being unloaded at the work site.
<b>THE PROJECT:</b>	Construction of a pipeline between the Line Valve Station TU53S – Malměřice (excluding this station) and the Distribution Node Přimda (excluding this station), Czech Republic
<b>TERRITORIAL LIMITS:</b>	Anywhere in the world, as per delivery, except whenever coverage provided by this policy would be in violation of any U.S. economic or trade sanctions.
<b>LIMIT OF INDEMNITY:</b>	Value determined by the applicable policy valuation clause.
<b>DEDUCTIBLES:</b>	EUR 5,000 any one accident or occurrence.

**ITEM 5. OTHER INSURANCES**

Plus all other insurances required by applicable Laws or by the Contract.



## **Annex 7 – CODE OF CONDUCT**





## **Annex 8 – LIST OF INTERNAL DOCUMENTS FOR PERFORMANCE OF SERVICE**

**Annex 9 – CONTRACTOR'S PROPOSAL**

**CONTAINED ON DVD**

**HASH:**

**SHA256**



## Annex 10 – **ROW REQUIREMENTS**

## **Annex 11 – REQUIREMENTS WITH RESPECT TO THE PERSONAL DATA PROCESSING**

### **Scope of the processing activities**

The fulfillment of the Contractors obligations shall be in accordance with this Contract.

The main purpose of personal data processing is to use them to ensure fulfillment of the Contract under 1.1.2.3. in particular their storage and coordination of contracted activities.

### **Duration of processing**

Processing of Relevant Personal Data will take place over the duration of this Agreement and then to the extent necessary (i) for such further period of time as expressly permitted or required by this Agreement and / or applicable law, and (ii) for the duration of the applicable limitation periods for the enforcement of any claims of the Parties arising under this Agreement and in relation to the Relevant Personal Data concerned by the claim of a Party until the termination of the relevant proceedings.

### **Data Subjects**

The Relevant Personal Data involve/concern the following categories of data subjects:

- (i) Contractors/customers of the Client and their representatives;
- (ii) Employees of the Client;
- (iii) Owners and lessees of relevant (special-interest) land plots;
- (iv) Representatives of the relevant state administration bodies and authorities of the Czech Republic.

### **Relevant Personal Data categories**

Contractor may in particular perform the processing of the Personal Data as follows:

- (i). in case of Contractors/customers of the Client and their representatives:
  - Basic data: name and surname; academic degree; title of the person's post or position signature;
  - Contact details: telephone number (land line and cell phone); e-mail address;
  - Training and education of contractors: accomplished qualifications; certificates proving qualification;
  - Compliance with laws and regulations and contractual obligations: reports on any breaches by a contractor's employee of any duties set forth in any laws and regulations or of any contractual obligations relating to the employee's job;
  - Security data: presence at the workplace.
- (ii). In case of Employees of the Client (the category of employees also includes Executive Officers and authorized officers/signatories of the Client, members of the Supervisory Board and members of the Audit Committee):
  - Basic data: name and surname; academic degree; title of the post or position; signature;
  - Contact details: workplace telephone number; company cell phone number; company e-mail address;

- Security data: presence at the workplace.

(iii). In case of Owners and lessees of relevant (special-interest) land plots:

- Basic data: name and surname; academic degree; birth registration number; date of birth; signature;
- Contact details: telephone number (land line and cell phone); e-mail address; permanent residence address and place of residence (if relevant);
- Data necessary for performance of the contract (contractual relationship): ownership share / leased land plot; Certificate of Title number; easements on the land plot.

(iv). In case of Representatives of the relevant state administration bodies and authorities of the Czech Republic:

- Basic data: name and surname; academic degree; title of the post or position; signature;
- Contact details: workplace telephone number; company cell phone number; company e-mail address.

### **Purposes of Relevant Personal Data Processing**

Based on the Agreement, the Relevant Personal Data processing is performed only for the purposes corresponding to the scope of the processing activities listed above in this Annex [7/8] to this Agreement.

### **Contact details for the area of personal data protection**

Client:

Postal address:

NET4GAS, s.r.o.

Personal Data Protection

Na Hřebenech II 1718/8, Nusle, 140 21 Praha 4,  
Czech Republic

E-mail: [osobni.udaje@net4gas.cz](mailto:osobni.udaje@net4gas.cz)



