

**CONTRACTUAL AGREEMENT
FOR THE WORKS DESIGN AND EXECUTION**

No...../.....

**DESIGN SERVICES (TP+ED+TDBP+TDEO), TECHNICAL ASSISTANCE AND WORK EXECUTION FOR THE
PROJECT "IN-DEPTH ENERGY REFURBISHMENT OF THE TECHNICAL ENERGY COLLEGE"**

This Contractual Agreement is concluded between:

SIBIU MUNICIPALITY, headquartered in Sibiu, Brukenthal Street, no. 2, Sibiu, post code 550178, telephone 0269/20.88.00, fax 0269/ 20.88.11, tax code 4270740, represented by ASTRID CORA FODOR - Mayor and Dorian Ioan Dancanet - Economic Manager, as beneficiary on the one hand and

....., legal entity..... headquartered in....., registered under no....., fiscal attribute, bank account no....., open with- Branch..... VAT account no., legally represented by....., (hereinafter referred to as (hereinafter referred to as the "Contractor")), on the other hand,
(hereinafter referred to as the "Parties"),

considering that the Beneficiary has agreed, according to the report of the procedure for the awarding of the public procurement contract no.that the works known as: **DESIGN SERVICES (TP+ED+TDBP+TDEO), TECHNICAL ASSISTANCE AND WORK EXECUTION FOR THE PROJECT "IN-DEPTH ENERGY REFURBISHMENT OF THE TECHNICAL ENERGY COLLEGE "**, (hereinafter referred to as the "Works") to be designed and carried out by the Contractor and has accepted the Contractor's offer for the execution and completion of the Works and the remedying of any possible defects in the Works,

The Parties agree as follows:

1. In this Contractual Agreement, the terms and expressions shall have the same meaning as in the Contractual Terms referred to below.

2. The Contract is an administrative contract and includes this Contractual Agreement together with any Addendum and the following annexes:

- (a) the completed and, where appropriate, corrected Tender Form,
- (b) The Specific Terms
- (c) The General Terms,
- (d) The Beneficiary's Requirements - The technical specifications in the tender book and technical documentation, including clarifications and/or remedial measures taken up to the submission of the tenders concerning the technical and financial aspects
- (f) Performance bond,

(g) Contractor's tender and any other documents forming part of the Contract:

- 1. Contractor's financial tender (after arithmetical corrections), including clarifications during the evaluation period
- 2. Contractor's technical tender (including clarifications during the evaluation period of the tenders),
- 3. firm commitment of each supporting third party (if applicable),
- 4. association agreement (if the Contractor establishes an association, consortium or other grouping of two or more persons),
- 5. subcontract concluded with each Subcontractor (if applicable),
- 6. any other documents forming part of the Contract (if applicable).

3. Subject to the payments to be made by the Beneficiary to the Contractor as set out below, the Contractor agrees with the Beneficiary to design, execute and complete the Works known as **DESIGN SERVICES (TP+ED+TDBP+TDEO), TECHNICAL ASSISTANCE AND WORK EXECUTION FOR THE PROJECT "IN-DEPTH ENERGY REFURBISHMENT OF THE TECHNICAL ENERGY COLLEGE "** and

to remedy any possible defects of these Works during the Warranty Period, in accordance with the contractual provisions.

4. The Beneficiary agrees with the Contractor to pay for the design, execution and completion of the Works and

to remedy any possible defects of the Works amounting to: Lei, excluding VAT (in words:), representing the Contract Price on the terms and according to the modalities stipulated in the Contract. To this amount the value added tax will be added in accordance with the legal provisions in

force. The change in the Contractual Price will be made in accordance with the legal provisions.

5. The other contractual data referred to in the Contractual Terms as provided in the Contractual Agreement are the following:

| Reference | Item | Contractual data |
|---|---|--|
| Clause 1 - Definiții | | |
| b) | Contractor's name and address | <i>(se va completa la momentul semnării Acordului Contractual)</i> |
| c) | Beneficiary's name and address, the name of the Beneficiary's representative | SIBIU MUNICIPALITY, headquartered in Sibiu, Brukenthal Street, no. 2, Sibiu, post code 550178, represented by ASTRID CORA FODOR - Mayor and DORIAN IOAN DANCANET - Economic Manager |
| q) | Execution Duration | <p>The contract duration is 27 months, as follows:</p> <p>1) The design will be completed within 7 months from signing the contract, period that necessarily includes the development of the documentation, the technical verification and the implementation of all necessary changes, as follows:</p> <ul style="list-style-type: none"> - 4 months for the development of the Technical Project (TP) and the Execution Details (ED), from the date of signing the contract until its handover to the Contracting Authority (confirmed by the Handover-Reception Protocol); - 2 months for the technical verification of the project by certified verifiers, period starting from the date of issuing the TP handover-reception protocol - 1 month assigned for any changes or updates to the documentation resulting from the technical verification by certified verifiers, as well as as a result of the observations of the Contracting Authority, the Ministry of Development (Programme Operator) or the Swiss partners, as the case may be. <p>2) Works execution: 18 months from the date of issuing the order to start the works;</p> <p>3) Reception upon completion of the works: 2 months from the notification on the works completion</p> |
| vv) | Sector | According to art. 3 of this contractual agreement |
| bbb) | Supervisor's name and address | <i>(will be determined after the supervision contract is awarded)</i> |
| Clause 2 – Contract Language | | |
| 2.1 | Contract Language | Romanian language |
| Clause 15 – Good Performance Bond | | |
| 15.1 | Good Performance Bond amount | 10% of the Contractual price excluding VAT |
| 15.6 a) | the amount of the Good Performance Bond returned after the approval of the Acceptance on Works Completion | 70% |
| Clause 16 - Responsibilities and insurances | | |
| 16.2 b) 1. | insurance coverage limits for third party damages | the insurance coverage limits will not be lower than those valid for compulsory motor third party liability insurance according to |

| | | |
|------------------------------------|--|--|
| | | the European Union regulations |
| Clause 17 – Execution Schedule | | |
| 17.6 | amount withheld for delay in submitting the Execution Schedule | 4.000 lei pe zi |
| Clause 19 Design by the contractor | | |
| 19.3 | Deadline for developing the technical project and submitting it to the Supervisor | 4 months from the date of signing the contract |
| 19.4 | Deadline for obtaining a building permit | Maximum 30 days from the date of receiving the TDBP documents from the contractor |
| Clause 36 - Delays | | |
| 36.3 | amount withheld from the Payment Certificate if the Contractor fails to reach a milestone by the established deadline | Not applicable |
| 36.4 | the amount of late payment penalties for each day of delay | <p>-5% per day of the value of unrendered/delayed design services, calculated over a period between the date established for the fulfillment of obligations, according to the plan/schedule provided in the contract, and the date of their actual fulfillment;</p> <p>-15% per day of the value of technical assistance, calculated over a period between the date established for the fulfillment of obligations according to the plan/schedule provided in the contract/specifications, and the date of their actual fulfillment</p> <p>-1% per day of the value of unrendered/delayed works, calculated over a period between the date established for the fulfillment of obligations, according to the plan/schedule provided in the contract, and the date of their actual fulfillment</p> <p>By way of exception, to the extent that during the course of the contract, the contractor does not fulfill one of the elements stated and scored within the evaluation factors applied within the procurement procedure, the purchaser is entitled to charge non-compliance penalties amounting to 0.5% per day of the total value of the contract, until the situation is remedied.</p> <p>The maximum amount of the delay penalties will be 15% of the Contractual Price upon signing the Contract.</p> |
| Clause 46 – Payment in advance | | |
| 46.1 | making an advance payment/s | No |
| 46.6 | value of each installment of the advance payments | Not applicable |
| 46.6 | number of installments | Not applicable |
| 46.6 | date of the installments | Not applicable |
| 46.7 | the amounts representing advance payments can be justified by works carried out by the deadline set within the framework of the Contract | Not applicable |
| 46.7 | value of each installment of the advance payments | Not applicable |
| 46.7 | number of installments | Not applicable |
| 46.7 | date of the installments | Not applicable |
| 46.7 | the amount of percentage deductions from Payment Certificates | Not applicable |
| Clause 47 – Amounts withheld | | |

| | | | |
|-------------------------------------|--|---|--|
| Clause 47.1 | | It applies only to contracts in which the Contractor establishes the performance bond through successive retentions, based on sub-clause 15.1, letter b) | |
| 47.2 | percentage value of Amounts Withheld from Payment Certificates | 5 % of the total amounts related to points a) and (b) of subClause (50.1) [Statement of Works] | |
| 47.2 | Limit on Withheld Amounts | 5% of the Contractual Price upon signing the Contract | |
| Clause 48 – Price adjustment | | | |
| 48.1 | application of a price adjustment formula when the Execution Duration when signing of the Contract is less than or equal to 365 days | no | |
| 48.3 | application of a price adjustment formula when the Execution Duration at the signing of the Contract is more than 365 days | Yes The contract will be adjusted according to the following method: The Parties agree that the contractual price will be revised using the adjustment formula: $A_n = a_v + (1 - a_v) * I_n / I_o$, where - "An" is the adjustment coefficient to be applied to the estimated contract value for the works carried out in month "n" (amounts related to the Statement of Works, excluding works evaluated based on Cost or current prices); - "av" is the percentage value of the advance payment compared to the Contractual Price; - "In" is the total construction cost index, published by the National Institute of Statistics in the Statistical Price Bulletin, in table 15, applicable 60 days before the last day of month "n". - "Io" is the total construction cost index, applicable on the Reference Date. The Reference Date is the date 30 days before the deadline for submitting Tenders. The profit will not be adjusted. The price adjustment is applied after 6 months from the date of issuing the work start order, until the works completion related to the investment site, according to the legal provisions in force on the date of reception, based on the work statements undertaken by the contractor, site manager and approved by the contracting authority, following the justified request from the contractor. In the event that during the contract, additional works appear that have an equivalent in the initial tender, the value of the payment request will be adjusted according to the formula above. For additional works that do not have an equivalent in the initial tender, the reference date is the month of concluding the negotiation protocol. | |
| 48.4 | Adjustment dates table | | |
| Coefficient value and indices names | Index currency | Index source and definition | Index value on a specified date (see note) |
| (1) | (2) | (3) | (4) |

| | | | |
|---|--|---|---|
| av = 0,15 - fix | - | - | - |
| m = example: 0,30 - M = labor force | - | - | - |
| f = F = | - | - | - |
| e = E = | - | - | - |
| | | | |
| Note: The indices values in column (4) represent the value of the indices on the date specified for each index. These values confirm the definition of the indices but do not represent their value on the Reference Date.. | | | |
| Clause 49 - Measurement, valuations and Provisory amounts | | | |
| 49.3 | amount for indirect expenses and profit | Not applicable | |
| Clause 50 - Payments | | | |
| 50.2 a) | list of Equipment and Materials for payment upon delivery to the Site or other location approved by the Supervisor | Not applicable | |
| 50.3 | the value of unfulfilled or non-observed obligations | 1. replacement of key staff of the contractor without complying with the provisions of subclauses 14.3 and 14.4: 5,000 lei per event 2. non-compliance with the provisions of subclause 27.2: 3,000 lei per day 3. non-compliance with the provisions of subclause 27.3:5,000 lei per day | |
| Clause 61 – Warranty period | | | |
| 61.7 | Warranty Period duration | (will be filled in at the time of signing the Contractual Agreement according to the tender submitted and cannot be less than 60 months. The warranty of the works is an evaluation factor) | |
| Clause 70 – Disputes and arbitration | | | |
| 70.4 | number of arbitrators | 3 | |
| 70.5 | place of arbitration | Bucharest | |
| 70.5 | language of arbitration | Romanian language | |
| Clause 71 - Law | | | |
| 71.1 | Law governing the Contract | Romanian law | |

1. The Contractor has the obligation to ensure the availability of information and documents relating to this contract, for 10 years from the date of the contract termination, during the inspections carried out by the Ministry of Development, Public Works and Administration, or by other structures competent in the inspection and recovery of debts related to non-reimbursable financing.
2. The Contractor and its subcontractors are obliged to guarantee the payment to workers of the national minimum gross basic salary and of the minimum salaries established by collective labor agreements, as applicable.
3. The Parties undertake to comply with high ethical standards, applicable anti-corruption legislation, to refrain from committing any offense regulated by the legal provisions in force in connection with the performance of this contract, during its validity period.
4. This Contractual Agreement shall take effect from the date of its signing by the last party. The date of signing the contract is considered to be the date of the last electronic signature applied.

Beneficiary

Contractor

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GENERAL TERMS FOR WORKS DESIGN AND EXECUTION

DESIGN SERVICES (TP+ED+TDBP+TDEO) , TECHNICAL SUPPORT AND WORKS EXECUTION FOR THE PROJECT „IN-DEPTH ENERGY REFURBISHMENT OF THE TECHNICAL ENERGY COLLEGE "

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CONTRACTUAL AGREEMENT

PRELIMINARY PROVISIONS

Clause 1 Definitions

1.1 Under these Contractual Terms, the terms and expressions below have the following meanings:

- a) Contractual Agreement - the document thus named, signed by the two Parties;
- b) Contractor - the person named as contractor in the Contractual Agreement and the legal successors of such person;
- c) Beneficiary - the person named as beneficiary in the Contractual Agreement and the legal successors of such person;
- d) Goods - the Contractor's Plant, Materials, Equipment and Temporary Works or any of them, as the case may be;
- e) Beneficiary's Requirements - the document, part of the specifications prepared by the Beneficiary, entitled "Beneficiary's Requirements" and included in the Contract, and any other amendments or additions to the Beneficiary's Requirements in accordance with the contractual provisions. This document specifies the destination and purpose of the Works and/or any technical requirements and criteria related thereto;
- f) Payment Certificate - a certificate issued by the Supervisor in accordance with the provisions of sub-clause 50.3 [Payment Certificate] or 51.2 [Final Payment Certificate] as the case may be;
- g) Final Payment Certificate - a certificate issued by the Supervisor in accordance with the provisions of sub-clause 51.2 [Final Payment Certificate];
- h) Contractual Terms - the set consisting of the Special Conditions (if any) and the General Conditions;
- i) General Conditions - the document thus named, included in the Contract;
- j) Special Conditions - the document thus named (if any), included in the Contract, drawn up by the Beneficiary and containing provisions only with respect to the sub-clauses and only in relation to the subjects mentioned in the General Conditions;
- k) Conflict of Interest - a situation described in sub-Clause 12b.1, which may compromise the correct and objective fulfillment of the Contract;
- l) Contract - the Contractual Agreement together with all the documents referred to in sub-clause 3.1;
- m) Cost(s) - all expenses reasonably incurred (or to be incurred) by the Contractor in or in connection with the Contract;
- n) Commencement Date - the date notified in accordance with the provisions of sub-clause 33.1;
- o) Reference Date - the date 30 days before the deadline for submission of Tenders. If there is no such deadline (for example, in the case of a contract awarded following a procedure negotiated without publication of a contract notice), the Reference Date shall be the date of signing the Contract;
- p) Decision (of the Supervisor)/Decides - a decision made by the Supervisor in accordance with the provisions of Clause 69c [Supervisor's Decision]/the process referred to in Clause 69c [Supervisor's Decision] resulting into the issue of a Decision/matter in respect of which the Supervisor takes a Decision in accordance with the provisions of Clause 69c [Supervisor's Decision];
- q) Contractor's Documents - designs, drawings, calculations, programmes, manuals, models and other technical documents (if any) supplied by the Contractor in accordance with the Contractual provisions;
- r) Beneficiary's Documents - the Beneficiary's Requirements and any designs, drawings, calculations, programmes, manuals, models and other technical documents (if any) prepared by or on behalf of the Beneficiary in accordance with the Contractual provisions;
- s) Time for Completion - the time for completion of the Works or a Section of the Works (as the case may be) in accordance with the provisions of Clause 34 [Time for Completion], as set out in the Contract Agreement, including any extension in accordance with the provisions of Clause 35 [Extension of Time for Completion], calculated from the Commencement Date;
- t) Equipment - the apparatus, machinery and vehicles which are or will be incorporated into the Permanent Works;
- u) Tender Form - the document so named, which has been completed by the Contractor as part of his tender, included in the Contract;
- v) Performance Bond - the bond provided in accordance with the provisions of Clause 15 [Performance Bond];
- w) Payment Schedule - the document so named, included in the Contract;
- x) Site Log - Log of works in accordance with the provisions of clause 39 [Site Log];
- y) Law - all normative acts in force issued by any competent entity according to the articles of incorporation, to develop normative acts;

- z) Permanent Works - the permanent works required to be executed by the Contractor according to the Contractual provisions (including the Contractor's Equipment and Documents);
- aa) Temporary Works - all temporary works of any kind (other than the Contractor's Equipment), necessary for the design, execution and completion of the Permanent Works and the remedying of any defects;
- bb) Works - the Permanent Works and/or the Temporary Works;
- cc) Materials - products of any kind (other than Equipment) which are or will be integrated into the Permanent Works, according to the Contractual provisions;
- dd) Amendment - any amendment to the Contract, approved in accordance with the provisions of Clause 37 [Amendments] and/or by an addendum to the Contract;
- ee) Tender (of the Contractor) - the legal act by which the Contractor has expressed its will to legally undertake to the Contract and the related documents, submitted by the Contractor, included in the Contract. The tender includes the technical tender (proposal) and the financial tender (proposal). The technical tender includes a project or project draft;
- ff) Administrative Order - a document issued by the Supervisor in accordance with the provisions of Clause 5 [The Supervisor and the Supervisor's representative];
- gg) Administrative Commencement Order - an Administrative Order issued by the Supervisor in accordance with the provisions of Clause 33 [Commencement];
- hh) Administrative Variation Order - an Administrative Order issued by the Supervisor in accordance with the provisions of Clause 37 [Amendments];
- ii) Party(ies) - the Beneficiary and/or the Contractor, as the context requires;
- jj) Warranty Period - the period, starting on the date of approving the Acceptance on Works (or Section) Completion, during which the Contractor shall be responsible for remedying defects and damage to the Works in accordance with the provisions of Clause 61 [Warranty Period] and which may be extended in accordance with the provisions of the same Clause;
- kk) Contractor's Staff - the Contractor's Representative and all the other staff, labour and other employees of the Contractor, of all Subcontractors and any other staff assisting the Contractor in the design and Works execution;
- ll) Beneficiary's Staff - the Supervisor, his representatives and all the other staff, labour and other employees of the Supervisor or the Beneficiary and any other staff notified to the Contractor by the Beneficiary or the Supervisor as Beneficiary's Staff;
- mm) Contract Price - the price set out in the Contractual Agreement for the design, execution and completion of the Works and the remedying of all defects (with any subsequent amendment after the signing of the Contract by addendum, excluding VAT);
- nn) Execution Schedule - a document prepared by the Contractor in accordance with the provisions of clause 17 [Execution Schedule];
- oo) Reference Schedule - Execution Schedule accepted by the Supervisor in accordance with the provisions of sub-clause 17.8 and/or sub-clause 17.12 [Revision of Execution Schedule];
- pp) Final Acceptance - acceptance of the Works carried out in accordance with the provisions of clause 62 [Final Acceptance];
- qq) Acceptance on Completion of Works - acceptance of the Works (or part of the Works or a Section) carried out in accordance with the provisions of clause 60 [Acceptance on Completion of Works];
- rr) Contractor's Representative - the person appointed by the Contractor (in the Contract or in accordance with the provisions of sub-Clause 13.2 to act on behalf of the Contractor;
- ss) Claim - a claim issued by the Contractor in accordance with the provisions of Clause 69a [Contractor's Claims] or by the Beneficiary in accordance with the provisions of Clause 69b [Beneficiary's Claims];
- tt) Contractor's Risks - the events or situations listed in sub-Clause 68.1 [Contractor's Risks];
- uu) Beneficiary's Risks - the events or situations listed in sub-Clause 68.1 [Beneficiary's Risks];
- vv) Site - the places where the Permanent Works are to be executed and where the Equipment and Materials are to be delivered and any other places specified in the Contract as forming part of the Site;
- ww) Section (of Works) - a part of the Works defined as a Section in the Contractual Agreement;
- xx) Statement of Works - the statement of works submitted by the Contractor in accordance with the provisions of sub-clause 50.1 [Statement of Works] and/or 51.1 [Final Statement of Works];
- yy) Subcontractor - any third party to whom the Contractor entrusts the execution of a part of the Contract, in accordance with the provisions of clause 7 [Subcontracting];
- zz) Provisory Amount - an amount provided for in the Contract as a Provisory Amount, used and paid in accordance with the provisions of sub-clause 49.3 [Provisory Amounts]. Provisory Amounts are implementation reserves within the meaning of the Law;
- aaa) Retained Amounts - the cumulative amounts that the Beneficiary retains and pays according to the provisions of clause 47 [Retained Amounts]

bbb) Supervisor - business operator or team within the Beneficiary, designated by the Beneficiary. The Supervisor has the technical, financial and contractual duties established by the Contractual Terms. The Supervisor is designated in the Contractual Agreement or notified to the Contractor according to the provisions of clause 5 [Supervisor and Supervisor's Representative]. The Supervisor has in his team authorized site managers, according to the provisions of the Law, and any other persons to fulfill his role;

ccc) Tests on Completion - the tests carried out according to the provisions of clause 58 [Tests on Completion] before the Works or a Section of Works (as the case may be) are taken over by the Beneficiary on completion of the Works;

ddd) Plant - all apparatus, machinery, vehicles and the like necessary for the Contract fulfillment, excluding Equipment, Materials and Temporary Works;

eee) Contract Value - the value defined in Clause 45 [Contract Value], which includes adjustments, modifications and revisions made in accordance with the Contractual provisions and represents the sum of payments made and the estimate of future payments until the fulfillment of all obligations under the Contract.

1.2 The headings in these General Conditions do not form part of them and shall not be taken into account in the interpretation of the Contract.

1.3 To the extent that the context admits, words in the singular shall include the plural and vice versa, and words in the masculine gender shall include the feminine and vice versa.

1.4 Words designating persons or parties shall include companies, firms and any legal entity.

Clause 2 Contract Language

The language of the Contract and of all communications between the Contractor, the Beneficiary and the Supervisor or their representatives shall be Romanian, unless otherwise provided in the Contractual Agreement..

Clause 3 Precedence order of the contractual documents

3.1 The documents constituting the Contract shall be considered as mutually explanatory. For the purpose of interpretation, the precedence order of the documents shall be as follows:

- (i) Contractual Agreement;
- (ii) Tender Form completed and, where applicable, corrected;
- (iii) Special Terms;
- (iv) General Terms;
- (v) Beneficiary's Requirements;
- (vi) Payment Schedule;
- (vii) Contractor's Tender and any other documents forming part of the Contract, including, but not being limited to:
 - Contractor's Financial Tender (after arithmetical corrections);
 - Contractor's Technical Tender (including clarifications during the tender evaluation period);
 - the firm commitment of each supporting third party (if applicable);
 - the joint venture agreement (if the Contractor establishes an association, consortium or other grouping of two or more persons);
 - the subcontract concluded with each Subcontractor (if applicable);any other documents forming part of the Contract.

Amendments and addenda (if any) shall take precedence over the documents they amend. The precedence order shall be the priority order of the documents. In event of any discrepancies between the documents, the provisions of the priority document shall prevail. In event of ambiguity in the documents, the Supervisor shall issue the necessary clarifications or instructions.

Clause 4 Communications

- 4.1** 4.1 Any written communication between the Beneficiary and/or Supervisor, on the one hand, and the Contractor, on the other hand, shall show the name of the Contract and the identification number and shall be sent by post, fax, e-mail with digital signature or delivered in person, to the appropriate address indicated by the parties for this purpose in the Contractual Agreement.
- 4.2** 4.2 If the sender requests confirmation of receipt, he shall include this request in the communication. The sender shall request confirmation of receipt each time there is a deadline for receipt of the communication. In any case, the sender shall take all the necessary measures to ensure the timely receipt of the communication.
- 4.3** 4.3 Where the Contract requires the giving or giving of any notice, consent, approval, agreement, certification or decision, the notice, consent, approval, agreement, certification or decision shall, unless otherwise provided, be in writing and the words "to notify", "to consent", "to approve", "to accept", "to certify" or "to decide" shall be construed accordingly. Any such consent, approval, acceptance, certification or decision shall not be unreasonably withheld or delayed.
- 4.4** 4.4 Any communication between the Contractor and the Supervisor shall be copied to the Beneficiary. Any communication between the Contractor and the Beneficiary shall be copied to the Supervisor.

Clause 5 Supervisor and Supervisor's representative

5.1 The Supervisor shall have the responsibilities set out in the Contract. Except as expressly provided in the Contract, the Supervisor shall not be authorized to exempt the Contractor of any of his obligations under the Contract.

Unless otherwise provided in the Special Terms, the Supervisor shall have the following main duties:

- (a) to issue Administrative Orders to the Contractor;
- (b) to issue the Administrative Commencement Order;
- (c) to verify, accept or reject the Contractor's Execution Schedule, including the physical existence of the resources necessary to carry out the submitted schedule;
- (d) to approve or reject with reasons the design documentation prepared by the Contractor;
- (e) to verify the pace of Works execution;
- (f) to verify the compliance with the quality of the Equipment and Materials and the methods of their implementation;
- (g) to reject Equipment, Materials or Works that prove to not be in accordance with the Contractual provisions;
- (h) to participate to carrying out the tests and verification of works that have reached decisive stages;
- (i) to measure the quantities of works actually executed;
- (j) to ensure the accuracy of the data and details in the Site Log;
- (k) to issue Variations in accordance with the Contractual provisions;
- (l) to issue Payment Certificates in accordance with the Contractual provisions;
- (m) to issue Decisions in accordance with the Contractual provisions;
- (n) to analyze the Claims of the Contractor and the Beneficiary;
- (o) to assist the Beneficiary in the Acceptance on Completion and Final Acceptance procedures;
- (p) to perform the other duties of the Supervisor established by the Contract.

5.2 Without prejudice to the Supervisor's responsibility for the proper performance of his duties under this Contract, the Supervisor, while retaining ultimate responsibility, may nominate one or more representatives from within his team to carry out any of the responsibilities and authority of the Supervisor and may at any time revoke such nomination or to replace the representative. Any such nomination, revocation or replacement shall be in writing and shall not be effective until a copy has been sent to the Contractor and the Beneficiary. The Supervisor shall issue to the Contractor an Administrative Order setting out the responsibilities, authority and identity of the Supervisor's representative, on the Commencement Date and from time to time thereafter. The role of the Supervisor's representative shall be as set out in the nomination sent by the Supervisor.

5.3 Any communication given by the Supervisor's representative to the Contractor under the terms of this delegation shall have the same effect as if it had been given by the Supervisor, but:

- (a) the failure of the Supervisor's representative to reject any work, Material or Equipment shall not affect the Supervisor's authority to reject such work, Material or Equipment and to give such instructions as may be necessary to rectify the same;
- (b) The Supervisor shall be at liberty to change or amend the contents of such communication within 5 days.

Such communication not changed or cancelled within 5 days shall remain final.

5.4 Instructions and/or Orders issued in writing by the Supervisor or his representative shall be deemed to be Administrative Orders. Such Orders shall be dated, numbered and noted by the Supervisor in a register and copies shall be personally delivered, as the case may be, to the Contractor's Representative.

Instructions and/or Orders issued verbally shall be confirmed by the Supervisor or his representative within 24 hours. If they are not confirmed, they shall be deemed cancelled and the Contractor shall have no obligation to implement them.

5.5 The Supervisor, including his representative, is the only one authorized to issue Administrative Orders to the Contractor, including with additional documents and instructions necessary for the proper design and Works execution and the remedying of any defects. For the avoidance of doubt, site provisions issued by the designer of the Works shall be implemented by the Contractor only after (and if) they are included in an Administrative Order issued by the Supervisor.

5.6 If the identity of the Supervisor is not established in the Contract Agreement, the Beneficiary shall designate the Supervisor by notice sent to the Contractor within 10 days of signing the Contract. If the Beneficiary does not send such notification, the role of the Supervisor will be fulfilled by the Beneficiary who will designate a team for this purpose. The Beneficiary has the right to replace the Supervisor. The replacement of the Supervisor will be notified by the Beneficiary in writing as soon as possible to the Contractor together with the provision of the identification details of the new Supervisor. Date when the new Supervisor takes up his duties will be the date of notification.

Clause 6 Assignment

6.1 No assignment shall be valid unless it is a written agreement by which a Party transfers the Contract or part thereof to a third party and the prior consent of the other Party has been obtained. Except as expressly provided in these General Terms, the Contractor shall not assign any of its obligations under the Contract.

6.2 Notwithstanding the provisions of sub-clause 6.1:

(a) each Party may assign, by way of security in favour of a bank or other financial institution, its right to any amounts due or which become due under the Contract, by giving prior notice to the other Party;

(b) the Beneficiary shall make direct payments to Subcontractors who have so elected, in accordance with the provisions of clause 52 [Direct Payments to Subcontractors] and clause 50 [Payments];

(c) in the event of the Contract termination by the Beneficiary in accordance with the provisions of Clause 64 [Termination by the Beneficiary], the Contractor shall assign to the Beneficiary any subcontract immediately upon receipt of the Beneficiary's notice to that effect;

(d) The Contractor is replaced by a new contractor when the rights and obligations of the Contractor are taken over, following universal succession or by universal title in a reorganization process, including by merger or division, by the new contractor that meets the qualification and selection criteria initially established, provided that this modification does not entail other substantial modifications to the Contract and is not made with the aim of circumventing the application of the awarding procedures provided by the Law on public procurement.

6.3 Approval of an assignment by the Beneficiary shall not exempt the Contractor of its obligations for the part of the Contract already performed or the part required for which the Contractor's Performance Bond may be retained.

6.4 In the event that the Contractor has assigned, in whole or in part, the Contract without complying with the provisions of this clause, the Beneficiary may apply the sanction for breach of the Contract provided by clauses 6 [Breach of Contract] and/or 64 [Termination by the Beneficiary].

Clause 7 Subcontracting

7.1 A subcontract shall be valid only if it takes the form of a written agreement by which the Contractor entrusts a third party with the performance of part of the Contract. The mere lease of equipment, the provision of labour or contracts for the supply of goods shall not be considered or interpreted as "subcontracts" for the purpose of this Contract. Subcontracts shall be in accordance with this Contract. For the avoidance of doubt, the prices in the subcontract may differ from the prices in the Contract, depending on market conditions, coordination costs, other indirect costs and the profit of the Contractor. Subcontracts shall be annexed to the Contract. The provisions of these subcontracts which are not regulated by the Contract Conditions shall not be enforceable against the Beneficiary.

7.2 No Subcontractor shall be in situations of exclusion related to the awarding of the Contract. Each Subcontractor shall have the technical and professional capacity necessary for the performance of the part of the Contract entrusted to it.

7.3 Upon signing the Contract, the Contractor shall submit to the Beneficiary the subcontracts concluded by the Contractor with the Subcontractors stated in the Tender. For the avoidance of doubt, these subcontracts shall be deemed to have received the Beneficiary's consent.

7.4 For the appointment of a proposed Subcontractor after signing the Contract (including for the replacement of any Subcontractor), the Contractor shall request the Beneficiary's consent to conclude a subcontract. The request shall indicate the part of the Contract to be subcontracted, the value of the subcontract, the identity of the Subcontractor and its legal representative, the certificates and other documents necessary to verify the absence of exclusion situations in accordance with the provisions relating to the awarding of the Contract and the resources/capabilities corresponding to its proposed involvement in the Contract, as well as a statement on its own liability by which it undertakes the compliance with the contractual provisions and the Technical Tender relating to its proposed involvement in the Contract. In the event of the replacement of any Subcontractor, the Contractor's request shall contain reasonable justifications for the replacement.

Within 30 days of receipt of this request, the Beneficiary shall notify its decision to the Contractor, indicating the reasons in the event of a refusal. If the Beneficiary does not notify its decision within the period shown above, the request shall be deemed to have been approved upon expiry of the period. Within 5 days of the approval of any new Subcontractor, the Contractor shall send to the Beneficiary a signed copy of the related subcontract, which shall be annexed to the Contract. The Subcontractor shall not begin the execution of its part of the Contract before the subcontract has been sent to the Beneficiary.

The replacement of a Subcontractor that has been stated in the Tender shall be made under the conditions set out in this sub-clause, provided that it does not represent a substantial change within the meaning of the Law on Public Procurement. If a Subcontractor terminates a subcontract or otherwise abandons the subcontract, the Contractor shall notify the Beneficiary within 5 days and shall indicate how it intends to

continue the performance of that part of the Contract.

7.5 The Contractor shall be liable for the acts, defaults and negligence of its Subcontractors, including its subcontractors at any level, their agents or employees, as if they were the acts, defaults or negligence of the Contractor, its agents or employees. The Beneficiary's approval of the subcontracting of any part of the Contract or of the Subcontractor for the performance of any part of the Contract shall not exempt the Contractor of any of its obligations under the Contract.

7.6 If a Subcontractor has undertaken a continuing obligation to the Contractor for a period exceeding the Warranty Period under the Contract in respect of the design, works performed or the goods, Materials, Equipment or services supplied by the Subcontractor, including warranties therefor, the Contractor shall, at any time after the expiry of the Warranty Period, immediately transfer to the Beneficiary, following the request and on the expense of the Beneficiary, the benefit of such obligation for the unexpired period. If the Contractor fails to make such transfer, the continuing obligation shall be transferred immediately.

7.7 If the Contractor enters into a subcontract without the Beneficiary's consent, the Contractor may apply the sanction for breach of the Contract provided by clauses 63 [Breach of Contract] and/or 64 [Termination by the Beneficiary].

7.8 If a Subcontractor fails to perform his obligations or fulfils them improperly, the Beneficiary may require the Contractor to remove the Subcontractor from the Site and to provide a Subcontractor with appropriate substitute qualifications and experience or to resume the performance of the relevant part of the Contract by himself.

7.9 The Contractor shall inform the Beneficiary, on a monthly basis, of the payments made to the Subcontractors. If the Contractor unreasonably delays making payments to the Subcontractors, the Beneficiary shall be entitled to suspend payments to the Contractor under Sub-Clause 50.4 [Payment] until the situation is remedied.

BENEFICIARY'S OBLIGATIONS

Clause 8 Provision of Beneficiary's documents

8.1 The Beneficiary's Requirements is the document prepared by the Beneficiary that sets out the essential requirements for the Works. The Beneficiary's Requirements include, but are not limited to:

- (a) the design topic and essential characteristics of the Works, including performance criteria;
- (b) the feasibility study (for information);
- (c) applicable standards and regulations;
- (d) Tests on Completion of the Works;
- (e) tests to be carried out during the Warranty Period;
- (f) requirements for operation and maintenance manuals;
- (g) requirements for training of Beneficiary's Staff; and
- (h) any other requirements of the Beneficiary, as provided in the Contractual Terms.

8.2 Unless otherwise specified in the Special Terms, within 15 days of signing the Contract, the Supervisor shall provide the Contractor, free of charge, with a complete copy of the feasibility study prepared for the design and Works execution, as well as all the Beneficiary's Documents relevant to the design and Works execution, or shall confirm that the complete feasibility study and all such Documents have been provided as part of the tender documentation.

8.3 The Beneficiary, through the Supervisor, shall communicate such information as the Contractor may reasonably require for the performance of the Contract, other than that which is the Contractor's responsibility.

8.4 After the Commencement Date, the Contractor shall carefully study the Beneficiary's Requirements (including design criteria and design calculations, if any) and the initial topographic or reference systems specified in the Contract or communicated by the Supervisor, exercising at least the due diligence defined in the Beneficiary's Requirements. Within 90 days of the Commencement Date (unless otherwise provided in the Contract Agreement), the Contractor shall notify the Supervisor of any error, mistake or other inconsistency identified in the Beneficiary's Requirements or in these references or systems.

Upon receipt of such notification, the Supervisor shall Decide whether the provisions of Clause 37 [Amendments] shall apply and shall notify the Contractor accordingly. If and to the extent that, having regard to the costs involved, the conditions and the time taken to prepare the Tenders, a diligent Contractor, exercising due care, would have identified the error, mistake or defect when inspecting the Site and examining the Beneficiary's Requirements before submitting the Tender, the Time for Completion shall not be extended and the Contract Value shall not be varied.

8.5 If the Contractor experiences delays and/or incurs additional costs as a result of an error in the

Beneficiary's Requirements and a diligent contractor, having regard to the relevant period, would not have discovered the error when studying the Beneficiary's Requirements in accordance with the provisions of sub-clause 8.4, the Contractor shall be entitled, subject to the provisions of clause 69a [Contractor's Claims], to:

(a) an extension of the Time for Completion for delay in accordance with the provisions of clause 35 [Extension of Time for Completion], if completion of the Works is or will be delayed, and

(b) payment of Additional Costs in accordance with the provisions of clause 55 [Additional Costs], plus a profit of 2% of such Costs (or the profit rate explicitly declared by the Contractor in the Tender, if this is less than 2%).

8.6 Unless necessary for the purpose of the Contract, the feasibility study and other Documents communicated by the Beneficiary shall not be used or communicated to a third party by the Contractor without the prior consent of the Beneficiary.

Clause 9 Access to the Site

9.1 The Beneficiary shall provide the Contractor with access to the Site and shall make the Site available to the Contractor at the times and for the areas specified in the Special Conditions. If no such times and areas are specified in the Special Conditions, the Beneficiary shall provide the Contractor with access to the Site and shall make the Site available to the Contractor within 30 days of the Commencement Date.

9.2 The Contractor shall provide appropriate access to the Site for other persons in accordance with the provisions of the Special Conditions or as directed by the Supervisor.

9.3 Any land purchased for the Contractor by the Beneficiary shall not be used by the Contractor for any purpose other than the execution of the Contract.

9.4 The Contractor shall keep any facilities made available to him in good repair during the period of occupancy and shall restore them, before Acceptance on Completion, to their original condition, taking into account normal wear and tear. The Contractor shall not be entitled to any payment for improvements resulting from work carried out on his own initiative.

9.5 If the Contractor experiences delays and/or additional costs are incurred as a result of the failure of the Beneficiary to grant access to the Site or making the Site available by the time specified in Sub-Clause 9.1 or at the latest by such time as will enable the Contractor to proceed in accordance with the schedule submitted in accordance with the provisions of Clause 17 [Schedule of Execution], the Contractor shall be entitled, subject to the provisions of Clause 69a [Contractor's Claims], to:

(a) an extension of the Time for Completion for delay in accordance with the provisions of Clause 35 [Extension of Time for Completion], if the completion of the Works is or will be delayed, and

(b) payment of Additional Costs in accordance with the provisions of Clause 55 [Additional Costs], plus a profit of 2% of such Costs (or the rate of profit expressly declared by the Contractor in the Tender, if this is less than 2%).

If and to the extent that the failure to grant the right of access or make available was caused by any fault or delay of the Contractor, including an error in, or a delay in, the transmission of any of the Contractor's Documents, the Contractor shall not be entitled to any such extension of the Time for Completion, nor to any such Additional Costs or profit.

Clause 10 Legal Authorisations and Assistance

10.1 Subject to any other provision of the Special Terms:

(a) the Beneficiary has obtained (or shall obtain) the planning and environmental clearance certificate, together with the consents/permits/authorisations for the Permanent Works (and any other approvals) described in the Beneficiary's Requirements as having been obtained (or in the process of being obtained) by the Beneficiary; the Beneficiary shall indemnify the Contractor and hold him harmless against any consequences arising from the failure to obtain such certificates and approvals;

(b) The Contractor shall give all notices, pay all taxes, rates and fees, prepare all necessary documentation and obtain all permits, licenses and approvals in accordance with the Laws in force for the design, execution and completion of the Works and the remedying of any defects (other than those referred to in paragraphs (a) and (c) of this sub-clause). The Contractor shall also obtain the permits relating to the Temporary Works. The Contractor shall indemnify and hold the Beneficiary harmless against any consequences arising from any failure to comply with these obligations; and

(c) The Contractor shall take all necessary steps to ensure that the Beneficiary obtains and, where applicable, extends the necessary building permit for the Permanent Works designed by the Contractor in accordance with the provisions of the Contract. The Contractor shall also obtain, on behalf of the Beneficiary, all necessary approvals and related consents for the commencement and execution of this part of the Works.

10.2 The Contractor shall not carry out any work in the absence of a valid building permit.

10.3 The Contractor may request the Beneficiary's assistance in obtaining documents of the Contract and other similar information, which would not be readily accessible and which may affect the Contractor in

fulfilling its obligations under the Contract.

10.4 The Beneficiary shall provide reasonable assistance to the Contractor, following its request, for authorizations, consents or approvals necessary to be obtained by the Contractor in accordance with the Contractual provisions.

Clause 11 Beneficiary's Staff

11.1 The Beneficiary's Staff includes the Supervisor, his representatives, as well as any other person employed by the Beneficiary and appointed by it as part of the Beneficiary's Staff. The Beneficiary's Staff shall have the powers delegated by the Beneficiary, communicated in writing to the Contractor. The delegation shall take effect on the date of receipt of the communication. The Beneficiary may also withdraw the delegation, by written communication to the Contractor.

CONTRACTOR'S OBLIGATIONS

Clause 12 General obligations

12.1 The Contractor shall, with due diligence, design, execute and complete the Works in accordance with the Contractual provisions and the instructions of the Supervisor and shall remedy any defects in the Works. The Works executed in accordance with the design prepared by the Contractor shall conform to their purpose as defined in the Beneficiary's Requirements and/or the design topic set out in the Contract. The Works shall include any work which is necessary to satisfy the Beneficiary's Requirements and the Contractor's Tender, as well as all work which is necessary to ensure the strength, stability and safety in operation of the Works (including if not mentioned in the Contract).

12.2 The Contractor shall provide all the administration, staff, materials, equipment, plants, and all other items, temporary or permanent, necessary to design, execute, complete and remedy any defects, in accordance with the provisions of the Contract or as reasonably inferred from the Contract.

12.3 The Contractor shall undertake full responsibility for the compliance, stability and safety of all construction operations and methods under the Contract.

12.4 The Contractor shall comply with any Administrative Order issued by the Supervisor. If the Contractor considers that the requirements of an Administrative Order exceed the authority of the Supervisor or the scope of the Contract, the Contractor shall give notice to the Supervisor stating the reasons. If the Contractor fails to give notice within 10 days of receipt of the Administrative Order, the Contractor shall be deemed to have accepted the Administrative Order as validly issued. The Supervisor shall respond to the notice within 10 days and may confirm, amend or cancel the Administrative Order. If the Supervisor fails to respond within 10 days, the Administrative Order shall be deemed to have been confirmed. The Contractor's giving of notice shall not suspend the effect of the Administrative Order.

12.5 The Contractor shall, within 5 days of receiving a request from the Beneficiary to this effect, submit any information and documents concerning the conditions under which the Contract is being implemented.

12.6 In fulfilling its contractual obligations, the Contractor shall comply with the Laws in force and shall ensure that its staff, agents and employees also comply with these Laws. The Contractor shall indemnify the Beneficiary for any claims or proceedings which may arise as a result of the Contractor, its staff, agents or employees failing to comply with these Laws.

12.7 The Contractor shall treat the details of the Contract as strictly confidential, to the extent that such treatment does not affect the performance of the contractual obligations or compliance with the obligations provided by the Law. The Contractor shall not use or disclose to third parties information or documents concerning the performance of the Contract without the prior consent of the Beneficiary. The Contractor shall continue to comply with this undertaking for 10 years after receipt of the final payment in accordance with the provisions of Sub-Clause 51.3 [Final Payment] and shall obtain from each member of its Staff the same undertaking. However, the use of the Contract reference for marketing or tendering purposes shall not require the prior consent of the Beneficiary.

12.8 Where the Contractor forms a partnership, consortium or other grouping of two or more persons, all such persons shall be jointly and severally liable to the Beneficiary for the performance of the Contract and the fulfilment of the obligations under the Contract, including any amount recoverable. Such persons shall notify the Beneficiary of their leader, who shall be the person appointed by the partnership to act on its behalf under this Contract and who shall be authorised to commit the partnership. The structure (including the identity of the leader) and the status of the partnership shall not be changed without the prior consent of the Beneficiary. If the association changes its status or structure without the prior consent of the Beneficiary, the Beneficiary may apply the sanction for breach of the Contract provided by clauses 63 (Breach of the Contract) and/or 64 [Termination by the Beneficiary].

The provisions of the association agreement included in the Contract that are not regulated by the Contractual Conditions shall not be enforceable against the Beneficiary.

12.9 If the Contractor has received, within the Tender, support from a third party, this support shall be proved by a firm commitment of this third party, included in the Contract. The supporting third party undertakes towards the Contractor and the Beneficiary to carry out the actions (including, where appropriate, making available to the Contractor financial, human and/or technical resources) or, where appropriate, the part of the Works, that make the scope of the firm commitment, including by substituting the Contractor in accordance with the firm commitment, if the Contractor fails to fulfill the Contractual obligations and responsibilities related to the activities, situations or part of the Works for which it has received support from the third party.

If the Contractor fails to fulfill the Contractual obligations and responsibilities related to the activities, situations or part of the Works for which it has received support from the third party, the Beneficiary shall be entitled to notify the Contractor and the third party supporter and to request the remedy of the situation by involving the third party.

The third party supporter shall indemnify the Beneficiary for any damages, losses and expenses incurred by the Beneficiary in the event that the third party supporter fails to comply with the obligations undertaken by the firm commitment or fulfills these obligations defectively.

12.10 All Contractor's documents relating to the Contract, including accounting records, except those handed over to the Beneficiary, shall be kept by the Contractor for the period established by Law, but not less than 10 years from the Final Payment made under the Contract.

12.11 The Contractor shall allow the Beneficiary to inspect and copy, without restriction, its accounting, records and other documents relating to the Tender submission procedure and the execution of the Contract and to allow their audit by experts/auditors appointed by the Beneficiary. The Beneficiary shall be entitled to produce and use any such accounts and records and other documents as evidence in the event of a dispute.

12.12 Standards and technical regulations

References in the Contract to published standards shall be understood as references to the edition applicable on the Reference Date, unless otherwise specified.

If, after the Reference Date, amended or new applicable standards come into force and (i) the Supervisor, with the prior approval of the Beneficiary, considers it necessary or appropriate to apply them and (ii) such enforcement does not involve a substantial change within the meaning of the Law on public procurement, then the Supervisor shall initiate a Change in accordance with the provisions of clause 37 [Changes]. The provisions of this sub-clause shall apply accordingly if a new technical regulation, relevant to the design of the Permanent Works, is implemented and published after the date of issue of the building permit for the Permanent Works.

Clause 12a Code of Conduct

12a.1 The Contractor shall at all times act in accordance with the code of conduct of his profession. It shall refrain from making any public statements concerning the Contract without the prior approval of the Beneficiary. The Contractor shall not bind the Beneficiary in any way without its prior consent and shall make this obligation clear to third parties.

12a.2 The Contractor, its staff or any of its Subcontractors and agents shall not abuse the power entrusted to them for private gain. The Contractor, its Staff or any of its Subcontractors and agents shall not receive or agree to receive from any person and shall not offer or agree to offer to any person or obtain for any person any gift, reward, commission or compensation of any kind as an inducement or reward for taking any action or refraining from taking any action in connection with the performance of the Contract or for the benefit or disadvantage of any person in connection with the Contract. The Contractor shall comply with the applicable laws and codes in force regarding the fight against bribery and corruption. For the avoidance of doubt, the provisions of this Sub-Clause 12a.2 shall not prevent or affect the possibility of concluding judicial or extrajudicial settlements between the Beneficiary and the Contractor in relation to matters arising from or in connection with the performance of the Contract.

12a.3 Payments to the Contractor under the Contract shall represent the sole income or benefit that may arise for the Contractor from the Contract. The Contractor and its Staff shall not carry out any activity or receive any advantage incompatible with the obligations set out in the Contract.

12a.4 The execution and performance of the Contract shall not give rise to unusual commercial expenses for the Contractor. Unusual commercial expenses are commissions not foreseen in the Contract or not generated by a properly concluded contract in relation to the Contract, commissions not paid in exchange for real and legitimate services, commissions paid in a tax haven, commissions paid to a beneficiary that is not clearly identified or commissions paid to a company that there are indications of being a shell company. The Beneficiary and the authorities responsible for controlling the Beneficiary's operations may carry out documentary or on-site checks, as appropriate, to uncover evidence in the event of suspicion of unusual commercial expenses..

Clause 12b Conflict of interest

12b.1 The Contractor shall take all necessary measures to prevent or put an end to any situation that may

compromise the correct and objective fulfillment of the Contract. This conflict of interest may be generated, directly or indirectly, by a financial, economic or other personal interest shared between the persons with decision-making functions within the Contractor (including all members of the association and its Subcontractors), on the one hand, and the persons with decision-making functions within the Beneficiary and the Supervisor, on the other hand. Any conflict of interest that may arise during the execution of the Contract shall be notified to the Beneficiary without delay. In the event of such a conflict, the Contractor shall immediately take all necessary measures to prevent and settle it.

The Beneficiary reserves the right to verify whether these measures are appropriate and may request additional measures, as appropriate. The Contractor shall ensure that its staff with decision-making functions are not placed in a situation that may generate a conflict of interest. Without prejudice to its obligation under the Contract, the Contractor shall immediately and free of charge replace for the Beneficiary any decision-making person from its Staff exposed to such a situation.

12b.2 The Contractor shall refrain from any contact which may influence its independence or that of its Staff and compromise the fair and objective performance of the Contract..

Clause 13 Work management

13.1 The Contractor shall ensure that the Works are properly designed and executed and that the Beneficiary's Requirements and Administrative Orders are complied with by his Staff, including his own employees, Subcontractors and their employees.

13.2 The Contractor shall appoint a Contractor's Representative who shall act on behalf of the Contractor in accordance with the provisions of the Contract. Unless the Contractor's Representative is appointed by the Contract, the Contractor shall submit to the Supervisor for approval, within 15 days of signing the Contract, the name and references of the person proposed as the Contractor's Representative. The Supervisor shall approve or reject the proposal with reasons within 10 days. The Supervisor's approval may be withdrawn at any time by notice to the Contractor. If the Supervisor rejects the proposed Representative within the deadline or withdraws approval of the appointment, he shall give reasons and the Contractor shall communicate an alternative proposal immediately. The address of the Contractor's Representative shall be deemed to be the address for communication communicated by the Contractor.

13.3 The Supervisor may withdraw his approval of the Contractor's Representative in the following circumstances: (i) the Contractor's Representative seriously or repeatedly fails to perform his obligations under the Contract and/or (ii) through the actions or inactions of the Contractor, occupational safety and security and/or environmental protection are endangered. If the Supervisor withdraws his approval of the Contractor's Representative, the Contractor shall, as soon as possible, but not later than 30 days after receiving notice to this effect, withdraw his Representative from the Site and replace him with another Representative, with the prior approval of the Supervisor.

13.4 The Contractor's Representative shall be fully authorized to take any decision necessary for the design and Works execution, including receiving and implementing Administrative Orders. The Contractor's Representative's time shall be entirely devoted to coordinating the execution of the Contract.

In the event that the Contractor's Representative or his assistants are not fluent in the language of the Contract, the Contractor shall ensure all that is necessary for efficient communication in the language of the Contract.

13.5 The documents transmitted by the Contractor to the Beneficiary (or the Supervisor) shall be signed by the Contractor's Representative.

13.6 The Contractor shall ensure that its specialized staff are authorized and/or certified in accordance with the legal provisions.

13.7 The Contractor shall ensure the level of quality corresponding to the requirements of the Contract through its own quality system designed and implemented by its own staff, with technical managers authorized for execution according to the provisions of the Law. The quality assurance system shall be in accordance with the details provided in the Contract, if any. The Supervisor shall have the right to audit any aspect of the quality system. Details of all procedures and compliance documents shall be submitted to the Supervisor for information, prior to the commencement of each stage of design or execution.

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

13.8 The Contractor shall take all necessary measures to protect the environment (both on and off the Site) and to limit damage or injury to people and property resulting from pollution, noise and other consequences of his activities. These measures shall be in accordance with those set out in the Beneficiary's Requirements and in the environmental regulatory act.

The Contractor shall ensure that emissions, surface discharges and waste resulting from his activities will not exceed the values set out in the Beneficiary's Requirements or the values established by Law.

Clause 14 Staff

14.1 The number of persons employed by the Contractor shall be sufficient to meet the requirements of the current Works schedule. Such persons shall have the skills and experience necessary for the proper progress and Works execution. The Supervisor may require the removal of any person from the Contractor's Staff in the following circumstances: (i) the person seriously or repeatedly fails to perform the Contractual obligations and/or (ii) the actions or inactions of such person endanger the safety and security of the work and/or the protection of the environment. The Contractor shall immediately replace any member of his Staff for whom the Supervisor, by reasoned notice, requests the removal.

14.2 The Contractor shall take all measures to employ all staff and labour, in accordance with the provisions of the Law.

14.3 The Contractor shall provide key staff as proposed in Tender. Key staff are staff for whom there were minimum requirements set out in the Contract award documentation. The Contractor's Representative and the Contractor's key staff shall be retained throughout the design and Works execution, except where the Supervisor requests replacement for good cause or where replacement is necessary for other reasons beyond the Contractor's control (e.g. resignation from the company/association, illness, death, etc.).

14.4 Any replacement of key staff shall be made with staff with qualifications and experience at least equivalent to those (if any) set out in the awarding documentation, with the prior consent of the Beneficiary. In the event that a member of the key staff has been assessed under the award criteria, the Contractor shall propose a replacement who obtains at least the same score as a result of the application of the award factors. The Contractor shall submit to the Beneficiary all documents necessary to verify the fulfillment of the established qualification/selection criteria and/or to calculate the score related to the evaluation factors, for any replacement of key staff.

Clause 15 Performance Bond

15.1. The Contractor shall establish a Performance Bond as a guarantee instrument for the proper fulfillment of the Contract, in the amount stipulated in the Contract Agreement and in the form included in the Contract (if any). If the Contract Agreement does not mention a value (absolute or percentage of the Contract Price), the value of the Performance Bond shall be 10% of the Contract Price. The Contractor shall establish the Performance Bond within 5 business days from the date of signing the Contract. The Contractor shall submit the original Performance Bond to the Beneficiary's premises as provided for in the Contract and a copy thereof to the Supervisor, within 3 days of the expiry of the term for its establishment. The Performance Bond shall be established in one of the following ways:

(a) by means of a guarantee document issued under the law by a banking company or an insurance company, which shall become an annex to the Contract. In this case, the Performance Bond shall be issued by a banking company or an insurance company, authorised to issue such guarantees in the territory of the European Union or (for other companies) rated at least BBB-/Baa3 or equivalent and the Contractor shall submit the supporting documents in this regard. The Performance Bond shall be irrevocable and shall provide that the payment of the Performance Bond shall be made unconditionally, namely following the first request of the Beneficiary, based on the Beneficiary's statement of fault on the Contractor in accordance with the provisions of sub-clause 15.3. The Performance Bond of an association or consortium shall be issued in the name of the association or consortium;

(b) if the parties agree, by successive deductions from the amounts due for the Payment Certificates, provided that this possibility has been provided for in the awarding documentation. In this case, within 5 business days of signing the Contract, the Contractor shall be obliged to open an account at the Beneficiary's disposal, at a credit institution agreed by both parties or at the State Treasury within the fiscal body competent to manage it. The initial amount to be deposited by the Contractor in the account thus opened must not be less than 0.5% of the Contractual Price. The initial amount shall be deposited within 5 business days from the date of signing the Contract. The Contractor shall send, in original, to the Beneficiary's headquarters provided by the Contract, within 3 days from the expiry of the term for depositing the initial amount, proof of the establishment of the blocked guarantee account in favor of the Beneficiary, together with proof of depositing the initial amount. During the performance of the Contract, the Beneficiary shall replenish this account by successive deductions from the amounts due and payable to the Contractor for each Payment Certificate up to the amount established as the Performance Bond in the public procurement contract. The Beneficiary shall order the credit institution or the State Treasury to notify the Contractor of the payment made, as well as of its destination. The account thus opened shall bear interest in favor of the Contractor. The Beneficiary shall ensure that the full amount of the Performance Bond shall be retained no later than the date of issue of the Payment Certificate upon Acceptance of the Works.

15.2. The Contractor shall ensure that the Performance Bond is valid and in force, taking into account the provisions of sub-clause 15.6, until the approval of the Final Acceptance. In the event that the Performance Bond is established in accordance with sub-clause 15.1 letter a), if the terms of the Performance Bond specify

its expiry date, and the Contractor is not entitled to obtain Final Acceptance approval 30 days before the expiry date of the Guarantee, the Contractor shall extend the validity of the Performance Bond until the Works are completed and all defects have been remedied. If the company issuing the Performance Bond loses its authorisation to issue such guarantees in the European Union or is no longer rated at least BBB-/Baa3 or equivalent, the Performance Bond shall be deemed to lose its validity and the Contractor shall be obliged to provide a new Performance Bond in accordance with the provisions of this clause.

15.3. In the event that the Performance Bond is provided in accordance with sub-clause 15.1 letter. a), prior to issuing a claim on the Performance Bond, the Beneficiary shall notify the claim both to the Contractor and to the issuer of the security instrument, specifying the obligations that have not been complied with, as well as the method of calculating the amount claimed. The Beneficiary shall not make any claim on the Performance Bond, except in the following cases and within the limits of the amounts to which the Beneficiary is entitled under the Contract:

(a) the Contractor fails to extend the validity of the Performance Bond, as described in sub-clause 15.2, in which case the Beneficiary may claim the full value of the Performance Bond;

(b) the Contractor fails to pay to the Beneficiary, within 30 days, an amount due, agreed by the Contractor or decided by the Supervisor in accordance with the provisions of sub-Clause 69c [Supervisor's Decision];

(c) the Contractor fails to remedy a breach of its obligations within 30 days of the Beneficiary's notice of such breach; or

(d) the Beneficiary terminates the Contract in accordance with Clause 64 [Termination by the Beneficiary].

15.4 The Beneficiary shall indemnify the Contractor against any damages, losses and expenses (including legal fees and costs) arising from any claim for enforcement of the Performance Bond where the Beneficiary was not entitled to the claim.

15.5 Whenever the Contractual Price is varied, the Contractor shall adjust the Performance Bond by the same proportion within 15 days of the variation.

Whenever the Performance Bond is executed following a request by the Beneficiary, in accordance with the provisions of letters (b) or (c) of sub-clause 15.3, the Contractor shall reinstate the value of the Performance Bond within 15 days of execution of the amounts requested by the Beneficiary.

15.6 The Beneficiary shall release/return the Performance Bond to the Contractor as follows:

(a) the percentage value of the Performance Bond value established in the Contract Agreement (70% if no percentage value is established in the Contractual Agreement) within 14 days from the date of approving the Acceptance on the Works Completion, if the Beneficiary has not made any claims on the Performance Bond by that date;

(b) the remaining amount of the Performance Bond upon approval of the Final Acceptance, excluding any amounts requested by the Beneficiary up to that date and not yet repaid by the Contractor.

15.7. Where the Performance Bond is provided in accordance with sub-clause 15.1(a), during the performance of the Contract, if the company that issued the Performance Bond fails to meet its obligations, the Performance Bond shall cease to be valid. The Beneficiary shall give notice to the Contractor to issue a new security on the same terms as the previous security; if the Contractor fails to provide a new Performance Bond within 30 days of such notice, the Beneficiary may terminate the Contract in accordance with clause 64 [Termination by the Beneficiary].

Clause 16 Liability and Insurance

16.1 Liability

a) Liability for Quality of Design and Damage to Works

Without prejudice to the provisions of Clause 59 [Use of Works before Acceptance on Completion], Clause 61 [Warranty Period] and Clause 66 [Force Majeure and Unilateral Termination], the Contractor shall undertake (i) full responsibility for the quality of the design, based on the Beneficiary's Requirements, (ii) full responsibility for maintaining the integrity of the Works and (iii) the risk of loss and damage, however caused, until the Acceptance on Completion is approved as provided for in Clause 60 [Acceptance on Completion]. Compensation for damage to the Works and arising from the Contractor's liability shall be limited to the Contractual Price.

This limit shall not apply to compensation for loss or damage arising from the Contractor's or his Staff's fraud or gross negligence his/her, including his/her Subcontractors and any person for whom the Contractor is responsible.

After the approval of the Acceptance on Completion of the Works in accordance with clause 60 [Acceptance on Completion of the Works], the Contractor shall remain liable for any failure to comply with his/her obligations under the Contract for the period provided by Law.

b) Liability of the Contractor to the Beneficiary

At all times, the Contractor shall be liable and shall indemnify the Beneficiary for any damage caused, during the performance of the Contract, to the Beneficiary by the Contractor or his/her Staff, including his/her

Subcontractors and any person for whom the Contractor is responsible.

Compensation for damage caused to the Beneficiary (other than to the Works) and arising from the Contractor's liability shall be limited to the Contract Price.

This limit shall not apply to compensation for personal injury, including death, nor to damages of any kind to the Beneficiary arising from the fraud or gross negligence of the Contractor or his Staff, including his Subcontractors and any person for whom the Contractor is responsible.

c) Contractor's Liability to Third Parties

The Contractor shall indemnify, defend and hold harmless the Beneficiary, including its Staff, from and against any action, claim, loss or damage, direct or indirect, of any nature whatsoever (hereinafter referred to as a "claim") arising out of any act or omission of the Contractor or its Staff, including its Subcontractors and/or any person for whom the Contractor is responsible, in the performance of its obligations under the Contract, except where:

(1) the claim arises out of the Beneficiary's right to carry out the Permanent Works on, over, under, in or through any land, and to occupy such land for the Permanent Works, or

(2) the loss or damage is an unavoidable result of the Contractor's obligations to design and carry out the Works and to remedy any defects.

The Beneficiary shall notify the Contractor of any third party claim as soon as practicable after the Beneficiary becomes aware of it.

If the Beneficiary chooses to challenge or defend the claim, the Contractor shall bear the reasonable costs of contesting or defending incurred by the Beneficiary and its Staff.

For the purposes of this point c), the Beneficiary's agents and employees, the Supervisor, his employees, his subcontractors, as well as the Contractor's Staff, Subcontractors and any person for whom the Contractor is responsible are considered third parties.

The Contractor shall handle all complaints in close collaboration with the Beneficiary.

Any understanding or agreement with third parties for the settlement of a complaint requires the express prior consent of the Beneficiary and the Contractor.

16.2 Insurance

a) Insurance - general

From or before the Commencement Date and throughout the performance of the Contract, the Contractor shall ensure that he, his Staff, including his Subcontractors and any person for whom the Contractor is responsible are properly insured by insurance companies acknowledged on the European insurance market.

On the Commencement Date, the Contractor shall forward to the Beneficiary and the Supervisor a copy of all insurance certificates indicating that the Contractor's insurance obligations are met, as well as of the policies. During the performance of the Contract, the Contractor shall forward without delay, after payment of each insurance premium and at any time at the request of the Supervisor, an updated version of the insurance certificates.

The Contractor shall obtain from the insurers an undertaking to personally and directly inform the Beneficiary and the Supervisor of any event which may reduce, cancel or modify in any way the insurance concerned. The insurers shall forward this information as soon as possible and in any event at least 30 days before the reduction, cancellation or modification of the insurance. The Beneficiary reserves the right to indemnify the insurer in the event that the Contractor fails to pay the premium, without prejudice to the Beneficiary's right to recover the amount so paid and to subsequently claim compensation for potential resulting damages.

To the extent practicable, the Contractor shall ensure that such insurance policies taken out contain a waiver of the insurer's right of recourse in favour of the Beneficiary and the Supervisor, their agents and employees.

The Contractor's taking out and maintaining appropriate insurance shall not exempt the Contractor of any legal and/or contractual liability. As a minimum, the insurance listed in this Sub-Clause shall provide cover up to the minimum level of contractual liability set out in Sub-Clause 16.1

[Liabilities] or the minimum level of liability set out in the applicable rate, whichever is higher. The Contractor shall bear the full consequences of the total or partial lack of insurance, completely releasing the Beneficiary and the Supervisor from any liability in this regard.

The Contractor shall ensure that its Staff, including its Subcontractors and any person for whom the Contractor is responsible, comply with the same insurance requirements as those imposed on the Contractor by this Contract. In the event of lack of insurance or improper insurance of the Contractor's Staff, including its Subcontractors or any person for whom the Contractor is responsible, the Contractor shall indemnify the Beneficiary and the Supervisor for all resulting consequences.

Under its own responsibility and without prejudice to the obligation to take out all insurance to cover the obligations provided for in this Contract, the Contractor shall ensure that all mandatory insurance is taken out in accordance with the Law in force. It shall also ensure that all legal obligations applicable to insurance are complied with.

The Beneficiary and the Supervisor shall be exempted from any liability regarding the assessment and compliance of the insurance policies taken out by the Contractor in relation to its contractual and/or legal obligations.

During the performance of the Contract, if any insurer fails to meet its obligations, the insurance shall cease to be valid. The Beneficiary shall notify the Contractor to take out new insurance in accordance with the provisions of the Contract. If the Contractor fails to submit a copy of the new insurance certificate and the related policy within 30 days of the date of notification, the Beneficiary may terminate the Contract in accordance with the provisions of clause 64 [Termination by the Beneficiary].

a) Insurance - Specific Aspects

1. Insurance for damage to third parties

The Contractor shall take out civil liability insurance covering bodily injury and damage to property that may be caused to third parties as a result of the performance of the Contract, including during the Warranty Period. The insurance policy shall provide that the Beneficiary's Staff, including that of the Supervisor, as well as those of other contractors and third parties present on the Site, in the vicinity of the Site or in any other place used by the Contractor are considered third parties in this insurance. Unless otherwise provided in the Contractual Agreement, the limits of coverage for this insurance shall not be lower than those valid for compulsory motor third party liability insurance according to the European Union regulations.

2. Insurance of the Works

The Contractor shall conclude an "all risks for construction-assembly works" insurance for his individual benefit and jointly and severally with his Subcontractors, the Beneficiary and the Supervisor.

This insurance shall cover all damage that may be caused to the Works included in the Contract, including damage caused by defects or design errors regarding the technical design, construction materials or commissioning and for which the Contractor is responsible under the Contract and damage caused by natural events. This insurance shall also cover damage to the Contractor's Documents, the Beneficiary's and the Supervisor's existing property and assets.

The Contractor shall also take out insurance to cover the Plant and Temporary Works at least up to the full replacement/reconstruction value.

3. Motor Insurance

The Contractor shall take out (or cause to be taken out) motor liability insurance for all vehicles used by the Contractor or his Subcontractors (whether or not such vehicles are owned) in connection with the Contract.

4. Workplace Accident Insurance

The Contractor shall take out insurance policies to cover the Contractor, his Staff, including his Subcontractors and any person for whom the Contractor is responsible, in the event of an accident at work or on the way to and from work. He shall ensure that his Subcontractors do the same. The Contractor shall indemnify the Beneficiary against any claims that his Staff, including his employees or his Subcontractors may make in these matters.

5. Insurance of liability regarding the quality of the Works

The Contractor shall take out insurance to cover his entire liability regarding the quality of the Works, even after Final Acceptance, in accordance with the Law.

Clause 17 Execution schedule

17.1 Within 30 days of the Commencement Date, the Contractor shall submit to the Supervisor, for review and acceptance, a detailed Execution Schedule for the entire Contract, consisting of a Gantt schedule (on paper and in editable electronic format) and a descriptive report. This first Execution Schedule, including the work methodology and resources, shall be prepared on the basis of the work schedule submitted in the Tender by the Contractor.

17.2 The Gantt schedule shall be prepared using critical path analysis and shall include all activities specified in the Contract and established reference points (if any). The Execution Schedule shall be prepared in accordance with the following requirements:

(a) The Execution Schedule shall consist of the activities necessary for the execution of the Contract, in accordance with the Beneficiary's Requirements, and will be presented in a structure so as to identify:

1. the design stages (investigations on site, design stages, verification, project submission for approval etc.);
2. the main stages that make up the Contract fulfillment (procurement, construction, inspections, testing, approvals and authorizations, acceptances);
3. the construction items that make up the Works;
4. the categories of works or physical stages that make up the Works;
5. the work sectors or the place where the construction activities will be carried out;
6. Subcontractors, if some parts of the Contract are carried out with Subcontractors.

(a) The activities will have allocated:

1. resources necessary for the design (number and specialties of designers, authorized verifiers, equipment, devices and specific software, etc.);
2. resources necessary for the works execution (main materials to be used, labor - number and trades of workers, equipment), in accordance with their need and availability;
3. quantities of works according to the technical project;
4. estimated costs in accordance with the Tender;
5. estimated productivity.

(b) The duration of the activities will be expressed in days, taking into account:

1. quantity of works,
2. size of the work area
3. number of human resources and equipment,
4. productivity of resources.

(c) The level of detail of the activities will be chosen so that their duration does not exceed 30 calendar days.

(d) The sequence of activities will be established with taking into account the work methodology proposed by the Contractor, the execution technologies in the Beneficiary's Requirements (if any) and organizational constraints. The conditioning relationships between activities shall be of the start-start, end-start and end-end type.

(e) The network diagram shall be drawn up so that there is only one activity without a predecessor and one activity without a successor, except for activities that designate reference points or activities for which a conditioning relationship cannot be established (justified by the descriptive report).

(f) The critical path shall be highlighted and shall correspond to the sequence of activities which maximum duration is the Execution Duration.

Until the completion of the technical design, the activities and resources related to the works execution shall be presented at an appropriate level of detail. After completing the technical design, these activities and resources shall be fully detailed.

17.3 The requirements for drafting the descriptive report are as follows:

(a) The Contractor shall prepare and submit to the Supervisor a descriptive report detailing and explaining the work plan established within the Execution Schedule.

(b) The descriptive report shall include:

1. a description of the design phases and related methods,
2. a general description of how the Contractor will carry out the Works,
3. a description of the critical activities and how the Contractor will secure the necessary resources,
4. the number and structure of the work teams with which the Contractor will carry out the activities,
5. a list of human resources (number and occupations of workers) distributed by month,
6. a list of Equipment (type, number, capacity) that the Contractor will have at its disposal, as well as the periods of time when they will be used,
7. Subcontractors involved, as well as the related human resources and Equipment,
8. the "S" curve of physical and financial progress and the cash flow graph.

17.4 Within 15 days of its submission by the Contractor, the Supervisor shall review the Execution Schedule and accept or reject it. In the absence of a response from the Supervisor within the relevant deadline, the Execution Schedule shall be deemed to have been accepted.

17.5 If the Execution Schedule is rejected, the Supervisor shall present the reasons for the rejection and shall request the Contractor to resubmit the completed and/or corrected Execution Schedule within 10 days, so that it complies with the Contractual provisions and is realistic to implement.

17.6 If the Contractor fails to submit the Execution Schedule, including the completed/corrected Execution Schedule, within the stipulated deadline, the Beneficiary shall be entitled, subject to compliance with the

provisions of clause 69b [Beneficiary's Claims], to retain an amount provided in the Contractual Agreement for each day of delay in the submission of the Execution Schedule, until the respective Execution Schedule is accepted.

17.7 In the event that the Execution Schedule analyzed by the Supervisor in accordance with the provisions of sub-clause 17.4 is rejected 3 times consecutively, in relation to the same request for completion/correction, the Beneficiary shall be entitled to suspend payments to the Contractor under sub-clause 50.4 [Payment] until the respective Execution Schedule is accepted.

17.8 Once accepted, the Execution Schedule submitted in accordance with the provisions of sub-clause 17.1 shall be called the Reference Schedule and shall become a means of monitoring and controlling the Contractor's performance and the progress of the Works. Except for the advance payment, no other payment shall be made by the Beneficiary before the acceptance of the Reference Schedule.

17.9 Acceptance of the Execution Schedule shall not exempt the Contractor of his responsibilities for the Contract fulfillment.

17.10 If the Contractor does not define in the Execution Schedule an element of work, activity or conditioning relationship, and the Supervisor, following his analysis, does not identify this omission or error, when it is discovered by the Contractor or the Supervisor, it shall be corrected by the Contractor in the next updated Execution Schedule, without affecting the Execution Duration and without entitling the Contractor to the payment of additional Costs.

17.11 Update of the Execution Schedule

- (a) Monthly, within 10 days from the beginning of each month, until the completion of all Works, the Contractor shall send to the Supervisor an updated Execution Schedule containing the updated Gantt schedule and the descriptive report.
- (b) The content of the updated Execution Schedule shall be in accordance with the provisions of sub-clauses 17.2 and 17.3.
- (c) Each updated document shall be presented in comparison with the related document in the Reference Schedule, highlighting the differences, as well as the events and causes that led to the differences and, in case of delay, the measures that the Contractor will take to comply with the Execution Time.
- (d) Within 5 days of its sending by the Contractor, the Supervisor shall analyze the updated Execution Schedule and accept or reject it. In the absence of a response from the Supervisor within the relevant deadline, the Execution Schedule shall be considered as accepted.
- (e) The provisions of sub-clauses 17.5 to 17.7 shall apply accordingly to the consideration, acceptance or rejection of the updated Execution Schedule and their consequences.

17.12 Revision of the Execution Schedule

In the event that unforeseen events, including events related to the risks of the Beneficiary, affect the duration of critical activities, the Contractor shall submit to the Supervisor a revision of the Execution Schedule.

Also, whenever the Contractor finds that he cannot complete the Works within the Execution Period, he shall submit a revision of the Execution Schedule.

The provisions of sub-clauses 17.2 to 17.7 shall apply accordingly to the preparation, consideration, acceptance or rejection of the revised Execution Schedule and their consequences.

The revised Execution Schedule accepted by the Supervisor shall become the new Reference Schedule.

The acceptance by the Supervisor of a Schedule of Works where the duration of the design and Works execution would be longer than the Execution Duration shall not represent an extension of the Execution Duration. Any extension of the Execution Duration shall be made only in accordance with the provisions of Sub-Clause 35 [Extension of Execution Duration] and subject to compliance with Clause 69a [Contractor's Claims].

Clause 18 Detailed Price Structure

18.1 Within 30 days of approving the technical design, the Contractor shall submit a proposal of unit prices for each quantity in the technical design, as well as a breakdown of such unit prices identifying the costs included for labour, Materials, Plant, transport, indirect costs and profit. Such proposals shall not affect the Contractual Price as a lump sum (except Provisory Amounts) or the Contractual provisions.

18.2 The Supervisor may take into account the Contractor's proposals submitted in accordance with the provisions of sub-clause 18.1 when assessing the financial impact of any Variations or the value of any part

of the Works, but shall have no obligation in relation thereto.

Clause 19 Design by the Contractor

19.1 The Contractor shall design the Permanent Works in accordance with the Beneficiary's Requirements and the Technical Tender. The Contractor shall be responsible for the design. The Contractor shall perform the role of designer in accordance with the provisions of the Law, including with regard to establishing the tests to be carried out, establishing the determining phases and providing the designer with technical assistance in accordance with the provisions of the Law.

The Contractor shall also design any Temporary Works necessary for the Contract fulfillment.

The design prepared by the Contractor shall strictly comply with the mandatory characteristics set out in the Beneficiary's Requirements. Unless the Contractor proves that there is an error in these mandatory characteristics (in which case the provisions of sub-clauses 8.3 and/or 8.5 shall apply), the Contractor shall not propose, during the preparation of the design or during the Works execution, any derogation from these characteristics. The design shall be prepared by qualified designers in accordance with the provisions of the Law and with the criteria (if any) mentioned in the Beneficiary's Requirements. The Contractor shall submit to the Supervisor for acceptance the names and references of the proposed designers, except those provided in the Tender. The Supervisor shall respond within 10 days, giving reasons for any rejection. Failure to respond by the Supervisor shall be deemed acceptance.

The Contractor shall guarantee that he, its designers and any Subcontractor involved in the design have the necessary experience and capacity for the design.

The Contractor shall prepare the design, including specifications, drawings and lists of quantities, in the language of the Contract and in accordance with the provisions of the Law and the Contract.

Any error discovered within the design prepared by the Contractor shall be rectified upon the Contractor's risk and liability, except as provided by sub-clauses 8.4 and 8.5. The approval by the Supervisor of the project prepared by the Contractor shall not exempt the Contractor of responsibility for the project.

19.2 The provisions set out in this sub-clause shall apply to any phase or item of the project prepared by the Contractor.

The Contractor shall submit to the Supervisor the project documentation, verified by a certified verifier employed by the Contractor, together with a statement of compliance of the project prepared by it with (i) the imperative characteristics set out in the Beneficiary's Requirements, (ii) the other provisions of the Beneficiary's Requirements and (iii) the project or design sketch in the Technical Tender. If the project prepared by the Contractor presents any deviations or differences from the Beneficiary's Requirements or from the project or design sketch in the Technical Tender, other than differences or deviations resulting from errors identified in the Beneficiary's Requirements and notified by the Contractor, such differences or deviations shall be considered as proposals for Modification initiated by the Contractor in accordance with the provisions of sub-clause 37.11.

Unless otherwise provided in the Special Conditions, the Supervisor shall approve or reject the documentation prepared by the Contractor with reasons within 60 days of receipt. This period shall also include any necessary periods of consultation between the Supervisor and the Beneficiary, analysis and approval by the Beneficiary or other entities.

If the Supervisor rejects the project prepared by the Contractor with reasons, he shall deal appropriately with the comments received in the project documentation and shall retransmit the documentation thus corrected to the Supervisor for approval.

If the Supervisor unreasonably delays the approval of the Contractor's design, except where approval of such design would represent a Variation, and if the Contractor experiences delays and/or incurs additional costs as a result of the Supervisor's delay, the Contractor shall be entitled, subject to the provisions of Clause 69a [Contractor's Claims], to:

- (a) an extension of the Time for Completion for delay in accordance with the provisions of Clause 35 [Extension of Time for Completion], if the Works completion is or will be delayed, and
- (b) payment of Additional Costs in accordance with the provisions of Clause 55 [Additional Costs].

19.3 Subject to any other provisions of the Beneficiary's Requirements:

- (a) within the period(s) specified in the Contractual Agreement, calculated from the Commencement Date, the Contractor shall prepare the technical design, including the technical documentation for the authorization of the execution of the construction works required for the Permanent Works, to the quality level specified in the Law and in the Contract, and shall submit it to the Supervisor for review and/or

approval in accordance with the provisions of sub-clause 19.2. The technical documentation for the authorization of the execution of the construction works required for the Permanent Works shall be prepared by the Contractor for and on behalf of the Beneficiary and shall include the documentation, approvals and related agreements necessary for the Works execution, obtained by the Contractor in accordance with the provisions of sub-clause 10.1. If the authority issuing an opinion or agreement makes observations or requests which are not caused by a deficiency in the Contractor's Documents, the Contractor shall be entitled, subject to the provisions of Clause 69a [Contractor's Claims], to an extension of the Time for Completion for delay in accordance with the provisions of Clause 35 [Extension of Time for Completion], if the Works completion is or will be delayed.

(b) Within 60 days from the date of the Supervisor's approval of the documents referred to in (a) above, unless a different period is specified in the Contractual Agreement, the Beneficiary shall obtain the building permit for Permanent Works. In the event of exceeding this period, the Contractor shall be entitled, subject to the provisions of Clause 69a [Contractor's Claims], to an extension of the Time for Completion for delay in accordance with the provisions of Clause 35 [Extension of Time for Completion], if the completion of the Works is or will be delayed. In the event of the building permit issuing authority making any observation or request in respect of the documentation submitted by the Beneficiary, caused by a deficiency in the Contractor's Documents, the provisions of Sub-Clause 19.6 [Errors in the Contractor's Documents] shall apply and the period referred to above shall run from the time the request is resolved. If the building permit issuing authority makes any other observations or requests, which are not caused by a deficiency in the Contractor's Documents, the Contractor shall be entitled, subject to compliance with the provisions of clause 69a [Contractor's Claims], to an extension of the Time for Completion for delay in accordance with the provisions of clause 35 [Extension of Time for Completion], if the completion of the Works is or will be delayed.

(c) Where the Contractor's Documents issued subsequent to obtaining the building permit, other than as a result of (i) an Administrative Variation Order issued by the Supervisor in accordance with the provisions of Clause 37 [Variations] or an addendum to the Contract or (ii) a Decision issued by the Supervisor in accordance with the provisions of Sub-Clause 69c.2 [Supervisor's Decision], involve a variation of the building permit, the Contractor shall be responsible for the time and costs involved.

19.4 The Contractor shall not carry out any work in relation to his design until the approval of the Contractor's Documents in relation to such work by the Supervisor and subject to the existence of a fully valid building permit for such work.

19.5 In accordance with the Beneficiary's Requirements, the Contractor shall prepare detailed operating and maintenance manuals so that the Beneficiary may operate, repair, dismantle, replace, maintain any part of the Works. Acceptance on Completion of these Works shall not be effected without the submission of these documents to the Beneficiary.

The Contractor shall provide training to the Beneficiary's Staff in the operation and maintenance of the Works in accordance with the Beneficiary's Requirements. If the Beneficiary's Requirements require training prior to Acceptance on Completion of the Works, Acceptance on Completion of the Works shall be effected in accordance with Sub-Clause 60 [Acceptance of Works and Sections of Works] only after such training has been completed.

19.6 Errors in Contractor's Documents

If errors, omissions, ambiguities, discrepancies or other deficiencies are identified in the Contractor's Documents, these and the Works shall be remedied at the Contractor's expense, without regard to any approval issued under this clause.

In such event, the Contractor shall submit the corrected Documents to the Supervisor in accordance with the provisions of sub-clause 19.2.

19.7 Construction Technical Book

The Works shall not be considered as completed for the purposes of Acceptance under clause 60 [Acceptance on Completion of the Works] until the Contractor has submitted to the Supervisor all documents necessary for the preparation of Chapters A and B of the Construction Technical Book, within the meaning of the Contract, and, where applicable, the documents necessary for the completion of Chapter D of the Construction Technical Book.

Clause 20 Correctness of the Contractual Price

20.1 The Beneficiary shall make available to the Contractor, for his information, no later than the Reference Date, all relevant data in the Beneficiary's possession relating to the geological structure and hydrological

conditions on the Site, including environmental aspects. The Contractor shall be responsible for the interpretation of such data.

20.2 The Contractor shall be deemed to have, to the extent practicable (having regard to cost and time), inspected and examined the Site and its surroundings, analysed the data referred to in sub-clause 20.1 and to have informed himself, before submitting the Tender, of all relevant matters, including the type of the soil and subsoil, the shape and type of the Site, the extent and type of the Works, the Materials required for the works execution, the means of access to the Site and generally to have obtained all information regarding the risks, including their likelihood of occurrence, and other circumstances which influence or affect the Tender.

20.3 The Contractor shall be deemed to have informed himself, before submitting the Tender, of the correctness and sufficiency of the Tender, of the Contractual Price and of the prices indicated in Payment Schedule, which, except as otherwise provided in the Contractual Terms, covers all obligations under the Contract.

20.4 Given that the Contractor is deemed to have established its Financial Tender on the basis of its own calculations, operations and estimates, the Contractor shall, without payment of any additional cost, comply with any obligation and design and execute any work set out in the Contract, even if there is no amount or value for that obligation or work in the Payment Schedule.

Clause 21 Exceptional Risks

21.1 If, during the Contract fulfillment, the Contractor faces adverse physical conditions, whether natural or artificial, including unexploded munitions or underground utilities, and other physical obstacles or pollutants, which could not reasonably have been foreseen by a diligent contractor at the time of submitting the Tender, the Contractor shall, as soon as he becomes aware of the situation, give notice to the Supervisor describing such conditions or obstacles, giving details of their anticipated effects, the measures he is taking or intends to take and the anticipated impact on the Works execution. The provisions of this Clause shall not apply to weather conditions.

21.2 After receiving notice under Sub-Clause 21.1, the Supervisor may, inter alia:

- (a) request the Contractor to provide an estimate of the cost of the measures it will take or intends to take;
- (b) approve the measures under Sub-Clause 21.1 with or without modification;
- (c) give written instructions as to how the conditions or obstacles referred to in Sub-Clause 21.1 shall be dealt with.

21.3 Within 30 days of receiving the notice under Sub-Clause 21.1, the Supervisor shall:

- (a) Decide whether or to what extent the conditions or obstacles notified by the Contractor could reasonably have been foreseen by a diligent contractor at the time of submitting the Tender;
- (b) assess whether the solution of the problem and the continuation of the Works require a Variation and whether such a Variation would be considered to be non-substantial within the meaning of the Public Procurement Law; and
- (c) communicate the Decision and assessment to the Beneficiary and the Contractor.

21.4 If the Contractor experiences delays and/or incurs additional costs as a result of the conditions or obstacles referred to in sub-Clause 21.1, the Contractor shall be entitled, subject to the provisions of Clause 69a [Contractor's Claims], to:

- (a) an extension of the Time for Completion for Delay in accordance with the provisions of the Execution Schedule, if the works completion is or will be delayed; and Clause 35 [Extension of Time for payment of Additional Costs, in accordance with the provisions of Clause 55 [Additional Costs].

Clause 22 Site Safety and labor security

22.1 The Contractor shall have the right to prohibit access to the Site to any person not involved in the Contract fulfillment, except for persons authorized by the Beneficiary or the Supervisor. For the purposes of this sub-clause, the following shall be deemed to be authorized persons:

- (a) residents, if access to their properties is through the Site, and
- (b) users of the construction, if and to the extent that the Contract provides that the Works are carried out in a manner consistent with continued use (including traffic).

22.2 In carrying out the Contract, the Contractor shall comply with the Law and regulations in force relating to work safety, including, where applicable, the Beneficiary's specific safety and security regulations. The Contractor shall take safety measures for his Staff appropriate to the potential physical hazard. The Contractor shall be responsible for monitoring the level of physical risk to which his Staff are exposed and for informing

the Beneficiary of the situation. If the Beneficiary or the Contractor becomes aware of an imminent threat to the life or health of any member of the Contractor's Staff, the Contractor shall take urgent action for the safety of the persons concerned. If the Contractor takes such action, he shall immediately inform the Supervisor.

22.3 Throughout the period from the date of handing over the Site until the Works Acceptance on Completion and whenever carrying out any work during the Guarantee Period, the Contractor shall ensure the safety of all persons entitled to be on the Site, shall be responsible for taking the necessary measures, in the interests of the Beneficiary's Staff and third parties, to prevent any loss or accident arising from the design or Works execution and shall use all reasonable endeavours to keep the Site and the Works free from unnecessary obstructions and to avoid exposure to risk to such persons.

22.4 The Contractor shall take all necessary steps, on his own risk, to ensure that current structures and installations are protected, preserved and maintained. The Contractor shall provide for the guarding and supervision of the Works and, if so provided in the Beneficiary's Requirements, the fencing and lighting of the Works until the Acceptance of the Works is approved.

22.5 If, during the Contract fulfillment, urgent measures are required to avoid any risk of accident or damage or for safety following an accident or damage, the Supervisor shall issue an Administrative Order to the Contractor to take such action as he considers necessary. If the Contractor is unwilling or unable to take the necessary measures, the Beneficiary may, subject to the provisions of Clause 69b [Beneficiary's Claims], carry out the work at the Contractor's cost to the extent that the Contractor is liable.

22.6 Within 30 days of the Commencement Date, the Contractor shall submit to the Supervisor for acceptance "Own Health and Safety Plan" in accordance with the Law. The Supervisor shall not allow any work to be carried out on the Site until such plan has been accepted by him. Acceptance of the Own Health and Safety Plan shall not exempt the Contractor of any of his responsibilities for health and safety on the Site.

22.7 The Contractor shall appoint a person responsible for occupational safety on the Site, who shall be responsible for compliance with the safety regulations for the prevention of accidents. This person shall have the necessary qualifications for such activity and shall have the authority to issue instructions and order accident prevention measures.

22.8 The Contractor shall bear full liability in the event of occupational accidents, dangerous events and incidents, occupational diseases generated or produced by the technical equipment (machinery, installations, etc.) and work or technological processes used, or by its staff including any person who carries out, directly or indirectly, activities for the Contractor, in accordance with the provisions of the Law, including any legislative amendment arising during the Contract fulfillment.

In the event of any work accidents, dangerous events or incidents occurring in the Contractor's work, the Contractor shall report and investigate the work accident or event in accordance with the legal provisions and shall register it with the Territorial Labour Inspectorate in which jurisdiction the event occurred.

Clause 23 Protection of Adjacent Properties

23.1 The Contractor shall, on his own risk and expense, take all necessary measures required by good construction practice and by the type of circumstances to protect and avoid disturbance to properties adjacent to the Site or any area where the Contractor is operating. In this regard, the Contractor shall design and execute any Temporary Works (including roads, footpaths, parapets and fences) which may be necessary, due to the Works execution, for the use by the public and the protection of the public, owners and occupiers of adjacent land.

23.2 The Contractor shall indemnify the Beneficiary for the financial consequences of all claims made by owners or residents of adjacent properties to the extent that the Contractor is responsible and to the extent that the damage caused to adjacent properties is not the result of a risk arising from the design developed by the Beneficiary or a method of construction imposed by the Beneficiary or the Supervisor.

Clause 24 Interference with Traffic and Access Roads

24.1 The Contractor shall ensure that the Works execution and its related activities do not affect traffic or obstruct means of communication such as roads, railways, waterways and airports, except as provided in the Special Terms and the Beneficiary's Requirements. Particular regard shall be paid to weight and size restrictions in the selection of routes and vehicles.

24.2 The Contractor shall be responsible for repairing any damage to access roads resulting from the Contractor's improper use of such roads.

24.3 The Contractor shall be responsible for any special measures which he considers necessary to protect, strengthen or improve sections of the access roads, whether or not they are carried out by him. The Contractor shall inform the Supervisor of any special measures which he intends to take before carrying them out.

24.4 The Contractor shall bear all costs, charges and fees for special purpose and/or temporary accesses which he may require, including those for access roads on the Site. The Contractor shall also obtain, on his own risk, any other additional facilities outside the Site which he may require in the design and Works execution.

Clause 25 Utilities, Cables and Pipes

25.1 If, during the design and/or Works execution, the Contractor discovers any markings showing the route of any underground cables, pipes or other utilities, he shall keep such markings in place or replace them if the design and/or Works execution requires their temporary removal.

25.2 The Contractor shall be responsible for the preservation, protection, removal or replacement, as the case may be, of cables, pipes and other utilities specified in the Contract or discovered during the design and/or Works execution, in accordance with the Contractual provisions, the Law and the specific regulations and agreements of the owners/operators of such utility networks, including the provisions of the notices given by them. The provisions of this sub-clause shall not affect the rights and obligations of the Contractor under the Contract, including those relating to Clause 20 [Correctness of the Contract Price] and Clause 21 [Exceptional Risks].

25.3 When any activity on the Site is likely to cause disruption or affect a utility service, the Contractor shall immediately inform the Supervisor in writing and shall take appropriate measures in due course to enable the normal design and/or Works execution to proceed.

Clause 26 Laying Out

26.1 The Contractor shall be responsible for:

(a) the accurate laying out of the Works in relation to the original reference beams and systems specified in the Contract or communicated by the Supervisor;

(b) the correctness of the position, elevations, dimensions and route of all parts of the Works; and
(c) the provision, during the Contract fulfillment, of all tools, equipment and labour necessary in connection with the above responsibilities.

26.2 If, at any time during the Contract fulfillment, an error occurs in the position, elevations, dimensions or route of any part of the Works, the Contractor shall, following the Supervisor's request, rectify any error without being entitled to any extension of the Time for Completion or to any additional cost. However, if such error is based on incorrect data relating to the original reference marks or systems provided in the Contract or communicated by the Supervisor, data which a diligent Contractor could not have identified so as to avoid delay or additional cost, and if the Contractor experiences delays and/or additional cost is incurred as a result of such error and its rectification, the Contractor shall be entitled, subject to the provisions of Clause 69a [Contractor's Claims], to:

(a) an extension of the Time for Completion for delay in accordance with the provisions of Clause 35 [Extension of Time for Completion], if the completion of the Works is or will be delayed; and

(b) payment of Additional Costs in accordance with the provisions of Clause 55 [Additional Costs].

26.3 The Supervisor's verification of the layout of the Works shall not in any way exempt the Contractor of his responsibility for accuracy and the Contractor shall carefully protect and preserve all markers, stakes, stakes and other items used in the layout of the Works.

Clause 27 Contractor's Activity on the Site

27.1 The Contractor shall carry out activities only within the boundaries of the Site and such ancillary areas as may be obtained by the Contractor and accepted by the Supervisor as areas of work. The Contractor shall take all necessary steps to keep the Contractor's Plant and Contractor's Staff within the boundaries of the Site and ancillary areas so as not to affect adjacent land.

27.2 During the Contract fulfillment, the Contractor shall store or remove any of his own Plant or surplus materials. The Contractor shall clear and remove from the Site any debris, waste and Temporary Works no longer required.

27.3 After the Works Acceptance on Completion has been approved, the Contractor shall clear and remove from the part of the Site taken over all Contractor's Equipment, surplus materials, rubble, refuse and Temporary Works. The Contractor shall leave that part of the Site and the Works clean and safe. During the Guarantee Period, the Contractor may retain on the Site such Goods as are necessary for the fulfillment of his obligations under the Contract.

27.4 Except as otherwise provided in the Contractual Terms or the Beneficiary's Requirements, the Contractor shall be responsible for all materials and articles resulting from any demolition or excavation work and other surplus materials (natural or artificial), rubble and waste and shall pay all costs of their transportation and storage.

27.5 Where the Contractual Terms or the Beneficiary's Requirements reserve to the Beneficiary the right of ownership and responsibility for any materials or articles obtained from demolition or excavation, the Contractor shall take all necessary steps to ensure that they are preserved. He shall be responsible for any destruction of or damage to such materials or articles until they are handed over to the Beneficiary.

Regardless of the purpose for which the Beneficiary uses the materials or articles in respect of which he reserves the right of ownership and responsibility, the Contractor shall bear all costs of their transport and storage and all charges for storage at the places specified in the Contract. Where such places are not specified in the Contract, they shall be indicated by the Supervisor, subject to the provisions of Clause 37 [Amendments].

Clause 28 Discoveries

28.1 Artefacts, antiquities and natural, numismatic or other objects of scientific interest, as well as rare objects and objects obtained from precious materials discovered during the Contract fulfillment shall remain the property (as between the Parties) and responsibility of the Beneficiary and shall be entrusted to its care and under its authority. In the event of any disagreement, the Beneficiary shall be the sole authority between the Parties to decide on the qualification of discoveries provided by this sub-clause.

28.2 Discoveries of any kind during the Contract fulfillment shall be notified immediately to the Supervisor. The Supervisor shall issue instructions to the Contractor on the management of such discoveries relating to sub-clause

28.1 having regard to in accordance with the provisions of the Law and of the Contract.

28.3 If the Contractor experiences delays and/or incurs additional costs as a result of complying with the Supervisor's instructions under Sub-Clause 28.2, the Contractor shall be entitled, subject to the provisions of

Clause 69a [Contractor's Claims], to:

(a) an extension of the Time for Completion for delay in accordance with the provisions of Clause 35 [Extension of Time for Completion], if the completion of the Works is or will be delayed, and

(b) payment of Additional Costs in accordance with the provisions of Clause 55 [Additional Costs].

Clause 29 Provisory Works

29.1 The Contractor shall carry out all Provisory Works to enable the Contract to be performed. Unless otherwise provided by the Contractual Terms or the Beneficiary's Requirements, the Contractor shall, in relation to the Provisory Works, be responsible for obtaining the necessary land, designing, obtaining building permits and authorisations (if required), executing, dismantling or decommissioning and restoring the land areas concerned to their original condition.

29.2 Where the Contractual Terms or the Beneficiary's Requirements provide the execution of specific Provisory Works (with details of their location), the land concerned shall be deemed to form part of the Site.

Clause 30 Contractor's Plant and Transport of Goods

30.1 The Contractor shall be responsible for his own Plant. The Contractor shall provide the Plant in accordance with the accepted and current Schedule of Works. For the Contract fulfillment, the Contractor shall use Plant of at least the same quality and capacity as the Plant proposed in the Tender and listed in the Contract.

30.2 The Contractor shall be responsible for the packing, loading, transportation, receiving, unloading, storing and protecting all Goods and other products necessary for the Works execution. The Contractor shall not be entitled to an extension of the Time for Completion or to payment of additional costs for damage, loss and expenses resulting from the transportation of the Goods.

Clause 31 Overlapping of Contracts

31.1 The Contractor shall, in accordance with the Contractual provisions and the Supervisor's instructions, ensure that suitable conditions are provided for the provision of services or the execution of works not forming part of the Contract by the Beneficiary, other contractors employed by the Beneficiary, a public authority or contractors employed by such an authority, on or in the vicinity of the Site. Such conditions may include the use of access routes for which the Contractor is responsible, of Temporary Works or, on a temporary and exceptional basis, of the Contractor's Plant.

To the extent that the Contractor's assurance of these conditions is not provided for in the Contract and if the Contractor experiences delays and/or additional costs are incurred as a result of complying with the Supervisor's instructions under this sub-clause, the Contractor shall be entitled, subject to the provisions of Clause 69a [Contractor's Claims], to:

(a) an extension of the Time for Completion for delay in accordance with the provisions of Clause 35 [Extension of Time for Completion], if the Works completion is or will be delayed, and

(b) payment of Additional Costs in accordance with the provisions of Clause 55 [Additional Costs].

31.2 In no case shall difficulties encountered in connection with one contract entitle the Contractor to modify or delay the performance of other contracts. Similarly, the Beneficiary shall not rely on such difficulties to suspend or delay payments due under any other contract.

Clause 32 Patents, Licences and Intellectual Property Rights

32.1 The Contractor shall indemnify the Beneficiary, the Beneficiary's Staff and their agents and shall ensure that they are not affected by any claim, damage, loss and expense resulting from a claim made by a third party, including designers and brokers, for any breach of any intellectual, industrial or other property rights based on the use by the Beneficiary in accordance with the Contractual provisions of any patents, licences, designs, models or registered trademarks, except where such breach results from compliance with the Beneficiary's Requirements or with the Supervisor's instructions.

32.2 All intellectual, industrial and other property rights relating to the Contractor's Documents prepared in accordance with the provisions of clause 19 [Design by the Contractor] shall belong to the Beneficiary as soon as the Contractor sends them to the Supervisor. For each Contractor's Document prepared in accordance with the provisions of clause 19 [Contractor's Design], this transfer is final when such Document is paid for, in accordance with the above provisions, all industrial, intellectual or other property rights (including but not limited to patents and copyrights) developed strictly in relation to the Works execution by or on behalf of the Contractor shall belong to the Contractor but the Beneficiary shall have an irrevocable, royalty-free and non-exclusive license to the above-mentioned rights for the purpose of the Contract and for the use, maintenance and repair of the Works. Such license shall include the right to grant sub-licenses and shall be transferable by the Beneficiary to third parties without the consent of the Contractor being required.

32.3 All industrial, intellectual or other property rights (including but not limited to patents and copyrights) developed in connection with the performance of the Contract by or on behalf of the Beneficiary, including but not limited to any rights in any documents drawn up for the purpose of the performance of the Contract, shall belong to the Beneficiary, but the Contractor shall have the right to copy, use and obtain communication of such documents for the purpose of the Contract fulfillment.

CONTRACT FULFILLMENT AND DELAYS

Clause 33. Commencement

33.1 Within 15 days of signing the Contractual Agreement, the Supervisor shall issue the Administrative Order to Commence the Design Activity to the Contractor with notification of the Design Activity Commencement Date.

33.2 The Supervisor shall send the Administrative Order to Commence the Works Execution to the Contractor only if the Technical Execution Project has been completed and the Building Permits have been obtained. The Supervisor shall establish within the Administrative Order to Commence the Works execution the Commencement Date of the Works, a date which shall not exceed 30 days from the date of sending the Administrative Order to Commence the Works Execution. The Administrative Order to Commence the Works Execution may also be issued in Sections/Sectors.

33.3 The Contractor shall commence the Works Execution on the Commencement Date of the Works and shall continue the Works Execution promptly and without delay.

Clause 34 Time for Completion

34.1 The Contractor shall complete all the Works and each Section (if any) by the expiry of the Time for Completion of the Works or Section (as the case may be) including:(a) passing the Tests on Completion, and(b) completing all works and fulfilling the obligations set out in the Contract so that the Works or Sections may be deemed to be completed for Acceptance on Completion.

Clause 35 Extension of Time for Completion

35.1 The Contractor shall use his best endeavours to prevent any delays and to limit the effects of delays on the Site. Subject to the provisions of Clause 69a [Contractor's Claims] and Sub-Clause 69c.5 [Notice of Disagreement], where, in accordance with the Contractual provisions, the Supervisor has issued a Decision on the Time for Completion without a Contractor's Claim having been notified, the Contractor shall be entitled to an extension of the Time for Completion if and to the extent that Works completion is or will be delayed by any of the following:(i) exceptional adverse weather conditions. Adverse weather conditions shall be considered exceptional if their probability of occurrence is less than once in a period of time defined as the Execution Duration when signing of the Contract multiplied by 5, taking into account the specifics of the works, the location of the Site and the time of year when the conditions occurred; (ii) public authorities, their staff or their agents delay the Contractor's work for reasons not due to the Contractor's fault and in a way that a diligent contractor could not have foreseen at the time of submitting the Tender or reasonably prevented; (iii) Administrative Orders affecting the date of the Works completion and not due to the Contractor's fault, including Variations (unless otherwise agreed in the Variation); (iv) failure by the Beneficiary or the Beneficiary's Staff to perform their obligations under the Contract; (v) any suspension of the Works not due to the Contractor's fault or any risk in the Contractor's responsibility;(vi) force majeure;(vii) any event or circumstance which, in accordance with the provisions of the Contractual Terms, entitles the Contractor to an extension of the Time for Completion and which is not due to the Contractor's fault.

For the avoidance of doubt, if the Contractor fails to comply with the provisions of Clause 69a [Contractor's Claims], or the provisions of Sub-Clause 69c.5 [Notice of Disagreement] where relevant, the Contractor shall be deemed to have forfeited its right to an extension of the Time for Completion.

35.2 The Time for Completion shall be deemed to have been extended by the Supervisor's Decision in accordance with the provisions of Sub-Clause 69c.2 [Supervisor's Decision], which Decision may be made in accordance with the provisions of Clause 70 [Disputes and Arbitration]

Clause 36 Delays

36.1 In order to ensure the conditions of the Contract fulfillment, periodic management meetings will be organized, monthly or whenever necessary. The meetings will take place on the Site or in a place mutually agreed upon and will be convened by the Supervisor. Representatives of the Beneficiary, the Contractor's Representative, the Supervisor, as well as other entities invited by the Beneficiary will participate to the meetings. The Supervisor will establish the agenda, will chair the meeting and will send the minutes of the meetings to all participants. Regardless of the authority with which the persons participating to the meeting are invested, the responsibilities for the actions to be taken will be in accordance with the Contractual provisions and the specifications made during the meeting and/or recorded in the minutes cannot modify the Contract and

the minutes cannot represent an addendum.

36.2 Unsatisfactory pace of the design and/or Works execution

If, due to the Contractor's fault, an unsatisfactory pace of the design and/or Works execution is observed, the Supervisor shall notify the Contractor of this fact. The Contractor shall update the Execution Schedule, in accordance with the provisions of Sub-Clause 17.11 [Update of Execution Schedule], within 10 days of receipt of the notification. The updated Execution Schedule shall include a plan of measures that the Contractor shall take to recover the delays that have occurred. The Contractor shall comply with this plan of measures, including any additional mobilization of resources.

36.3 If so defined in the Beneficiary's Requirements, the compliance of the progress of the Works with the Reference Schedule established in accordance with the provisions of Sub-Clause 17.8 shall be controlled by a system of reference points, through which the progress of the Works is monitored and evaluated. In such case, the Beneficiary's Requirements shall define

(i) the milestones (ii) the time frame, calculated from the Commencement Date, for achieving each milestone and/or (iii) the method of establishing milestones and related deadlines based on the Milestone Schedule. These milestones and related deadlines shall be revised accordingly if a Variation is approved in accordance with the provisions of Clause 37 [Variations] and as a result of enforcing the provisions of Clause 35 [Extension of Time for Completion]. If the Contractor fails, without just cause, to meet any milestone within the time limit (taking into account any revisions made), the Supervisor shall be entitled to deduct from each subsequent Payment Certificate a percentage of 10% of the total of the amounts under (a) and (b) of Sub-Clause 50.1 [Status of Works], unless another amount (absolute or percentage) is provided in the Contractual Agreement. The amount so deducted shall be included in the Payment Certificate for the month when the milestone is met.

36.4 If the Contractor fails to complete the Works (or a Section) within the Time for Completion, as may be extended in accordance with the provisions of Clause 35 [Extension of Time for Completion], the Beneficiary shall, subject to the provisions of Clause 69b [Beneficiary's Claims] and without prejudice to any other remedies provided by the Contract, be entitled to recover from the Contractor, by way of liquidated damages, liquidated damages for each day which elapses between the end of the Time for Completion, as may be extended in accordance with the provisions of Clause 35 [Extension of Time for Completion] and the actual date of completing the Works (or Section) as stated in the Taking-Over Certificate of Completion of the Works (or Section) approved by the Beneficiary or (in the absence of such a statement) certified by the Supervisor. Unless otherwise provided in the Contractual Agreement, the amount of the delay penalties for each day of delay shall be equal to the Contractual Price (or Sector) at the time of signing the Contract divided by the Duration of Execution at the time of signing the Contract expressed in days. The maximum amount of the delay penalties shall be 15% of the Contract Price at the time of signing the Contract.

If a Sector or part of the Works has been subject to Acceptance upon Completion, the amount of the delay penalties for each day of delay shall be equal to the Contractual Price at the time of signing the Contract less the price of the Sector or part of the Works at the time of signing the Contract, divided by the Execution Duration at the time of signing the Contract expressed in days. The maximum amount of the delay penalties shall also be 15% of the Contract Price at the time of signing the Contract less the price of the Sector or part of the Works at the time of signing the Contract.

36.5 If the Beneficiary becomes entitled to recover from the Contractor the maximum amount of liquidated damages as set out in sub-clause 36.4, the Beneficiary shall be entitled to terminate the Contract in accordance with the provisions of Clause 64 [Termination by the Beneficiary].

36.6 The liquidated damages shall be the only damages payable by the Contractor for delay in completing the Works, other than any penalties and damages in the event of termination of the Contract in accordance with the provisions of Clause 64 [Termination by the Beneficiary]. For the avoidance of doubt, the expiry of the Period for Completion shall not constitute the expiry of the Contract. The recovery by the Beneficiary of liquidated damages shall not relieve the Contractor of his obligation to complete the Works or of any other duties, obligations or responsibilities which he has under the Contract and shall not relieve the Beneficiary of his contractual obligations.

Clause 37 Modifications

37.1 For the purpose of interpreting the Contract, the direct enforcement of the provisions of the Contractual Terms or of the Beneficiary's Requirements, established since the signing of the Contract and which does not imply any decision being taken by the Beneficiary, the Supervisor or the Contractor in relation to the advisability of the change concerned does not represent a Variation. For the avoidance of doubt:

(a) a variation by the Contractor of its design, including the correction by the Contractor of a design error in accordance with the provisions of sub-clause 19.6 [Errors in the Contractor's Documents], does not represent a Variation, provided that it does not bring about changes to the Beneficiary's Requirements or the design or

design sketch in the Technical Tender;

(b) the enforcement of the provisions of sub-clause 37.4 or 37.11 [Proposal for Variation initiated by the Contractor] represents Variations.

37.2 Any Variation shall be approved by an Administrative Order or by an addendum to the Contract. Any Amendment to the Contractual Terms shall be approved only by way of an addendum to the Contract. Only non-substantial Amendments within the meaning of the Law on Public Procurement may be approved by way of an Administrative Order.

37.3 If, as a result of the direct enforcement of the provisions of the Contractual Terms or of the Beneficiary's Requirements under the conditions set out in sub-clause 37.1 or the approval of a non-substantial Amendment within the meaning of the Law on Public Procurement, it is necessary to conclude an addendum to the Contract the sole purpose of which is to increase the Contractual Price so that the related payments can be made, the Beneficiary shall send the addendum to the Contractor and the Contractor shall return it, signed, to the Beneficiary within 10 days of its sending. The signing of such an addendum by the Contractor shall not prejudice any other right of the Contractor. If the Contractor fails to return such a signed addendum within 10 days of its sending by the Beneficiary, the Contractor shall forfeit the right to benefit from any additional payment that the direct application of the provisions of the Contract Conditions or the Beneficiary's Requirements or the approval of the Non-Substantial Variation within the meaning of the Law on Public Procurement could have generated.

37.4 At any time before the approval of the Acceptance on Works Completion, the Supervisor may approve by Administrative Order a Variation to any part of the Works, provided that such Variation is Non-Substantial within the meaning of the Law on Public Procurement and is previously approved by the Beneficiary. Such Variation may include changes to the Beneficiary's Requirements, the Contractor's Documents or the Works.

The procedure for the preparation and approval of the Administrative Variation Order shall be in accordance with the provisions of this clause.

37.5 The Contractor shall be responsible for any increase or decrease in the quantity of works actually executed from that shown in the bills of quantities forming part of the Contractor's Documents, unless such increase or decrease is caused by a Variation. Except in such case, the Contract Value shall not be affected by any increase or decrease in the quantities actually fulfilled from that shown in the bills of quantities forming part of the Contractor's Documents.

37.6 Before issuing an Administrative Variation Order, the Supervisor shall notify the Contractor of the type and form of the Variation contemplated. The Contractor shall, within the time specified in the Supervisor's notification, submit to the Supervisor a written proposal containing, in relation to such variation:

- (a) a description of the activities to be implemented or the measures to be taken and the related execution schedule;
- (b) any necessary adjustment to the Time for Completion or any of the Contractor's obligations under this Contract; and
- (c) any adjustment to the Contract Value, in accordance with the rules set out in this clause, and the Schedule of Payments.

37.7 The Supervisor shall, for all Variations considered under this clause, determine the adjustment to the Contract Value for additional or waived work on the basis of the following principles:

- (a) similar and relevant elements of the Contract, if any;
- (b) reasonable estimates of Costs plus the profit margin explicitly declared by the Contractor in the tender on which the contract was signed; and
- (c) market prices.

37.8 In preparing the Administrative Order and its related Decisions, the Supervisor shall take into consideration the price elements and breakdowns submitted in accordance with the provisions of Clause 18 [Detailed Price Structure] and the proposal submitted by the Contractor in accordance with the provisions of Sub-Clause 37.6, but shall have no obligation in relation to them.

The Supervisor shall consult with the Beneficiary on the draft Variation and the the Amendments as being immaterial within the meaning of the Public Procurement Law. The Supervisor shall also consult with the Beneficiary regarding the impact of the proposed Amendment on the building permit.

37.9 The Administrative Order approving the Amendment shall include at least the following:

- (a) any relevant amendment to the Beneficiary's Requirements, the Contractor's Documents or the Works;
- (b) any relevant amendment to the Schedule of Works;
- (c) the Supervisor's Decision in accordance with the provisions of sub-clause 69 c.2 [Supervisor's Decision] on any adjustment (extension or reduction) of the Time for Completion relating to the Amendment;
- (d) the Supervisor's Decision in accordance with the provisions of sub-clause 69c.2 [Supervisor's Decision] on any adjustments to the Contract Value and the Schedule of Payments relating to the Amendment.

37.10 On receipt of the Administrative Variation Order, the Contractor shall implement the Variation without

delay, but without prejudice to the Contractor's right to give notice of disagreement with the Supervisor's Decision in accordance with the provisions of sub-clause 69c.5 [Notice of Disagreement]. The Contractor shall not carry out any work without a valid building permit (including, where applicable, a new building permit for the modified Works) obtained in accordance with the provisions of sub-clause 10.1.

37.11 Proposal for Variation by the Contractor

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

However, the Contractor shall not submit any proposal which would affect the essential characteristics of the Works as set out in the Beneficiary's Requirements unless (and to the extent) there is an error in those essential characteristics (in which case the provisions of Sub-Clause 8.4 and/or 8.5 shall apply).

8.3 The proposal shall be prepared on the Contractor's expense and shall include the items listed in Sub-Clause 37.6, as well as the following items, but not necessarily limited to:

- (a) the extent to which the proposal complies with the Contractual provisions (including the Beneficiary's Requirements and the design or draft of the Technical Tender);
- (b) the extent to which the proposal complies with the provisions of the environmental regulation;
- (c) the extent to which the proposal complies with the provisions of the building permit (if any).

Any document issued by the Contractor, other than as a result of (i) an approved Variation or (ii) an instruction or Decision of the Supervisor and which, if implemented, would result in a Variation to the provisions of the Contract, shall be deemed to be a proposal issued in accordance with the provisions of this sub-clause. Any proposal which would represent a Substantial Variation within the meaning of the Public Procurement Law shall be rejected.

The Contractor shall be fully responsible for any proposal made under this sub-clause, including the periods necessary for the preparation, review and/or approval of the proposal and, where applicable, obtaining a new or revised environmental regulation and a new or revised building permit. The Contractor shall not be entitled to any extension of the Time for Completion or to the payment of additional costs.

A proposal made under this sub-clause shall be approved by Administrative Order of Modification and the provisions of sub-clauses 37.7 to 37.10 shall apply accordingly.

37.12 The Contractor shall notify the Beneficiary of any change to its bank account. The Beneficiary shall have the right to object to the change to the Contractor's bank account in cases where such change would raise doubts as to the beneficial owner and/or for other reasons related to combating money laundering and terrorist financing.

37.13 Notwithstanding the provisions of this Clause, if the Supervisor determines that an emergency has arisen which may directly and immediately affect the safety of life, the Works or adjacent property, he may, without the prior approval of the Beneficiary, direct the Contractor to carry out works or to do whatever is necessary, in the opinion of the Supervisor, to remove or mitigate the risk and without releasing the Contractor from his obligations under the Contract. The Contractor shall comply immediately with such instructions from the Supervisor.

If the emergency is due to one of the risks listed in Sub-Clause 68.1 [The Beneficiary's Risks] and if the Contractor experiences delays and/or If the Contractor incurs additional costs as a result of complying with the Supervisor's instructions under this Sub-Clause, the Contractor shall be entitled, subject to the provisions of Clause 69a [Contractor's Claims], to:

- (a) an extension of the Time for Completion for delay in accordance with the provisions of Clause 35 [Extension of Time for Completion], if the Works completion is or will be delayed, and
- (b) payment of the Additional Costs in accordance with the provisions of Clause 7 [Additional Costs].

Clause 38 Suspension

38.1 Suspension by Administrative Order of the Supervisor

The Contractor shall, on receipt of an Administrative Order of suspension, suspend the Works execution or any part thereof for such period or periods and in such manner as may be specified in the notice. The Administrative Order shall state the cause of the suspension and the Party responsible in accordance with the Contractual provisions. The suspension shall take effect on the date when the Contractor receives the Order or on such later date as the Order so provides. If the date for resuming the execution is not specified in the Administrative Suspension Order, the Supervisor shall issue a new Administrative Suspension Order as soon as, in the opinion of the Supervisor, the cause of the suspension has ceased to exist or has been reasonably remedied. The Contractor shall resume the Works execution on the date of resuming the execution (if specified in the

Administrative Suspension Order) or within the shortest reasonable time and, unless the Parties otherwise agree, not later than 10 days after receipt of an Administrative Suspension Order. Subject to the provisions of sub-clause 10.1, the Parties shall ensure that the building permit(s) is/are still valid.

38.2 Suspension by notice sent to the Contractor

If the Supervisor fails to comply with the obligations set out in Sub-Clause 50.3 [Payment Certificate] or if the payment due by the Beneficiary under the Contract is delayed by at least 45 days from the due date set out in Sub-Clause 50.4 [Payment], the Contractor shall notify the Beneficiary and shall be entitled, after a period of 30 days from the date of such notice, to suspend the Works execution or to reduce the rate of execution, as provided in the notice, until the date when the Contractor receives the Payment Certificate or payment, as the case may be, and as specified in the notice. The Contractor's action shall not affect his right to interest for late payment under Clause 53 [Delayed Payment] and to termination under Clause 65 [Termination by the Contractor]. If the Contractor receives the Payment Certificate or payment, as the case may be, before giving notice of termination under Clause 65 [Termination by the Contractor], the Contractor shall resume the normal operations as soon as reasonably practicable and, unless the Parties otherwise agree, not later than 10 days after receipt of the Certificate or payment.

38.3 During the suspension period, the Contractor shall take such protective measures as may be necessary or as may be provided by instructions of the Supervisor to protect the Works, Plant, Goods and Site against deterioration, loss or damage.

38.4 If the suspension cause is related to the Contractor's failure to perform any of his obligations under the Contract, including but not limited to errors in the Contractor's design, improper work, materials or workmanship, failure to comply with occupational health and safety regulations or the Contractor's failure to protect, store or guard, or generally any risk for which the Contractor is responsible under the Contract, the Contractor shall not be entitled to any extension of the Time for Completion or to the payment of any additional costs as a result of the suspension, taking protective measures or resuming the Works execution. For the avoidance of doubt, the total or partial suspension of the Works shall not automatically suspend the Time for Completion. The Time for Completion shall only be extended in accordance with the provisions of Clause 35 [Extension of Time for Completion].

38.5 If the suspension cause is related to the failure of the Beneficiary to fulfill any of his obligations under the Contract or generally to any risk for the Beneficiary under the Contract, and if the Contractor incurs delays and/or additional costs as a result of the suspension, taking protective measures or resuming the Works execution, the Contractor shall be entitled, subject to the provisions of Clause 69a [Contractor's Claims], to:

- (a) an extension of the Time for Completion for delay in accordance with the provisions of Clause 35 [Extension of Time for Completion], if the Works completion is or will be delayed, and
- (b) payment of Additional Costs, in accordance with the provisions of Clause 55 [Additional Costs].

38.6 If the suspension period of the execution of all the Works exceeds 180 days and the suspension cause is not related to the failure of the Contractor to fulfill any of his obligations under the Contract or to any risk for which the Contractor is responsible, the Contractor may, by notice sent to the Supervisor, request the resumption of the Works execution within 30 days of the notice. In the event of a negative response or in the absence of a response within the deadline, the Contractor may terminate the Contract in accordance with the provisions of Clause 65 [Termination by the Contractor].

The Supervisor, after consultation with the Beneficiary, shall inform the Contractor as soon as possible, but not later than 10 days after receipt of the notification, of the date of resuming the Works execution.

MATERIALS AND EXECUTION

Clause 39 Site Log

The Contractor shall establish and maintain a log of the works, called a Site Log, in a format approved by the Supervisor. The Site Log shall be kept on the Site and the Contractor shall record daily at least the following information:

- (a) weather conditions, breaks in work due to adverse weather conditions;
- (b) number of hours worked;
- (c) number and qualifications of workers present on the Site;
- (d) Materials purchased, delivered and stored on the Site and elsewhere, as well as Materials incorporated into the Works;
- (e) Plant used on the Site and elsewhere and those inoperative or out of use;
- (f) tests carried out and samples taken;

- (g) the works executed;
- (h) a list of the various obstacles or other difficulties encountered by the Contractor during the Works execution on that day;
- (i) incidents and/or accidents;
- (j) Administrative Orders received.

39.1 Entries in the Site Log shall be signed by the Contractor's Representative at the time of entry and checked and countersigned by the Supervisor within 5 days of the date of entry. If the Supervisor fails to check the Site Log within the above-mentioned period, the Contractor's entries shall be deemed to be correct.

If the Supervisor notes in the Site Log his disagreement with an entry, the Contractor shall communicate his comments in writing to the Supervisor within 10 days of the date when the Supervisor noted his disagreement in the Site Log. If the Contractor does not submit his comments within the given time, the Contractor shall be deemed to accept the Supervisor's position.

39.2 Following the Supervisor's request, the Contractor shall make available to the Supervisor, in the place specified by the Supervisor, a copy of the Site Log.

Clause 40 Materials and Equipment used in the Works

40.1 The Contractor shall ensure that all Materials and Equipment brought to the Site are in accordance with the provisions of the Contract and the Contractor's Documents (whichever prevails).

The Contractor shall be responsible for the production and supply of the Equipment and Materials required for the Works execution in due time as to enable the Supervisor and other members of the Beneficiary's Staff (if any) to check the quality of the Materials and Equipment.

40.2 The Contractor shall, before using the Materials and/or Equipment in the Works, submit for the Supervisor's approval all quality documents, as well as the results of samples and tests in accordance with the provisions of the Contract and the Contractor's Documents. The Contractor shall submit all certifications of the Materials and Equipment and processes in accordance with the requirements of the competent authorities, such as certification agreements, etc. Each sample of Material shall be labelled indicating the source of the Material and the place where it is to be used in the Works. Samples from the Site shall be taken in the presence of the Supervisor, the procedure set out in Clause 41 [Inspection and Testing] being duly applied.

40.3 Materials and/or Equipment used in the Works may be rejected by the Supervisor if found to be defective or defective, including on subsequent examination, in which case the provisions of Clause 42 [Rejection] shall apply and they shall be immediately replaced by the Contractor at his own risk and expense. 40.4 The Contractor shall pay all applicable taxes, charges and fees for Materials obtained from outside the Site and for their transport and storage.

Clause 41 Inspection and Testing

41.1 The Supervisor and other members of the Beneficiary's Staff (if any) shall have the right to inspect, examine, evaluate, measure, require testing of the Equipment, Materials and workmanship of the Works and to verify the preparation, manufacture or production of any item prepared, manufactured or produced for the Works under the Contract to determine whether such Equipment, Materials, items and workmanship are of the required quality and quantity. These may be carried out at the places of production, manufacture, preparation, storage or on the Site or such other places as may be specified in the Beneficiary's Requirements.

41.2 For the purpose of carrying out the tests and inspections, the Contractor shall:

- (a) provide the Supervisor and the Beneficiary's Staff (if any), temporarily and free of charge, with assistance, samples or test pieces, machinery, equipment, instruments, skilled labour, materials, drawings and production data routinely required and/or in accordance with the Beneficiary's Requirements for inspection and testing, including protective equipment;
- (b) arrange with the Supervisor the time and place of the tests;
- (c) provide access for the Supervisor and the Beneficiary's Staff (if any) to all places where the inspections and tests are to be carried out.

41.3 Whenever a work or part of the work reaches a critical stage, in accordance with the inspection schedule established by the designer of the work concerned, the Contractor shall convene, in accordance with the provisions of the Law and within the period provided by the Law, the responsible parties in order to verify the works that have reached a critical stage and to approve the continuation of the Works execution. In accordance with the provisions of the Law, the works that have reached the relevant stages, the related quality documents, as well as the measures ordered by the previously concluded inspection documents will be checked. Based on the findings recorded in the report, the Supervisor will act, as relevant, in accordance with the provisions of the Contract, including but not limited to Clause 42 [Rejection], Clause 38 [Suspension], or will notify the Contractor regarding the authorization to continue the Works execution.

41.4 Without prejudice to the provisions of Sub-Clause 41.3, each time a work or part of the works is completed and before it becomes covered or concealed, the Contractor shall notify the Supervisor. The Supervisor, without

undue delay, shall carry out the necessary inspection, testing and/or measurement or notify the Contractor that such activities are not necessary. If the Contractor fails to notify the Supervisor, the Contractor shall, following the Supervisor's instructions, uncover the Works for inspection, testing and/or measurement on his own risk and expense.

41.5 If the Supervisor does not attend the tests, the Contractor may start them and the tests shall be deemed to have been carried out in the presence of the Supervisor.

If the Supervisor issues an Administrative Order setting the tests to be carried out at a later date than agreed, the Contractor shall be entitled, subject to the provisions of clause 69a [Contractor's claims] to:

- a) extending the Execution Duration for delay according to the provisions of Clause 35 [Extension of the Execution Duration] if the works termination is or will be delayed; and
- b) payment of additional costs, according to the provisions of clause 55 [Additional costs]

41.6 After carrying out the tests, the Contractor shall submit to the Supervisor the results of the tests, analysis reports, etc.

41.7 The Supervisor may require any tests to be repeated or any additional tests to be carried out. If the repeated or additional tests confirm that the Materials, Plant or Works are in accordance with the provisions of the Contract and the Contractor's Documents, the Contractor shall, subject to the provisions of Clause 69a [Contractor's Claims], be entitled to pay the Costs of such repeated or additional tests in accordance with the provisions of Clause 55 [Additional Costs].

41.8 If the results of the tests show that any Materials, Equipment or Works are not compliant with the provisions of the Contract and/or the Contractor's Documents (whichever prevails), the provisions of Clause 42 [Rejection] shall apply.

41.9 If the results of the tests show that the Materials, Equipment and/or Works are not compliant with the contractual provisions, the Supervisor shall issue, within 5 days of receiving the results, a certificate confirming these results. If the Supervisor fails to submit such certificate within the said period and fails to act in accordance with the provisions of Sub-Clause 41.7, the certificate shall be deemed to have been issued.

The issue by the Supervisor of a certificate confirming the results of the tests (including the case where such a certificate is deemed to have been issued) shall not relieve the Contractor of his responsibility for the quality of the Works.

Clause 42 Rejection

42.1 Materials and Equipment not of the specified quality shall be rejected by the Supervisor. A special mark shall be applied to the rejected Materials or Equipment. Such mark shall not alter or affect their commercial value. Rejected Materials and Equipment shall be removed from the Site by the Contractor within a time specified by the Supervisor. If the Contractor fails to comply with the time specified, the rejected Materials and Equipment may be removed by the Beneficiary on the Contractor's cost (subject to the provisions of Sub-Clause 69b [Beneficiary's Claims] and risk. Any work or part of the work which includes rejected Equipment or Materials shall be rejected. No Payment Certificate shall be issued and no payment shall be made for rejected Materials, Equipment or work.

42.2 The Supervisor, pending the approval of the Acceptance on Completion, shall have the authority to require or Order, by issuing an Administrative Order:

- (a) the removal from the Site, within the time specified in the Order, of Materials or Equipment which, in the reasoned opinion of the Supervisor, are not compliant with the contractual provisions and their replacement with conforming Materials or Equipment; or
- (b) the demolition and proper restoration or satisfactory repair, without regard to any previous test or payment, of any work which, in relation to the Materials, Equipment, execution or design for which the Contractor is responsible, is not, in the reasoned opinion of the Supervisor, in compliance with the contractual provisions and/or the Contractor's Documents (whichever is the earlier).

42.3 The Contractor shall remedy the specified defects as soon as practicable and on his own cost. If the Contractor fails to comply with the Administrative Order, the Beneficiary shall be entitled to employ other persons to implement the provisions of the Order and, subject to the provisions of clause 69b [Beneficiary's Claims], all related costs shall be deducted by the Beneficiary from the amounts payable to the Contractor.

42.4 After the defects have been remedied, tests shall be repeated in accordance with the contractual provisions.

42.5 If the rejection of any Materials, Equipment and/or Works results in additional costs to the Beneficiary, such costs, subject to the provisions of sub-clause 69b [Beneficiary's Claims], shall be deducted by the Beneficiary from the amounts payable to the Contractor.

42.6 The provisions of this clause shall not affect the Beneficiary's right to apply, as the case may be, the provisions of clauses 36 [Delays] and/or 63 [Breach of Contract].

Clause 43 Ownership over Materials and Equipment

43.1 All Materials, Equipment, Goods used in the Works execution and Temporary Works, when brought to the Site or to another place specially arranged and approved by the Supervisor (such as the Contractor's site management), shall be deemed to be exclusively intended for the Works execution. The Contractor shall not remove them from the Site without the Supervisor's consent.

43.2 After the Materials and Equipment are brought to the Site or to another place approved by the Supervisor, the Contractor shall give a statement on his own responsibility that all Materials and Equipment used in the Works execution are free from any encumbrances. This statement shall be given at the latest at the time of commissioning but shall be required in respect of Materials or Equipment claimed for payment in accordance with the provisions of sub-clause 50.2. On receipt of the Contractor's statement, the said Materials and Equipment shall automatically become the property of the Beneficiary. Although they become the property of the Beneficiary, the Contractor shall undertake full responsibility for their safekeeping, storage, maintenance, management and security from the Commencement Date until the Acceptance of Completion of the Works or the relevant Section or part thereof is approved. For the avoidance of doubt, during this period the Contractor shall be liable for any damage or loss, including technological losses.

43.3 In the event of termination, unilateral cancellation or termination of the Contract in accordance with the provisions of Clauses 64 [Termination by the Beneficiary], 65 [Termination by the Contractor] or 66 [Force Majeure and Unilateral Termination], the Contractor shall ensure the transport and storage on the Site, in accordance with the Supervisor's instructions, of all Materials and Equipment owned by the Beneficiary but not on the Site at the time of termination. In the event of termination or unilateral cancellation in accordance with the provisions of Clause 65 [Termination by the Contractor] or Clause 66 [Force Majeure and Unilateral Termination], the Contractor shall, subject to the provisions of Clause 69a [Contractor's Claims], be entitled to payment of the Costs of transport and storage on the Site in accordance with the provisions of Clause 55 [additional costs].

43.4 In the event of termination, unilateral cancellation or termination of the Contract in accordance with the provisions of clauses 64 [Termination by the Beneficiary], 65 [Termination by the Contractor] or 66 [Force Majeure and Unilateral Termination], the Beneficiary shall be entitled to use the Temporary Works and/or the Contractor's Plant as may be necessary to ensure the stability or safety of the Works. The Beneficiary shall give the Contractor notice of this within 5 days of the date of termination. The Contractor shall, subject to the provisions of clause 69a [Contractor's Claims], be entitled to payment of the Costs relating to the Beneficiary's use of such Temporary Works or Plant after the date of termination, in accordance with the provisions of clause 55 [Additional Costs].

43.5 Any agreement for the lease (in any form) by the Contractor of Temporary Works and/or equipment shall contain a provision that, upon written request by the Beneficiary within 5 days of the date of termination, unilateral cancellation or termination of the Contract in accordance with the provisions of clauses 64 [Termination by the Beneficiary], 65 [Termination by the Contractor] or 66 [Force Majeure and Unilateral Cancellation] and with the Beneficiary's undertaking to pay all costs involved in this regard from that date, the owner shall lease to the Beneficiary such Provisory Works and/or equipment on the same terms on which they were leased by the Contractor, with providing that the Beneficiary shall have the right to allow their use by any other contractor engaged for the preservation and/or completion of the Works.

PAYMENTS

Clause 44 General Principles

44.1 Unless otherwise provided in the Special Terms, the currency of the Contract shall be the Romanian Leu and payments shall be made in this currency.

44.2 Payments due by the Beneficiary shall be made to the account established in the Contract or indicated by the Contractor, respectively to the accounts indicated by the Contractor and the Subcontractors. The Beneficiary is entitled to refuse any account that would raise doubts regarding the beneficial owner or for other reasons related to combating money laundering. If the Law so provides or following the Beneficiary's request, such accounts shall be opened by the Contractor and the Subcontractors at the State Treasury.

44.3 The Beneficiary shall not make any payment unless there is a valid Performance Bond, in accordance with the provisions of clause 15 [Performance Bond].

44.4 The Contractor undertakes to pay the Beneficiary any amount claimed by the Beneficiary in accordance with the provisions of Clause 69b [Beneficiary's Claims] and deemed by agreement of the Parties, the Supervisor's Decision, an arbitral award or otherwise in accordance with the provisions of the Law and the Contract to be due. Any such amount, if not deducted from the amounts payable by the Beneficiary to the

Contractor, shall be paid by the Contractor within 30 days of the Beneficiary's sending of an invoice.

If the Contractor fails to make such payment within the time limit set, the Beneficiary shall be entitled, without any other formality than the sending of an invoice, to interest for late payment at the rate and on the terms set out in Clause 53 [Late Payments].

44.5 If the conditions for termination of the Contract by the Beneficiary in accordance with the provisions of Clause 64 [Termination by the Beneficiary] are met, before or in lieu of termination of the Contract, the Beneficiary may suspend payments as a precautionary measure without prior notice. In the event that the Contract is not terminated, such suspension shall not last for more than 60 days.

Clause 45 Contract Value

45.1 The Contract Value shall be the Contractual Price as a lump sum (excluding Provisory Amounts), plus VAT, and may be adjusted and reviewed in accordance with the provisions of the Contractual Terms.

45.2 The Contractor shall pay all taxes, duties and fees which it is required to pay under the Contract and the Law, and the Contract Value shall not be adjusted in respect of such costs, except as provided in sub-Clause 48.8.

45.3 The Supervisor shall notify the Beneficiary and the Contractor whenever he becomes aware that the Contract Value may exceed the Contractual Price then in force, with the valuation of the difference. If applicable, the Beneficiary shall act without delay in accordance with the provisions of Sub-Clause 37.3.

45.4 If any part of the Works is to be paid for by quantity supplied or work carried out, the provisions relating to measurement and valuation shall be set out in the Special Terms. The Contract Value shall be determined accordingly and shall be subject to updates in accordance with the provisions of the Contractual Terms.

Clause 46 Advance Payment

46.1 Where it is provided in the Contractual Agreement that no advance payment shall be made, the provisions of this Clause shall not apply.

46.2 The Beneficiary shall make advance payments, free of interest, for the purpose of mobilising, designing and executing the Works in accordance with the provisions of this Clause. The advance payment shall be subject to the existence of a valid Performance Bond, in accordance with the provisions of Clause 15 [Performance Bond], the existence of a guarantee for the return of the advance in accordance with the provisions of Sub-Clause 46.3. The advance payment shall not be made before the Commencement Date.

46.3 The Contractor, except where the Law provides otherwise, shall submit to the Beneficiary a guarantee for the return of the advance and shall send a copy thereof to the Supervisor. The value of the guarantee shall be at least equal to the value of the advance payment plus the value resulting from applying the reference interest rate of the National Bank of Romania to the value of the advance payment, for the period provided from the time of payment until the full justification of the advance.

The advance payment guarantee shall be issued by a banking or insurance company authorised to issue such guarantees in the European Union or (for other companies) rated at least BBB-/Baa3 or equivalent and the Contractor shall submit supporting documents in this regard. The advance payment guarantee shall be irrevocable and shall provide that payment of the advance payment guarantee shall be made unconditionally, namely following the first request of the Beneficiary, based on the latter's statement of default on the Contractor's part. The advance payment guarantee of an association or consortium shall be issued in the name of the association or consortium.

The Contractor shall ensure that the advance payment guarantee shall remain valid and in force until the advance payment is justified or reimbursed, but the value of the guarantee may be progressively reduced by the amounts justified by the Contractor, as indicated in the Payment Certificates. If the advance payment has not been fully justified or reimbursed 30 days before the expiry date of the guarantee, the Contractor shall extend the validity of the guarantee until the advance payment is fully justified or reimbursed.

If the advance payment guarantee has expired and the Contractor has not extended the validity of the guarantee, the amounts remaining to be justified from the advance payment will shall be deemed, without further formality, to be due in accordance with the provisions of Sub-Clause 44.4 and shall be recovered by the Beneficiary, by issuing a debit note to the Contractor or by deduction from future payments due to the Contractor under the Contract.

The Advance Payment Guarantee shall be released by the Beneficiary to the Contractor on and when the advance payment is fully justified or reimbursed.

46.4 If the Contract is terminated or cancelled unilaterally or ceases in accordance with the provisions of Clauses 64 [Termination by the Beneficiary], 65 [Termination by the Contractor] or 66 [Force Majeure and Unilateral Termination], for whatever reason, the amounts remaining to be justified out of the advance payment shall be deemed, without further formality, to be due in accordance with the provisions of Sub-Clause 44.4 and shall be recovered by the Beneficiary. The advance payment guarantee may be immediately called upon by the

Beneficiary to reimburse the amounts remaining to be justified from the advance payment, and the guarantor shall not delay payment or challenge it due to any reason.

46.5 The Contractor shall use the amounts representing the advance payment exclusively for operations related to the Contract fulfillment. In the event that the Contractor does not properly use part of these amounts, the Beneficiary shall be entitled, subject to compliance with the provisions of sub-clause 69b [Beneficiary's Claims], to the reimbursement by the Contractor of the amounts remaining to be justified (including through the execution by the Beneficiary of the advance payment guarantee), to the payment by the Contractor of delay penalties applying the reference interest rate of the National Bank of Romania, calculated for the period from the granting of the advance until the moment of recovery, to the amounts improperly used and to not make any further advance payments.

46.6 The amount (which may be expressed as a percentage) of each installment of the advance payments, the number and date of instalments shall be as specified in the Contract Agreement and shall be to the extent established by Law. An appropriate security shall be furnished by the Contractor for each installment in accordance with the provisions of sub-clause 46.3. If the Contractual Agreement does not specify the amount, number and date of installments, an installment of 15% of the amount of the payments (including VAT) for each calendar year, as set out in the cash flow schedule of the approved Execution Schedule for the time being in force, shall be called for by the Contractor in a Statement of Works issued immediately after the Commencement Date for the first year and in the first Statement of Works of each subsequent calendar year and shall be paid by the Beneficiary in accordance with the provisions of clause 50 [Payments].

Each advance payment will be justified by full deductions (100%) from each Statement of Works, respectively Payment Certificate. Actual payments are not allowed until the advance has been fully deducted.

A new advance installment is granted only after the previously granted advance has been fully justified or reimbursed.

If any amounts representing advance payments remain undeducted by the end of the calendar year, the Beneficiary shall be entitled, subject to the provisions of sub-clause 69b [Beneficiary's Claims], to reimbursement by the Contractor of the amounts remaining to be justified (including through the execution by the Beneficiary of the advance payment guarantee), and to payment by the Contractor of late payment penalties applying the reference interest rate of the National Bank of Romania, calculated for the period from when the advance was granted until the moment of recovery, to the amounts improperly used (to the extent that the Contractor's delay is not due to a cause or risk for which the Beneficiary is responsible).

46.7 Where it is provided in the Contractual Agreement that amounts representing advance payments may be justified by works executed by the deadline established under the Contract, the provisions apply, but the provisions of this sub-clause shall apply.

An appropriate security shall be provided by the Contractor for each installment, in accordance with the provisions of sub-clause 46.3. Unless the Contractual Agreement specifies other amounts, number and/or dates of installments (to the extent established by Law), a first installment of 5% of the Contractual Price (plus VAT) shall be requested by the Contractor in a Statement of Works issued immediately after the Commencement Date and shall be paid by the Beneficiary in accordance with the provisions of clause 50 [Payments] and a second installment of 10% of the Contractual Price (plus VAT) shall be requested by the Contractor in a Statement of Works issued immediately after obtaining the building permit for the Permanent Works and shall be paid by the Beneficiary in accordance with the provisions of Clause 50 [Payments].

Each advance payment shall be justified by percentage deductions from the Payment Certificates, in the amount of 25% of the total amounts related to points (a), (b) and (c) of Sub-Clause 50.1 [Statement of Works] (unless another percentage is specified in the Contract Agreement), until the advance payment is fully justified.

At the end of each budget year, the Contractor shall submit to the Beneficiary a justifying estimate of the expenses made, by which he will confirm the level of use of the advance corresponding to the destination established by the Contract.

Clause 47 Retained Amounts

47.1 Retained amounts shall apply only under contracts in which the Contractor establishes the Performance Bond, by successive retentions based on Sub-Clause 15.1 letter b). The amounts withheld shall not apply in the event that the Contractor provides the Performance Bond in the amount established in the Contractual Agreement, by:

- a) bank transfer;
- b) guarantee document issued under the law by a credit institution or an insurance company;
- c) combination of two or more of the methods of providing the Performance Bond provided

47.2 The Amounts withheld shall be withheld from the Payment Certificates, as a method of payment related to the Contractor's obligations (i) to complete the Works and (ii) to remedy the defects during the Warranty Period.

Unless the Contractual Agreement specifies other values, a percentage value of 5% of the total amounts related to letter. (a) and (b) of Sub-Clause 50.1 (Status of Works) shall be withheld from each Payment Certificate until the limit of Retained Amounts is reached, where the total of the Retained Amounts is equal to 5% of the Contractual Price at the time of signing the Contract. 50% of the Retained Amounts shall be included in the first Payment Certificate after the Acceptance of the Works has been approved and paid by the Beneficiary. The balance of the Retained Amounts shall be included in the first Payment Certificate after the Final Acceptance has been approved and paid by the Beneficiary.

47.3 The Contractor may, at his choice, establish and provide to the Beneficiary a Retained Amounts guarantee, on his own cost, which shall be issued by a banking institution authorised to issue such guarantees in the territory of the European Union and shall be in a form agreed by the Beneficiary. The guarantee shall be irrevocable and shall provide that payment of the guarantee shall be unconditionally made upon the first demand of the Beneficiary. The Contractor shall ensure that the guarantee is valid and in force until the approval of the Final Acceptance. The amount of the guarantee for Retained Amounts shall be equal to the cumulative value of the Retained Amounts foreseen for the following six-month period, in accordance with the cash flow schedule in the Execution Program approved and in force at that time. At subsequent intervals, the amount of the guarantee for Retained Amounts shall be progressively increased until the limit of the Retained Amounts is reached. The Contractor shall ensure that the guarantee for Retained Amounts is valid and in force until the approval of the Final Acceptance. At any time until the approval of the Acceptance on Works Completion, the amount of the guarantee for Retained Amounts shall be higher than or equal to the cumulative value of the Retained Amounts. At any time between the approval of the Acceptance on Completion and the approval of the Final Acceptance, the amount of the Retention Security shall be higher than or equal to the balance of the Retention Funds. If, at any time, the Contractor fails to provide a Retention Security in accordance with the above provisions, the Retention Funds shall be deducted from the Payment Certificates and retained by the Beneficiary. The Beneficiary shall return the Retention Security to the Contractor in accordance with the payments of the Retention Funds provided by sub-clause 47.2.

47.4 During the course of the contract, regardless of whether or not the Acceptance on the Works Completion has been carried out, when the amount of the Performance Bond established by successive deductions cumulated with the amount of the Bond for Retained Amounts reaches the threshold of 10% of the Contractual Price, the Contracting Authority will no longer withhold the Retained Amounts from the Payment Certificates, and their amount will be transferred to the cash account opened at the disposal of the Contracting Authority where the performance bond was established after signing the contract. Given that for the Withheld Amounts the Contractor has used guarantee instruments, when the amount of the Performance Bond established by successive withholdings cumulated with the amount of the Bond for the Withheld Amounts reaches the threshold of 10% of the Contractual Price, the Contractor is obliged to modify the guarantee instrument related to the amounts withheld into a performance bond document, within the term established by the Beneficiary. When the performance bond execution was initially established by successive withholdings based on sub-clause 15.1 letter b) and subsequently, during the course of the contract, the method of establishing the performance bond is changed by switching to the guarantee document provided by sub-Clause 15.1 letter a) in the amount initially established by the contract, the provisions of sub-clause 47.1 shall apply accordingly.

47.5 Repealed.

Clause 48 Price adjustment

48.1 One considers that the prices in the Contractor's Tender:

- (a) were established based on those described and applicable in this clause;
- (b) in accordance with the relevant Law applicable on the Reference Date.

The Parties are deemed to be satisfied with the applicable provisions of this clause and the other clauses of the Contractual Terms regarding the price adjustment, including where these provisions do not provide full compensation for the increase or decrease in the price of the constitutive elements of the Tender.

48.2 Unless otherwise provided in the Contractual Agreement, if the Execution Duration when signing the Contract is less than or equal to 365 days, the prices in the Contract shall be considered as firm and shall not be adjusted except in the case provided by sub-clause 48.8.

48.3 Unless otherwise provided in the Contractual Agreement, if the Execution Duration at the time of signing the Contract is more than 365 days, the prices in the Contractor's Tender shall be deemed to have been established on the basis of the price and market conditions in force on the Reference Date and the amounts payable to the Contractor shall be adjusted for the increase/decrease in the price indices for the constitutive elements of the Tender, which effect shall be reflected in the increase/decrease in the costs on which the Contractual Price was based. No adjustment shall be made to works valued on the basis of Cost (such as those

relating to Provisory Amounts) or current prices. This adjustment shall be determined by applying the formula set out in this clause.

48.4 The price adjustment formula is a polynomial formula of the type:

$A_n = a_v + m * M_n/M_o + f * F_n/F_o + e * E_n/E_o$, where:

— “ A_n ” is the adjustment coefficient to be applied to the estimated contract value for the works completed in month “ n ” (the amounts related to point (a) of sub-clause 50.1 [Statement of Works], excluding works valued on the basis of Cost or current prices);

— “ a_v ” is a fixed coefficient and represents the percentage value of the advance payment related to the Contractual Price;

— “ m ”, “ f ”, “ e ” are coefficients representing the estimated share of each relevant cost item in the Works execution. The cost items represent relevant resources such as labour, machinery and materials;

— “ F_n ”, “ E_n ”, “ M_n ” are the current price/cost indices or reference prices for month “ n ”, expressed in the Contract currency, as applicable on the date 60 days before the last day of month “ n ”. The price indices or reference prices are related to the relevant cost item.

— “ F_o ”, “ E_o ”, “ M_o ” are the basic price/cost indices or reference prices, expressed in the Contract currency, applicable on the Reference Date.

The price/cost indices and/or reference prices, including their source and any information necessary to determine with certainty their definition, as well as their weighting, shall be established by the Beneficiary in the adjustment data table in the Contract Agreement. The following equation shall be verified: $a_v + m + f + e = 1$.

If a current price/cost index or a reference price for the month concerned is not available (or its value is not final), the last available index or price shall be used and the adjustment shall be recalculated when the index or price becomes available (or its value becomes final).

48.5 Where the provisions of Sub-Clause 48.3 are applicable and if the adjustment data table in the Contract Agreement is not completed by the Beneficiary, a single cost index shall be used and the applicable formula shall be:

$A_n = a_v + (1 - a_v) * I_n/I_o$, where:

— “ A_n ” is the adjustment coefficient to be applied to the estimated contract value for the works carried out in month “ n ” (the amounts referred to in point (a) of Sub-Clause 50.1 [Statement of Works], excluding works valued on the basis of Cost or current prices);

— “ a_v ” is the percentage value of the advance payment compared to the Contractual Price;

— “ I_n ” is the construction cost index - total published by the National Institute of Statistics in the Statistical Price Bulletin, in table 15, applicable on the date 60 days before the last day of the month “ n ”. The applicable value of this index for January 2017 is 113.8.

— “ I_o ” is the construction cost index - total, applicable on the Reference Date.

48.6 For works executed after the approval of the Acceptance on Completion, the current price indices /cost shall have the values applicable at the date of Acceptance. These values shall not be further modified.

48.7 If the Contractor does not complete the Works within the Execution Period as may be extended in accordance with the provisions of Clause 35 [Extension of Execution Period], the adjustment of prices after the end of the Execution Period shall be made by using:

(a) the discount rate (P_n) calculated on the basis of price/cost indices or reference prices 60 days before the last day of the Execution Period; or

(b) the discount rate (P_n) calculated on the basis of current price/cost indices or reference prices, whichever of the above is most favourable to the Beneficiary.

48.8 The Contract Value shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Law (including the enactment of new Laws and the repeal or amendment of existing Laws) published after the Reference Date which affects the Contractor in the performance of its obligations under the Contract.

If the Contractor experiences delays and/or incurs additional costs as a result of a change in the Law, the Contractor shall be entitled, subject to the provisions of Clause 69a [Contractor's Claims], to:

(a) an extension of the Time for Completion for delay in accordance with the provisions of Clause 35 [Extension of Time for Completion], if the completion of the Works is or will be delayed, and

(b) payment of Additional Costs in accordance with the provisions of Clause 557 [Additional Costs].

If the amendment of the Law results in a reduction of the Cost borne by the Contractor, the Beneficiary shall be entitled, subject to the provisions of clause 69b [Beneficiary's Claims], to a corresponding reduction of the Contract Value.

The provisions of this sub-clause shall not apply if the increase or decrease in the Cost resulting from the amendment of the Law is taken into account by the evolution of the relevant and applicable price/cost indices or

reference prices established under this clause..

Clause 49 Schedule of Payments and Provisions

49.1 The Contractual Price, excluding Provisions, shall be a lump sum. The Schedule of Payments shall detail the manner how this lump sum shall be paid. Such manner shall include:

- (a) the breakdown of the lump sum into amounts or percentages relating to parts of the Works or stages of design and/or Works execution;
- (b) the conditions under which each part of the Works or stage of design and/or Works execution shall become payable.

Except as expressly provided in the Contractual Terms, the Contractor shall not be entitled to request an increase in the lump sum on the ground that the work or service required more work or cost more than initially anticipated, nor shall the Beneficiary be entitled to request a reduction in the lump sum on the ground that the work or service required more work or cost more than initially anticipated.

49.2 For the purpose of issuing Payment Certificates during the Contract fulfillment until the Acceptance of Completion of all Works has been approved, the Supervisor shall assess the contract value of the Works executed (including the Contractor's Documents produced) at that time in accordance with the method set out in the Schedule of Payments. The Supervisor shall also use an alternative method of valuing the parts of the Permanent Works executed at that time (including the Contractor's Documents), using the bills of quantities in the Contractor's Documents, the measurement of such quantities actually executed and the unit prices submitted by the Contractor in accordance with the provisions of Clause 18 [Detailed Price Structure] or other relevant unit prices, such as market prices. If the strict application of the method set out in the Schedule of Payments would cause the contract value of the Works executed to be significantly higher than the value of the parts of the Permanent Works executed at that time, as determined by the Supervisor in accordance with the alternative method set out above, the Supervisor shall be entitled to temporarily withhold such difference from the relevant Payment Certificate, providing the Contractor with supporting details. The amounts temporarily retained shall become payable to the extent that the difference between the value of the Works as assessed by the method set out in the Schedule of Payments and the value of the Permanent Works as assessed by the Supervisor in accordance with the alternative method set out above is reduced. Any balance remaining temporarily retained in accordance with the provisions of this sub-clause shall become payable in the first Payment Certificate issued after the approval of the Acceptance on Completion of all the Works.

For the avoidance of doubt, if the contract value of the Works as assessed (applying the method set out in the Schedule of Payments) is, at any time before the approval of the Acceptance on Completion of all the Works, less than the value of the Permanent Works as assessed by the Supervisor in accordance with the alternative method set out above, the relevant Payment Certificate shall be issued in accordance with the method set out in the Schedule of Payments.

49.3 Provisory Amounts

Each Provisory Amount shall be used, in whole or in part, only in accordance with the Supervisor's instructions. For each Provisory Amount, the Contractor, in accordance with the procurement procedures established by the Beneficiary, shall purchase, in accordance with the Supervisor's instructions and the intended purpose of the Provisory Amount, Equipment, Materials, Works or services, the value of which shall be included in the Contract Value and shall consist of:

- (a) the actual amounts paid (or to be paid) by the Contractor, and
- (b) an amount for indirect costs and profit, calculated as a percentage of 5% of such amounts (or such other percentage as may be provided in the Contract Agreement).

The Contractor shall, upon the Supervisor's request, provide supporting documents, invoices, vouchers and receipts. For the avoidance of doubt, to the extent that Provisory Amounts are established by the Beneficiary, the responsibility for the sufficiency of the Provisory Amounts for the intended purpose shall be the Beneficiary's responsibility.

Clause 50 Payments

50.1 Statement of Works

After the Commencement Date, on a monthly basis, the Contractor shall submit to the Supervisor, in quadruplicate, a Statement of Works detailing the amounts to which the Contractor considers himself entitled, together with supporting documents.

The Statement of Works shall include:

- (a) the estimated contractual value for all Works executed up to the end of the month (including Variations, Provisory Amounts and/or Contractor's Documents drawn up), less the corresponding value included in the

previous Statement of Works;

(b) amounts to be added or deducted for the price adjustment in accordance with the provisions of clause 48 [Price Adjustment];

(c) amounts to be added or deducted in respect of Retained Amounts in accordance with the provisions of clause 47 [Retained Amounts];

(c¹) withholding from the amounts due and payable to the Contractor up to the amount established as the Performance Bond, in the event that the Performance Bond is established in accordance with sub-clause 15.1 letter b);

(d) amounts to be added or deducted in respect of advance payment and justification thereof in accordance with the provisions of clause 46 [Advance Payment];

(e) amounts to be added or deducted for Equipment and Materials, in accordance with the provisions of sub-clause 50.2;

(f) any other additions or deductions which may be due under the Contract or otherwise, including those under Clauses 69 [Claims and Awards] and 70 [Disputes and Arbitration].

The Statement of Works shall include a breakdown of the amounts by Subcontractor in accordance with the provisions of the Schedules regarding direct payment of subcontracts annexed to the Contract.

Any Statement of Works, in accordance with the provisions of this Sub-Clause, shall be signed by the Contractor's Representative. Otherwise, the Statement of Works shall be null and void.

The Contractor shall not claim in the Statement of Works, and the Supervisor shall not certify for payment, any amounts for which the Contractor has not provided in full and in final form the necessary supporting documents, as reasonably determined by the Supervisor.

50.2 The Contractor shall be entitled to payment in respect of Equipment and Materials brought to the Site or other place approved by the Supervisor for the purpose of carrying out the Permanent Works but not yet incorporated into the Permanent Works on the following conditions:

(a) The Equipment and Materials are as specified in the relevant Schedule in the Contract Agreement and are delivered in quantities reasonable related to the contractual provisions;

(b) The Equipment and Materials comply with the Beneficiary's Requirements and the Contractor's Documents for the Permanent Works and are arranged in lots so as to be acknowledged by the Supervisor;

(c) The Equipment and Materials are properly stored and protected against loss, damage or deterioration;

(d) The Equipment and Materials are the property of the Beneficiary in accordance with the provisions of Clause 43 [Title to Materials and Equipment];

(e) The Contractor shall keep proper records of the ordering, delivery, invoicing, payment, storage, testing and use in Contract fulfillment the Equipment and Materials, in a form acceptable for the Supervisor and such records shall be available for the Supervisor's review;

(f) the amounts to be paid to him shall be the equivalent of 80% of the cost established by the Supervisor for the Equipment and Materials concerned (excluding freight and delivery, excluding VAT), taking into account the documents referred to in point (e) above the contract value for the Equipment and Materials.

The amounts paid in accordance with the provisions of this sub-clause shall be deducted from the Statement of Works (i) when the Equipment and Materials are incorporated into the Permanent Works and their contract value is included in the amounts related to point (a) of sub-Clause 50.1 [Statement of Works], (ii) in the event that the above conditions are no longer met and (iii) in the event of deterioration, damage or loss, including technological loss.

50.3. The Supervisor shall check the Statements of Works submitted by the Contractor and, within 30 days of receipt of the Statement of Works, shall issue a Payment Certificate to the Beneficiary, with a copy sent to the Contractor. The 30-day period may not be extended without the agreement of the Contractor. The Payment Certificate shall have the same structure as the Statements of Works, including the breakdown of amounts by Subcontractors, if applicable. In establishing the amounts related to point (a) of Payment Certificate, the Supervisor shall act in accordance with the provisions of sub-clause 49.2. By issuing a Payment Certificate, the Supervisor certifies, on his own responsibility, that the amounts requested for payment are in accordance with the provisions of the Contract and correspond to real works, services and items in accordance with the provisions of the Contract. In the event that the Performance Guarantee is established in accordance with sub-clause 15.1 letter b), respectively by successive deductions, the Beneficiary shall credit the account opened by the Contractor at the Beneficiary's disposal, by successive deductions from the amounts due and payable to the Contractor for each Payment Certificate up to the amount established as the Performance Guarantee in the public procurement contract. The Supervisor shall not certify for payment amounts for which the Contractor has not provided the necessary supporting documents in full and in final form, as established in reasonable by the Supervisor. The Supervisor may, by any Payment Certificate, make any amendments and modifications justified to any Payment

Certificate previously issued. If the Contractor has failed or fails to perform any work or to comply with any obligation, having been notified by the Supervisor to that effect, the Supervisor shall be entitled to withhold the value of such work or obligation until the work is completed or the obligation is fulfilled. When determining the value of any obligation not performed or not complied with, the Supervisor shall take into account, as a reference, the values mentioned in the Contract Agreement, if any, with adaptations as appropriate. Without prejudice to any other rights of the Contractor arising under the Contract or otherwise, the Supervisor shall not be entitled to issue a Payment Certificate which would cause the cumulative value approved for payment to exceed the Contract Price, as may be revised by addendum.

50.4 Payment

The Beneficiary shall pay the amounts certified by the Supervisor within 30 days of receipt of the Payment Certificate, subject to the following conditions:

- (a) without causing any delay in the payment period, the Beneficiary shall be entitled to correct arithmetical errors in any Payment Certificate. The Beneficiary shall immediately notify the Contractor of any arithmetical correction made to the amount of the Payment Certificate issued by the Supervisor. Such arithmetical corrections shall be made without regard to the provisions of Clause 69b [Beneficiary's Claims];
- (b) as from the 15th day after the date of issue of the Payment Certificate by the Supervisor, the Contractor shall issue to the Beneficiary an invoice for the amount specified in the relevant Payment Certificate, as may be corrected in accordance with the above. The invoice shall include a breakdown of the amounts by Subcontractor in accordance with the provisions of the Schedules relating to direct payment of subcontracts annexed to the Contract. For the avoidance of doubt, in the absence of a corresponding invoice, a payment shall not be deemed to be due.

If the Beneficiary does not agree with the Payment Certificate issued by the Supervisor or with any part of it, the Beneficiary shall be entitled, subject to the provisions of Clause 69b [Beneficiary's Claims], to deduct the amounts paid but not due from the amounts payable by the Beneficiary to the Contractor or to receive reimbursement of such amounts from the Contractor within 30 days of the Beneficiary's sending of a debt note.

Clause 51 Final Payment

51.1 Final Statement of Works

Within 45 days of the approval of the Final Acceptance, the Contractor shall submit to the Supervisor, in quadruplicate, the Final Statement of Works, together with the supporting documents. The Final Statement of Works shall include:

- (a) the final contract value for all Works executed (including Variations, Provisions and/or Contractor's Documents prepared), less the corresponding value of previously paid works,
- (b) final amounts to be added or deducted for price adjustments in accordance with the provisions of Clause 48 [Price Adjustments],
- (c) final amounts to be added or deducted for Retained Amounts in accordance with the provisions of Clause 47 [Retained Amounts],
- (d) final amounts to be added or deducted for advance payment and justification thereof in accordance with the provisions of Clause 46 [Advance Payment],
- (e) final amounts to be added or deducted for Equipment and Materials in accordance with the provisions of Sub-Clause 50.2;
- (f) any other amounts which the Contractor considers himself entitled to receive under the Contract or otherwise, including those under Clauses 69 [Claims and Awards] and 70 [Disputes and Arbitration].

The Final Statement of Works shall include a breakdown of the sums by Subcontractor in accordance with the provisions of the Annexes relating to direct payment of subcontracts annexed to the Contract.

The Beneficiary shall have no further liability towards the Contractor in any way or for any matter in connection with or under the Contract or the Works execution, except where the Contractor has expressly included sums in that respect in paragraph (f) of the Final Statement of Works.

If the Contractor fails to issue the Final Statement of Works within the time specified, the Supervisor shall issue a Final Payment Certificate in accordance with the provisions of Sub-Clause 51.2 [Final Payment Certificate].

51.2 Final Payment Certificate

Within 30 days of submitting the Final Statement of Works or of the date when the Final Statement of Works should have been issued, the Supervisor shall issue a Final Payment Certificate to the Beneficiary, with a copy to the Contractor. The Payment Certificate shall have the same structure as the Statements of Works, including the breakdown of amounts by S subcontractors if applicable, except for point (f) which shall read as follows: "(f) amounts to be added to or deducted from the final value, agreed by the Parties or decided by the Supervisor, of all

amounts relating to any Claims in accordance with the provisions of clause 69 [Claims and Decisions]".

In the event that the Beneficiary and/or the Contractor do not agree with the Final Payment Certificate, either Party shall give notice of disagreement in accordance with the provisions of the disagreement], within the time and on the conditions set out in the relevant sub-clause 69c.5 [Notice of disagreement] within the deadline and under the terms provided in the respective sub-clause.

Even if a notice of disagreement is given, payment shall be made in accordance with the provisions of sub-clause 50.4 [Payment].

In the event of an agreement between the Parties and in the absence of a notice of disagreement within the deadline, the value of the Final Payment Certificate shall represent the termination of all financial obligations under the Contract. The Beneficiary shall have no further liability to the Contractor in any way or for any matter in connection with or under the provisions of the Contract or the Works execution and the Contractor shall be forfeited of his right to receive any further payment.

This sub-clause shall not limit the Beneficiary's liability in respect of his indemnity obligations in the event of fraud, wilful misconduct or misconduct.

51.3 Final Payment

The Beneficiary shall pay the amounts certified by the Supervisor within 30 days of receipt of the Final Payment Certificate, provided that there are no disputes concerning such Certificate, in accordance with the following conditions:

(a) without causing any delay in the payment period, the Beneficiary shall be entitled to correct, without further formality, arithmetical errors in any Final Payment Certificate. The Beneficiary shall immediately notify the Contractor of any arithmetical correction applied to the amount of the Final Payment Certificate issued by the Supervisor;

(b) as from the 15th day after the date of issue of the Final Payment Certificate by the Supervisor, the Contractor shall issue to the Beneficiary an invoice for the amount specified in the relevant Final Payment Certificate, as may be corrected in accordance with the above. The invoice shall include a breakdown of the amounts by Subcontractors in accordance with the provisions of the annexes concerning direct payment of subcontracts annexed to the Contract. For the avoidance of doubt, in the absence of a corresponding invoice, the final payment shall not be deemed to be due.

Where a dispute regarding the Final Payment Certificate is finally resolved in accordance with the provisions of clause 70 [Disputes and Arbitration], the Beneficiary shall pay any amounts due without delay.

Clause 52 Direct Payments to Subcontractors

52.1 Where a Subcontractor, in accordance with the provisions of the Law, expresses its option to be paid directly, the subcontract annexed to the Contract shall contain a specific annex regarding direct payment, whereby the Contractor and the Subcontractor shall (i) record this option, (ii) specify the Subcontractor's bank account and (iii) indicate, for each item in the Payment Schedule relating to the part of the Works for which the Subcontractor is appointed, the part of the amount or the corresponding percentage relating to the Subcontractor, as well as the method of treatment and application of the elements listed in points (a)-(f) of sub-clause

50.1 [Statement of Works] in relation to the Subcontractor, so as to establish the effective method of assessment and certification of the part of each payment made by the Beneficiary in accordance with the provisions of clauses 50 [Payments] and 51 [Final payment] relating to the Subcontractor. The application by the Beneficiary of the provisions relating to the direct payment of Subcontractors shall only result into the breakdown of payments made by the Beneficiary in accordance with the provisions of clauses 50 [Payments] and 51 [Final Payment] between the Contractor and the Subcontractors, without any further modification. Otherwise, the annex relating to the direct payment of each subcontract shall become null and void.

For the avoidance of doubt, the entry by the Contractor, in point (a) of a Statement of Works, of an amount relating to a part of the Works executed by a Subcontractor shall be deemed to represent the confirmation by the Contractor of the corresponding performance of that Subcontractor.

Subject to compliance with the provisions defined in the above paragraph and until the Subcontractor is replaced, if replaced, the Beneficiary shall take into account the agreement between the Contractor and the Subcontractor and shall make direct payments to the Subcontractor. The Beneficiary's application of the provisions relating to direct payment to the Subcontractor is the Beneficiary's only obligation in relation to the provisions of the subcontract. Unless the Beneficiary does not fulfill this obligation, the Contractor and each Subcontractor shall indemnify the Beneficiary, the Beneficiary's Staff and its agents and shall ensure that they are not affected by any claim, damage, loss and expense arising out of or in connection with each subcontract.

In the event that it is found, by amendment or modification by the Supervisor in a Payment Certificate of amounts previously certified, the need to recover from a Subcontractor an amount paid directly by the Beneficiary to that Subcontractor, and if the amount is not deducted from the amounts payable by the Beneficiary to the Subcontractor, it shall be paid by the Subcontractor within 30 days of the transmission of an invoice by the Beneficiary. In the event that the Subcontractor does not make such payment within the established period, the Beneficiary shall recover the respective amount from the Contractor.

Clause 53 Delayed Payments

53.1 If the Contractor fails to receive payment due in full within the deadline set out in Clause 50.4 [Payment] or Clause 51.3 [Final Payment], the Contractor shall, without further formality than sending to the Beneficiary of a detailed invoice within 60 days of receipt of payment in full, be entitled to receive interest for delayed payment, calculated monthly on the amount not paid in full.

This interest for delayed payment shall be calculated on an annual basis as follows:

(a) the reference interest rate of the National Bank of Romania, when the currency of payment is the Romanian Leu,

or

(b) the reference interest rate of the European Central Bank, when the payment currency is the euro, or

(c) the equivalent rate of the central bank of the respective State or of the equivalent institution, when the payment currency is other than the Romanian Leu or the euro, to which shall be added 8 (eight) percentage points.

Interest shall be due for the period between the expiry of the payment deadline and the date when the Beneficiary's account is debited.

Clause 54 Payments to Third Parties

54.1 The Beneficiary shall make payments due to the Contractor to third parties only after an assignment has been made in accordance with the provisions of Clause 6 [Assignment] or in accordance with the provisions of Clause 52 [Direct Payments to Subcontractors].

54.2 In the event of a legal attachment imposed on the Contractor affecting payments due to the Contractor under the Contract and without prejudice to the period provided for in Clause 53 (Delayed Payments), the Beneficiary shall have 30 days from the date on which he receives notification of the definitive cessation of the impediment to payment to resume payments to the Contractor.

Clause 55 Additional Costs

55.1 The Contractor shall act diligently to prevent, so far as possible, the occurrence of Additional Costs. Subject to the provisions of Clause 69a [Contractor's Claims] and, where, in accordance with the provisions of Sub-Clause 69c.5 [Notice of Disagreement], the Supervisor has issued a Decision on Additional Costs without a Contractor's Claim having been notified, the Contractor shall be entitled to payment of Additional Costs if and to the extent that the Contractor incurs additional costs due to any of the following causes:

(a) Administrative Orders not due to the Contractor's fault, including Variations (unless otherwise agreed in the Variation), except Variations under Sub-Clause 37.11;

(b) failure by the Beneficiary or the Beneficiary's Staff to perform their obligations under the Contract;

(c) any suspension of the Works not due to the Contractor's fault or any risk for the Contractor's responsibility;

(d) force majeure;

(e) any event or circumstance which, in accordance with the provisions of the Contractual terms, entitles the Contractor to payment by the Beneficiary of Additional Costs, including by way of damages, which is not due to the Contractor's fault.

For the avoidance of doubt, if the Contractor fails to comply with the provisions of Clause 69a [Contractor's Claims] or the provisions of Sub-Clause 69c.5 [Notice of disagreement] in the relevant cases, the Contractor shall be entitled to receive payment for any Additional Costs.

55.2 The existence of Additional Costs within the meaning of the Contractual terms requires the Contractor to prove that:

(a) such Additional Costs have been or will be reasonably incurred by the Contractor. For the avoidance of doubt: (i) a Cost cannot include the Contractor's profit, (ii) a mere risk of expenditure is not a Cost, (iii) loss of profit is not a Cost;

(b) such Additional Costs are clearly due to the cause invoked and would not have been incurred but for that cause;

(c) such Additional Costs are substantiated on the basis of the Contractor's records, which shall necessarily include financial, accounting and other data relating to the costs incurred or to be incurred by the Contractor.

Clause 56 Termination of Liability of the Parties

56.1 Final Acceptance Approval confirms the Contractor's obligations to design, execute and complete the Works and to remedy any defects within the Warranty Period. However, after Final Acceptance Approval, each Party shall be responsible for performing any obligation that remains unfulfilled on the date of Acceptance, in accordance with the provisions of the Law and the Contract. For the purpose of determining the nature and extent of unfulfilled obligations, the Contract shall be deemed to be in force.

56.2 Final Acceptance Approval shall be without prejudice to the Contractor's liability under the Law for defects in the Works.

56.3 The Contractor shall have no further liability to the Contractor in any way or for any matter in connection with or under the Contract or the Works execution after the final payment has been made in accordance with

the provisions of Sub-Clause 51.3 [Final Payment].

56.4 Notwithstanding the provisions of this Clause, a Party shall indemnify the other Party for any loss or damage suffered by that Party arising from fraud or wilful misconduct of the former Party, without any fault of the other Party.

ACCEPTANCE AND WARRANTY PERIOD

Clause 57 General Principles

57.1 The inspection and testing of the Works by the Supervisor and/or the Beneficiary in preparation for the Acceptance on Completion or Final Acceptance shall be carried out in the presence of the Contractor. The absence of the Contractor shall not represent an obstacle to the inspection provided that the Contractor has been duly notified at least 30 days before the date of the inspection.

57.2 If exceptional or meteorological circumstances make it impossible to assess the condition of the Works and/or to test them in preparation for the Acceptance on Completion or Final Acceptance, the Supervisor shall, after consulting, as far as possible, the Contractor, make a statement certifying the impossibility. The inspection and testing shall be carried out within 30 days from the date on which such impossibility ceases. The Contractor shall not invoke such circumstances to avoid the obligation to present the Works in a satisfactory condition.

Clause 58 Tests on Completion

58.1 The Works shall not be accepted until the inspections and Tests on Completion specified in the Contract have been carried out. The provisions of Sub-Clause 41.2 shall apply accordingly, except that where the tests are carried out by the Beneficiary, only (b) and (c) of that Sub-Clause shall apply.

The Contractor shall notify the Supervisor of the date on which the Inspections and Tests on Completion may commence.

58.2 Following the inspection and testing, the Supervisor shall notify the Contractor of the results of the Tests on Completion. In accordance with the provisions of the notice and within the time specified therein, the Works which do not comply with the specifications and conditions of the Contract shall be demolished and rebuilt by the Contractor or repaired. If the Contractor fails to comply with the provisions of the notice, the Beneficiary may elect, by notice given to the Contractor in accordance with the provisions of Sub-Clause 69b [Beneficiary's Claims], to carry out such demolition, reconstruction or repairs, directly or through third parties, at the Contractor's cost. The Supervisor may also require the demolition and reconstruction or repair of any Works in which Materials and/or Plant not in conformity with the provisions of the Contract have been used, or which have been executed during the suspension periods specified in Clause 38 [Suspension].

Clause 59 Use of Works before Acceptance on Completion

59.1 Where the Contract provides that the Works shall be carried out in a condition of continued use (including traffic), the provisions of sub-clauses 59.2 and 59.3 shall not apply. In such case, the Contractor shall give notice to the Supervisor after any part of the Works has been completed and is in working order in accordance with the provisions of the Contract. Unless the Contractor's notice is rejected, with detailed reasons, by the Supervisor within 15 days of receipt, the Beneficiary shall be responsible for the care of that part from the date of commencement of use which shall be the 30th day after the date of receipt of the Contractor's notice.

59.2 The Beneficiary shall not use any part of the Works (other than as a temporary measure specified in the Contract or agreed by both Parties) until the Acceptance on Completion for that part has been approved. If the Beneficiary uses any part of the Works before the Acceptance of the Works is approved, the Contractor shall cease to be responsible for the care of that part from the date on which such use commences, at which time responsibility shall pass to the Beneficiary.

59.3 If the Contractor incurs delays and/or additional costs as a result of the Beneficiary's use of any part of the Works other than as specified in the Contract or agreed by the Contractor, the Contractor shall be entitled, subject to the provisions of Clause 69a [Contractor's Claims], to:

(a) an extension of the Time for Completion for delay in accordance with the provisions of Clause 35 [Extension of Time for Completion], if the completion of the Works is or will be delayed, and

(b) payment of Additional Costs in accordance with the provisions of Clause 55 [Additional Costs].

59.4 If the Beneficiary approves Acceptance on Completion or uses a part of the Works, including a Section, (of other than as a temporary measure specified in the Contract, or agreed by both Parties), any delay penalties under sub-clause 36.4 relating to the completion of the Works remaining to be executed shall be reduced accordingly. For a delay recorded after the date of Acceptance on Completion or the date of commencement of use, the proportionate reduction of the delay penalties shall be calculated as the ratio of the value of the part of the Works received or used to the total value of the Works or Section of Works (as the case may be). The Supervisor shall proceed in accordance with the provisions of sub-clause 69c.2 [Supervisor's Decision] to

agree or Decide such parts.

Clause 60 Acceptance on Completion

60.1 Acceptance on Completion of the Works or a Section shall only be made if the following conditions are cumulatively met:

- (a) The Works or Section have been completed in accordance with the provisions of the Contract,
- (b) The Works or Section have passed the Tests on Completion in accordance with the provisions of Clause 58 [Tests on Completion],
- (c) The Contractor has fulfilled the obligations set out in the Contract so that the Works or Section may be considered complete for the purpose of Acceptance on Completion, including but not limited to the obligations set out in Sub-Clause 9.4 and 19.7.

60.2 Acceptance on Completion may also be made for parts of the Works, subject to the Law and this Contract, if they are physically and functionally distinct/independent.

60.3 The Contractor shall notify the Beneficiary and the Supervisor at least 15 days before the Works or a Section of Works are, from the Contractor's point of view, completed and ready for acceptance and shall request the Beneficiary to carry out the Acceptance on Completion.

60.4 Within 10 days from the date of notification by the Contractor, the Supervisor shall verify that the conditions for acceptance are met and shall issue to the Beneficiary, with a copy to the Contractor, a report on the Completion of the Works by which the Supervisor shall recommend to the Beneficiary, with detailed reasons, the acceptance, postponement or rejection of the acceptance of the Works.

60.5 The Beneficiary shall organize the commencement of the acceptance and shall communicate to the Contractor the established date and the structure of the acceptance committee. The acceptance committee shall record the observations and conclusions in a report in accordance with the Law.

60.6 Within 5 days after signing the minutes, the Beneficiary shall notify the Contractor of the decision to accept, suspend or reject the acceptance upon completion, with a copy of the relevant minutes signed by the Beneficiary.

In the event of suspension or rejection of the acceptance, the Beneficiary shall present, in its notification if not presented in the minutes, the motivation, as well as the works to be carried out by the Contractor and the obligations to be fulfilled in order to make it possible to accept the acceptance in accordance with the provisions of the Contract. The Contractor shall remedy and/or complete the works and fulfill the obligations, before sending a new notification in accordance with the provisions of sub-clause 60.3.

If the Beneficiary approves the Acceptance on Completion of the Works, the Beneficiary shall record, in his notification if not recorded in the minutes, (i) the date on which the Works or Section of Works were completed in accordance with the provisions of the Contract, (ii) the minor works remaining to be executed and the related deadlines, (iii) the defects, non-conformities and other non-conformities, with the related deadlines for remedy, (iv) the Claims of the Beneficiary (subject to the provisions of sub-clause 69b [Claims of the Beneficiary] regarding penalties, diminution in value and the like.

Clause 61 Warranty Period

61.1 The Contractor shall be responsible for remedying any defect or damage to any part of the Works which may occur or may arise during the Warranty Period and which:

- (a) results from the use of defective Equipment or Materials or from the Contractor's improper design or execution; and/or
- (b) results from any action or omission of the Contractor during the Warranty Period.

If any such defect or damage occurs during the Warranty Period, the Supervisor or the Beneficiary shall give notice to the Contractor of such defect or damage. The notice shall state the reasons why the Contractor is responsible for the defect or damage.

During the Warranty Period, the Contractor shall not be liable for normal wear and tear of the Works incurred, for each part of the Works, from the date when the Beneficiary commences to use that part in accordance with the provisions of Clause 59 [Use of Works before Acceptance on Completion] or, if there is no such date, from the date of approval of Acceptance on Completion. Also, the Contractor shall not be liable for wear and tear or damage resulting from improper use of the Works.

61.2 On receipt of a notice given under and in accordance with Sub-Clause 61.1, the Contractor shall remedy at his own expense any defect or damage as soon as practicable.

If during the Warranty Period a defect or damage cannot be remedied on the Site, the Contractor may, for the purpose of repair, transport the relevant parts off the Site, subject to the lodging of a security for the replacement value of the parts removed and with the prior consent of the Supervisor.

If the Contractor considers that he is not responsible, in accordance with the provisions of Sub-Clause 61.1, for the defect or damage, the Contractor shall remedy the defect or damage in accordance with the notice given but shall be entitled, subject to the provisions of Clause 69a [Contractor's Claims] to payment of Additional

Costs in accordance with the provisions of Clause 55 [Additional Costs].

61.3 If the Contractor fails to remedy a defect or damage within the period specified in the notice, the Beneficiary:

(a) may carry out the remedy works by himself or through a third party, on the Contractor's risk and (subject to the provisions of Clause 69b [Beneficiary's Claims]); or

(b) may terminate the Contract in accordance with the provisions of Clause 64 [Termination by the Beneficiary].

61.4 If any defect or damage for which the Contractor is responsible under Sub-Clause 61.1 results into the Beneficiary being materially deprived of the benefit of the Works (or any part of the Works), the Beneficiary shall, without prejudice to any other right of the Beneficiary, be entitled, subject to Sub-Clause 69b [Beneficiary's Claims], to recover all amounts paid for the parts of the Works concerned together with the cost of dismantling such parts and clearing the Site. In such event, the Contractor shall have no further obligation to remedy the part or parts of the Works concerned.

61.5 In the event of an emergency, where the Contractor is not immediately available or, if contacted, is unable to take the required action, the Beneficiary may carry out the work at the Contractor's cost (subject to Sub-Clause 69b [Beneficiary's Claims]). The Beneficiary or the Supervisor shall as soon as practicable inform the Contractor of the action taken.

61.6 If the Beneficiary's Requirements require tests to be carried out during the Warranty Period, the Beneficiary shall carry out such tests at the times and under the conditions set out in the Beneficiary's Requirements and in accordance with the manuals supplied by the Contractor, in accordance with the provisions of sub-clause 19.5, and any guidance which the Contractor is required to provide during such tests. The Beneficiary shall notify the Contractor of the carrying out of the tests 30 days before such tests. The Contractor shall be entitled to be present when carrying out of the tests. If the Contractor does not participate to carrying out of the tests, the Beneficiary may commence the carrying out of the tests and the tests shall be deemed to have been carried out in the presence of the Contractor.

If the Works or any part of the Works fail the tests, the provisions of sub-clauses 61.1, 61.2 and 61.3 shall apply as appropriate. The tests shall be repeated after the necessary remedial measures have been taken.

If the Works or any part of the Works fail the repeated tests, the Beneficiary shall be entitled, subject to the provisions of clause 69b [Beneficiary's Claims], to payment by the Contractor of any damage caused to the Beneficiary. If this results into the Beneficiary being materially deprived of the benefit of the Works (or any part of the Works), the Beneficiary shall, without prejudice to any other right of the Beneficiary, be entitled, subject to the provisions of clause 69b [Beneficiary's Claims], to recover all amounts paid for the parts of the Works concerned together with the cost of dismantling such parts and clearing the Site.

61.7 The Warranty Period, before any extension of this period in accordance with the provisions of this clause, shall be provided in the Contractual Agreement. If the Contractual Agreement does not provide it, the duration of the Warranty Period, this duration shall be as follows:— 5 years for constructions classified into importance categories A and B, within the meaning of the Law;— 3 years for constructions classified into importance category C, within the meaning of the Law;— 1 year for constructions classified into importance category D, within the meaning of the Law.

The Warranty Period, for the Works, each part of the Works received separately or Sector, shall commence on the date of approving the Acceptance on Works completion, part of the Works or Sector, as the case may be.

61.8 The Beneficiary shall be entitled, subject to compliance with the provisions of sub-clause 69b [Beneficiary's Claims], upon extension of the Warranty Period for the Works, part of the Works received separately or Sector, if and for the period during which the Works, part of the Works or Sector, including a major component of the Equipment, cannot be used for the purpose for which they were intended, during the Warranty Period, due to defects or damage (including failure to pass the tests provided by sub-clause 61.6).

Clause 62. Final Acceptance

62.1 The Contractor's performance shall not be deemed to be complete until the Final Acceptance has been approved.

62.2 Upon the expiry of the Warranty Period (including any extension pursuant to sub-clause 61.8), or, if parts or Sections have been accepted separately upon completion, of the last Warranty Period (including any extension pursuant to sub-clause 61.8), the Beneficiary shall organize the final acceptance and shall communicate to the Contractor the date set and the structure of the acceptance committee in accordance with the Law. The acceptance committee shall record its observations and conclusions in a report in accordance with the Law.

62.3 Within 5 days after signing the report, the Beneficiary shall notify the Contractor of the decision to accept, suspend or reject the final acceptance, with a copy of the related report signed by the Beneficiary.

In the event of suspension or rejection of final acceptance, the Beneficiary, without prejudice to his right to terminate the Contract in accordance with the provisions of Clause 64 [Termination by the Beneficiary], shall set out in his notification, if not set out in the minutes, the reasons, as well as the work to be carried out by the Contractor and the obligations to be fulfilled in order to make it possible to accept acceptance in accordance with the provisions of the Contract. The Contractor shall remedy and/or complete the work and fulfil the obligations.

If the Beneficiary approves Final Acceptance, the Beneficiary shall set out in his notification, if not set out in the minutes, the date on which the Contractor completed his obligations under the Contract (or the dates where parts of the Works or Sections were accepted separately upon completion), without prejudice to the provisions of Clause 56 [Termination of the Parties' Liability].

62.4 The Final Acceptance Report signed by the Beneficiary shall be the only document deemed to certify the Final Acceptance of the Works.

BREACH OF CONTRACT AND TERMINATION

Clause 63. Breach of Contract

63.1 Either Party is in breach of the Contract when it fails to fulfill its obligations under the Contract.

63.2 Where a breach of the Contract occurs, the Party aggrieved by the breach shall be entitled, to the extent and subject to the conditions provided in the Contractual terms, to the following remedies:

(a) (in case of breach of the Contract by the Contractor) the Beneficiary shall give notice to the Contractor, where the Beneficiary will show, with specific reference to the contractual provisions, the obligation not complied with by the Contractor, shall set a reasonable time within which to remedy the breach and shall state that the notice is given under this sub-clause;

(b) specific measures provided for in the Contract (including, but not limited to, those provided for in sub-clause 36.2, sub-clause 36.3, Clause 38 [Suspension], sub-clause 44.5, Clause 53 [Late Payment] or sub-clause 50.3 [Payment Certificate]);

(c) remedies and damages provided for in the Contract, subject to the provisions of Clause 69 [Claims and Awards] and/or, as the case may be, Clause 70 [Disputes and Arbitration], and/or

(d) termination of the Contract, subject to the provisions of Clause 64 [Termination by the Beneficiary], or Clause 65 [Termination by the Contractor], respectively.

Clause 64. Termination by the Beneficiary

64.1 Subject to the other relevant provisions of the Contractual terms, the Beneficiary may, by giving the Contractor 15 days' notice of termination giving reasons, terminate the Contract in any of the following circumstances:

(a) the Contractor is in breach of the Contract; for the purposes of this Clause, a breach of the Contract by the Contractor is where the Contractor fails to comply with a notice given in accordance with sub-Clause 63.2(a) within a reasonable time specified in such notice;

(b) the Contractor assigns the Contract without complying with the provisions of Clause 6 [Assignment] or subcontracts without the Beneficiary's consent (express or implied);

(c) The Contractor becomes bankrupt, goes into liquidation or if any other event occurs which (under the provisions of the Law in force) has a similar effect to that of any such situation or event;

(d) The Contractor fails to enter into or maintain in force the Performance Bond or the insurances provided for in Clause 16 [Liabilities and Insurance] or the issuer of the Performance Bond or any of the insurance companies with which the Contractor has entered into the insurances provided for in Clause 16 [Liabilities and Insurance] is unable to meet its obligations and the Contractor fails to submit within the time limit a new Performance Bond or a copy of the new insurance certificate;

(e) The Contractor is found, at the time of awarding the Contract, in one of the the following situations and, therefore, should have excluded him from the awarding procedure or is in one of the following situations at any time after awarding the Contract: has been convicted by a final judgment of a court of law within the last 5 years

for participation to a criminal organisation, for corruption, for fraud, for terrorist offences or offences related to terrorist activities, for money laundering or terrorist financing, and/or for child labour and other forms of human trafficking;

(f) The Contractor fails to fulfil any of its obligations under Clause 12.8, Clause 12a [Code of Conduct] or Clause 12b [Conflict of Interest];

(g) the third supporting party, according to the provisions of Sub-Clause 12.9, fails to comply with the obligations assumed under the firm commitment;

(h) The Beneficiary shall be entitled to recover from the Contractor the maximum amount of liquidated damages as set out in Sub-Clause 36.4;

(i) The Contractor fails to perform its obligations under Clause 61.

The termination cases provided by points (c), (e) and (f) may apply to persons who are members of the administrative, management or supervisory body of the Contractor and/or persons with powers of representation, decision or control over the Contractor.

The termination cases provided by points (a), (c), (e) and (f) may also apply to persons who are individually and jointly liable for the performance of the Contract.

The cases provided by point (f) may apply to Subcontractors.

In any of these circumstances and unless the Beneficiary, within 15 days of the date of receipt by the Contractor of the notice of termination, gives the Contractor notice of revocation of the notice of termination, the Contract shall terminate ipso jure, without notice, delay, judgment, arbitral award or any other formality, on the 16th day after the Contractor receives the notice of termination from the Beneficiary.

64.1 ^{^1} Repealed.

64.2 From the date of termination, the Contractor shall immediately take steps to complete the Works promptly and in an orderly manner and to reduce expenses to a minimum. The Contractor shall vacate the Site and hand over to the Beneficiary all Goods in the Owner's possession (including their transport and storage on the Site in accordance with the provisions of sub-clause 43.3), all Contractor's Documents and any other design documents prepared by or for the Contractor. From the date of the notice of termination until the expiry of a period of 5 days from the date of termination, the Contractor shall not remove from the Site any Temporary Works or Plant without the prior consent of the Beneficiary.

64.3 Within 5 days from the date of termination, the Beneficiary shall give the Contractor any notice of the assignment by the Contractor of any subcontracts. The Contractor shall assign any subcontract to the Beneficiary immediately after receiving the Beneficiary's notice to that effect.

64.4 Subject to the provisions of sub-clause 43.4, within 5 days from the date of termination, the Beneficiary shall give the Contractor any notice of the use by the Beneficiary of any Temporary Works and/or Plant of the Contractor necessary to ensure the stability or safety of the Works.

64.5 Subject to the provisions of Sub-Clause 43.5, within 5 days of the date of termination, the Beneficiary shall give the Contractor any request to enter into with their owners contracts for the hire of the Temporary Works and/or Plant on the same terms as those on which they were hired by the Contractor, with the Beneficiary undertaking to pay all costs involved in this regard from the date of the request.

64.6 The Contractor shall comply immediately with any notice given by the Beneficiary or the Supervisor within 5 days of reasonable steps to be taken by the Contractor to protect life or property or for the safety of the Works.

64.7 Termination shall not affect any other rights or remedies of the Beneficiary or the Contractor available to them under the Contract or the Law. The Beneficiary may complete the Works directly or by entering into another contract with a third party. The Contractor's obligation to perform the Works and the Contractor's liability for delay in completing the Works shall cease immediately upon termination. Termination shall not affect:

(a) the rights and obligations under the Contract acquired or due up to the date of termination (including but not limited to the Beneficiary's right to recover damages from the Contractor);

(b) the rights and obligations of the Contractor and the Beneficiary which survive under any provision of this Contract which is stated to survive termination of the Contract or which is required to survive termination of the Contract to give effect to the termination or the consequences of termination of the Contract.

64.8 The Supervisor shall, as soon as practicable but not later than 25 days after the date of termination, certify the value of the Works (including the Contractor's Documents produced) and all amounts which the Supervisor determines to be due to the Contractor on the termination date (including any balance in respect of the Cost of Materials, Equipment and other Goods purchased, manufactured or produced by the Contractor and in the ownership of the Beneficiary, and any Additional Costs claimed by the Contractor in accordance with the contractual provisions, if any).

64.9 After termination, a report on the Works executed by the Contractor (including the Contractor's Documents produced) shall be prepared by the Supervisor as soon as practicable after inspection of the Works and taking an inventory of the Provisional Works, Materials, Equipment and other Goods. The Contractor shall be summoned to

appear for inspection and inventory. The Supervisor shall also prepare a statement of the amounts due from the Contractor to the Beneficiary.

64.10 The Beneficiary shall not be obliged to make any payment to the Contractor until the Works are completed. After the Works are completed, the Beneficiary shall recover from the Contractor the additional costs, as applicable, of completing the Works and/or pay any balance due to the Contractor. The additional costs of completing the Works are calculated as follows: the costs actually incurred by the Beneficiary after the date of termination for the purpose of completing the Works plus the total amounts paid or due to the Contractor at the date of termination less the Contract Value at the date of termination and any amounts due from the Contractor to the Beneficiary at the date of termination.

64.11 In the event of termination in accordance with the provisions of this clause, in addition to the additional costs of completing the Works and without prejudice to any other remedies provided for in the Contract, the Beneficiary shall be entitled to recover from the Contractor any loss suffered up to an aggregate of 10% of the Contractual Price. The amounts obtained by the Beneficiary as a result of the execution of the Performance Bond shall be used to cover such additional costs or losses.

Clause 65. Termination by the Contractor

65.1 Subject to the other relevant provisions of the Contractual terms, the Contractor, by reasoned notice of termination received by the Beneficiary 15 days before the date of termination, shall be entitled to terminate the Contract in any of the following circumstances:

- (a) if the Contractor does not receive, in full, a payment due, within 120 days from the expiry of the period provided by Clause 50.4 [Payment] or Clause 51.3 [Final Payment] respectively;
- (b) the Beneficiary and/or its Staff fail to perform their obligations under the Contract, after three notices sent by the Contractor to the Beneficiary regarding such non-performance, each notice having a remedy period of at least 30 days. Any notice of termination by the Contractor given to the Beneficiary in breach of this provision shall be null and void and of no effect.
- (c) the execution of all Works is suspended for more than 210 days and the suspension is not caused by the Contractor's failure to perform any of its obligations under the Contract or by any risk for the Contractor's responsibility;
- (d) the Beneficiary becomes bankrupt, goes into liquidation or if any other event occurs which (under the provisions of the Law in force) has a similar effect to that of any such situation or event.

In any of these situations and unless the Contractor, within 15 days of the date of receipt by the Beneficiary of the notice of termination, sends the Beneficiary a notice of revocation of the notice of termination, the Contract shall terminate automatically, without notice, notice of delay, court decision, arbitration award or any other formality, on the 16th day after the Beneficiary receives the notice of termination issued by the Contractor.

65.2 The provisions of sub-clauses 64.2, 64.4, 64.5, 64.6, 64.8 and 64.9 shall apply accordingly.

Termination shall not affect any other rights or remedies of the Beneficiary or the Contractor available to them under the Contract or the Law. The Beneficiary may complete the Works directly or by concluding another contract with a third party. The Contractor's obligation to perform the Works and the Contractor's liability for delays in completing the Works shall cease immediately on the date of termination. Termination of the Contract shall not affect:

- (a) the rights and obligations under the Contract acquired or due up to the date of termination (including, but not limited to, the Contractor's right to recover damages from the Beneficiary);
- (b) the rights and obligations of the Contractor and the Beneficiary which survive under any clause of this Contract which is stated to survive termination of the Contract or which is necessary to give effect to termination or the consequences of termination of the Contract.

65.3 In the event of termination in accordance with the provisions of this Clause, the Beneficiary shall promptly:

- (a) return to the Contractor the Performance Bond;
- (b) pay to the Contractor: a. the amounts due for all Works executed, including Retained Amounts and Contractor's Documents drafted; b. the amounts due for Materials, Equipment and other Goods purchased, manufactured or produced by the Contractor and owned by the Beneficiary; c. the amounts due in respect of Additional Costs claimed by the Contractor under the Contract up to the date of termination, less the amounts due by the Contractor to the Beneficiary in respect of amounts claimed by the Beneficiary under the Contract up to the date of termination.
- (c) pay to the Contractor any other Costs incurred after or in connection with termination, loss or damage suffered by the Contractor. The maximum cumulative amount of these shall be 10% of the Contractual Price.

Clause 66. Force Majeure and Unilateral Termination

66.1 Neither Party shall be held to be in default or in breach of its obligations under the Contract if the

performance of such obligations is prevented by any force majeure circumstances arising after the date of signing the Contract.

66.2 The term force majeure, within the meaning of the Contract, includes any exceptional, unforeseeable events that cannot be controlled by either Party and that neither Party, exercising all due diligence, can overcome, such as acts of God, strikes, blockades or other industrial disturbances, acts of the public enemy, declared or undeclared wars, blockades, insurrections, riots, epidemics, landslides, earthquakes, storms, lightning, floods, local erosion, civil unrest, explosions.

66.3 Notwithstanding the provisions of Clauses 36 [Delays] and 64 [Termination by the Beneficiary], the Contractor shall not be liable for the performance of the Performance Bond, for late payment penalties or for termination of the Contract for the Contractor's fault if, and to the extent that, any delay in the execution of the Works or any other failure to perform the obligations under the Contract is the result of Force Majeure. Similarly, the Beneficiary shall not be liable, notwithstanding the provisions of Clauses 53 [Delayed Payments] and 65 [Termination by the Contractor], for the payment of interest for late payment, suspension or termination of the Contract by the Contractor if, and to the extent that, any delay in the execution of the Works or any other failure to perform the obligations under the Contract is the result of the Force Majeure event.

66.4 If either Party considers that a force majeure event that has occurred may affect the fulfillment of its obligations, it shall immediately notify the other Party and the Supervisor, giving particulars of the nature, likely duration and effect of the circumstances. Unless the Supervisor otherwise directs in writing, the Contractor shall continue to perform its obligations under the Contract to the extent reasonably possible and shall seek all reasonable alternative means for the performance of those obligations which are not prevented by the event of force majeure. The Contractor shall not implement such alternative means except with the consent of the Supervisor.

66.5 If the Contractor incurs additional costs in complying with the Supervisor's instructions or using alternative means under sub-clause 66.4, the Contractor shall, subject to the provisions of clause 69a [Contractor's Claims], be entitled to payment of Additional Costs in accordance with clause 55 [Additional Costs].

66.6 If force majeure circumstances have occurred and continue for 180 days, preventing the execution of a substantial part of the Works or the making of payments, then, without regard to any extension of the Time for Completion granted to the Contractor, either Party shall be entitled to terminate the Contract by giving the other Party 30 days' notice of termination, giving reasons, before the date of termination. If, at the end of the 30-day period, the force majeure continues, the Contract shall terminate ipso jure, without notice, notice of delay, court order, arbitral award or any other formality and the Parties shall be released from further performance of the Contract, without prejudice to the rights of either Party in respect of any previous breach of the Contract.

66.7 The Beneficiary may, at any time and with immediate effect, unilaterally terminate the Contract by giving notice to the Contractor to that effect. Without prejudice to the obligations and liability of the other Party The Beneficiary shall not be obliged to indicate to the Contractor the reasons for the unilateral termination. In the event of unilateral termination, the Beneficiary shall not continue the Works either by its own means or by concluding a new contract for a period of 3 years from the date of unilateral termination. Otherwise, the Contractor shall be entitled to receive payments from the Beneficiary in accordance with the provisions of sub-clause 65.3.

66.8 In the event of termination pursuant to the provisions of sub-clause 66.6 and in the event of termination by unilateral termination pursuant to the provisions of sub-clause 66.7, the provisions of sub-clauses 64.2, 64.4, 64.5, 64.6, 64.8 and 64.9 shall apply accordingly.

Termination shall not affect any other rights or remedies of the Beneficiary or the Contractor available to them under the Contract or the Law. The Beneficiary may complete the Works directly or by entering into another contract with a third party. The Contractor's obligation to design and execute the Works and the Contractor's liability for delays in completing the Works shall cease immediately on the date of termination. Termination of the Contract shall not affect:

- (a) the rights and obligations under the Contract acquired or due up to the date of termination;
- (b) the rights and obligations of the Contractor and the Beneficiary which survive under any clause of this Contract which is stated to survive termination of the Contract or which is necessary to give effect to termination or the consequences of termination of the Contract.

After termination for force majeure or unilateral termination, the Beneficiary shall promptly:

- (a) return to the Contractor the Performance Bond;
- (b) pay to the Contractor: a. the amounts due for all Works executed, including Retained Amounts and Contractor's Documents produced; b. amounts due for Materials, Equipment and other Goods purchased, manufactured or produced by the Contractor and owned by the Beneficiary; c. amounts due in respect of Additional Costs claimed by the Contractor under the Contract up to the date of termination, less amounts due by the Contractor to the Beneficiary in respect of amounts claimed by the Beneficiary under the Contract up to the date of termination.

(c) pay to the Contractor any other Costs incurred after or in connection with the termination or unilateral termination. The maximum amount thereof shall be 10% of the Contractual Price.

66.9 If any of the following situations occurs:

(a) The Contract has been or is subject to a modification (substantial or otherwise) which, in accordance with the provisions of the Law, requires a new award procedure,

(b) The Contract should not have been awarded to the Contractor in view of a serious breach of obligations arising from the Treaties and European Directives in the field of public procurement, declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union, or

(c) events or circumstances beyond the control of the Parties (including but not limited to force majeure) occur which make it impossible or unlawful for one or both Parties to perform their contractual obligations or which, in accordance with the provisions of the Law, entitle the Parties to be exempted from further performance of the Contract, then, after notice given by one Party to the other Party of those events or circumstances: (a) the Parties shall be relieved of further performance of the Contract, without prejudice to the rights of either Party in respect of any prior breach of the Contract, and (b) the amount payable by the Beneficiary to the Contractor shall be the same as that which would have been payable under Sub-Clause 66.8 if the Contract had been terminated due to the force majeure event.

Clause 67. Insolvency and Bankruptcy

67.1 If general insolvency proceedings are opened against the Contractor, including any member (including the leader) in the case of an association, consortium or other grouping of two or more persons, or against a Subcontractor or third party supporter, the Contractor shall, within 30 days of the Supervisor's notification in this regard, submit to the Beneficiary a detailed analysis of the impact of this event on the performance of the Contract and the fulfilment of the obligations, with a plan of measures that the Contractor will take to prevent any adverse impact.

Where the Contractor establishes an association, consortium or other grouping of two or more persons, the plan of measures shall include a presentation of the specific manner in which the individual and joint liability of each member will be exercised in accordance with the provisions of sub-clause 12.8. In such case, the Contractor may proceed to certain modifications or reallocations of responsibilities within the association agreement (without changing the members or the status of the association), including, except as provided in sub-clause 12.8, a change in the leader of the association, without the prior consent of the Beneficiary being required and without such modifications or reallocations being considered Amendments within the meaning of clause 37 [Amendments].

67.2 If the Contractor establishes an association, consortium or other grouping consisting of two or more persons and if the Contractor (including the leader or any other member) becomes bankrupt, goes into liquidation or if any other event occurs which (according to the provisions of the Law in force) has a similar effect to that of any such situation or event, the Contractor shall, within 30 days of the Supervisor's notification in this regard, submit to the Beneficiary a detailed analysis of the impact of this event on the performance of the Contract and the fulfilment of the obligations, with a plan of measures that the Contractor will take to prevent any adverse impact. These provisions shall not prejudice any rights of the Beneficiary, including those related to point (c) of sub-clause 64.1.

The plan of measures shall include a presentation of the specific manner in which the individual and joint liability of each member will be exercised according to the provisions of sub-clause 12.8. In this case, the Contractor may make certain modifications or reallocations of responsibilities within the association agreement (without changing the members who have not become bankrupt or similar or the status of the association), including, except for the provisions of sub-clause 12.8, the removal from the association of the bankrupt or similar member and/or the change of the leader of the association, without the prior consent of the Beneficiary being necessary and without such modifications or reallocations being considered Modifications within the meaning of clause 37 [Modifications].

SETTLEMENT OF DISPUTES AND LAW

Clause 68. Risks, Risk Allocation and Indemnification

68.1 Beneficiary's Risks

The Beneficiary's Risks are as follows:

- (a) the issuance by the Supervisor of an Administrative Order in breach of the terms of this Contract, including in the event of delay in issuance;
- (b) the failure of the Beneficiary to comply with the terms of this Contract regarding the making available of the Site, including in the event of delay in making available;
- (c) errors in topographic landmarks and reference systems, initially provided for in the Contract or communicated by the Supervisor, which a diligent contractor could not have identified so as to avoid delays or additional costs;
- (d) errors, deficiencies and/or incompleteness of the Beneficiary's Requirements and/or the Beneficiary's Documents;
- (e) natural or artificial physical conditions, including unexploded ordnance or underground utilities, and other physical obstacles or pollutants, which could not reasonably have been foreseen by a diligent contractor at the time of submitting the Tender, occurring during the Works execution, except for exceptional adverse weather conditions;
- (f) the discovery of archaeological remains or the like, which could not reasonably have been foreseen by a diligent contractor at the time of submitting the Tender;
- (g) delay in testing of Materials, Equipment or Works by the Beneficiary or Supervisor during the Works execution and/or the Tests on Works completion, as well as tests carried out during the Warranty Period or tests carried out in breach of other contractual clauses;
- (h) suspension of the Works by the Supervisor for reasons not attributable to the Contractor;
- (i) use of any part of the Works prior to Acceptance on Completion, otherwise than in the manner provided in the Contract;
- (j) exclusion from the scope of the Contract of any Works or part of the Works;
- (k) change of Law after the Reference Date;
- (l) force majeure.

68.2 Consequences of Beneficiary's Risks

If the Contractor experiences delays and/or incurs additional costs as a result of the occurrence of any Beneficiary's Risks and unless otherwise provided in other clauses of the Conditions of Contract, the Contractor shall, subject to the provisions of sub-clause 69a [Contractor's Claims], be entitled to:

- (a) an extension of the Time for Completion for delay in accordance with the provisions of clause 35 [Extension of Time for Completion], if the Works completion is or will be delayed; and
- (b) payment of the Additional Costs, in accordance with the provisions of Clause 55 [Additional Costs], to which shall be added a profit of 2% of such Costs (or the profit share explicitly stated by the Contractor in the Tender, if this is less than 2%) in cases expressly mentioned in the Contractual terms.

68.3 Indemnification

Without prejudice to any other provisions of the Contractual terms, the Beneficiary shall indemnify the Contractor, including its Staff, for any bodily injury, death or illness arising out of the negligence of the Beneficiary, including its Staff, or the breach of the Contract by the Beneficiary, including its Staff, unless such breach is due to the negligence of the Contractor.

68.4 Limitation of Liability

Except as otherwise expressly provided in the Conditions of Contract, the Beneficiary shall not be liable to the Contractor for:

- (a) loss of another contract; or
- (b) any financial loss to the Contractor (other than Additional Costs).

68.5 Contractor's Risks

Except for Beneficiary's Risks and other circumstances expressly provided in the Contractual terms which entitle the Contractor to an extension of the Time for Completion, payment of Additional Costs or other remedies and damages, the Contractor shall not be entitled to an extension of the Time for Completion, payment of Additional Costs or other remedies and damages for any other reason which constitutes the Contractor's Risks.

By signing the Contract, the Contractor expressly states that it concludes the Contract taking into account all the relevant circumstances in connection with the Contract fulfillment and that, except for the Beneficiary's Risks and other situations expressly provided in the Contractual terms which entitle the Contractor to an extension of the Execution Period, payment by the Beneficiary of additional Costs or other remedies and damages, the Contractor undertakes all other risks.

Clause 69. Claims and Decisions

Clause 69a Contractor's Claims

69a.1 Notification of the Contractor's Claim

In the event of a situation qualifying as a Beneficiary's Risk or another situation in which respect the Contractual terms expressly provide that the Contractor may be entitled to an extension of the Execution Period and/or payment of Additional Costs, and the Contractor considers himself entitled to an extension of the Time for Completion and/or payment by the Beneficiary of Additional Costs, losses and/or profits, the Contractor shall notify the Beneficiary, with a copy to the Supervisor.

The notification shall refer to:

- (a) the provisions of this sub-clause, in which basis the Contractor's Claim is filed;
- (b) the specific sub-clauses of the Conditions of Contract, applicable to the Claim concerned;
- (c) a description of the event or circumstance and the date of its occurrence.

The notification shall be sent within 30 days of the date of the occurrence of the event or circumstance. If notification has not been given within 30 days of the occurrence of the event or situation, the Contractor shall bear all responsibility and risks for any consequences (in terms of time and costs) caused by the event or situation in question up to the date 30 days prior to the date of notification. The Contractor shall not be entitled to any extension of the Time for Completion or to any payment of any Additional Costs as a result of the event or situation during the period between the date of the occurrence of the event or situation and the date 30 days prior to the date of notification. If notification has not been given within 30 days of the occurrence of the event or situation, the Time for Completion shall not be extended and the Beneficiary shall not pay any additional costs in relation to the consequences of the event or situation up to the date 30 days prior to the date of notification.

69a.2 Details of the Contractor's Claim

Within 30 days of the date of notification of the Claim, the Contractor shall submit to the Beneficiary the details of his Claim. The Contractor's Claim shall be sufficiently detailed and drawn up in such a manner that its elements can be verified and shall be presented in a clear manner so that it can be read and understood by any person not familiar with the performance of the Contract.

The Contractor shall be entitled to an extension of the Time for Completion and payment of Additional Costs, losses and/or profits only for those elements which are not the responsibility and risk of the Contractor.

The details of the Contractor's Claim shall be based on daily records and the Contractor shall be required to substantiate his claims. The Contractor shall submit the relevant daily records as part of the details of the Claim.

Where the Contractor intends to submit multiple Claims in a single package simultaneously (global Claims, compendium of Claims, etc.), the Contractor shall detail the financial and time impact for each Claim separately. The Contractor shall set out the event or situation relating to the compensation sought in sufficient detail to enable the Beneficiary to be aware of the case which is the subject of the Claim.

In the event of a Claim for an extension of the Execution Period, the Contractor shall submit a revised Execution Schedule. The Execution Schedule shall include at least the items listed in Clause 17 [Execution Schedule].

Where the Contractor is requesting financial compensation, these shall be separated and detailed as follows:

- (a) costs relating to the design and execution of the Works;
 - (b) costs relating to indirect site costs;
 - (c) any other costs and losses (indirect expenses with the main office, financial obligations, loss of profit, etc.).
- In the event that the Contractor does not submit the financial compensation separately, the Claim will be rejected in accordance with sub-clause 69c.1 [Admission/rejection in principle by the Supervisor of the Claim] and the Contractor shall be deprived of the right to request financial compensation from the Beneficiary as a result of the event or situation that is the subject of the Claim.

The Contractor shall clearly state under which provisions of the Contractual Conditions (with indication of the relevant sub-clause) he considers himself entitled to time and/or financial compensation, in order to correctly establish the contractual merit of his request. Otherwise, the Claim shall be rejected in accordance with sub-clause 69c.1 [Acceptance/rejection in principle of Claim by Supervisor] and the Contractor shall be deprived of the right to claim time and/or financial compensation from the Beneficiary as a result of the event or situation that makes the scope of the Claim.

(ii) The 30-day period for submitting the details may only be extended at the request of the Contractor and with the approval of the Supervisor. The Contractor shall be entitled to submit the details after the expiry of this period only if it provides justified reasons for the impossibility of submitting the details of the Claim within this period. The reasons provided by the Contractor may not relate to situations or events within the Contractor's control or involving the Contractor's fault.

If the Supervisor:

(a) does not approve the Contractor's request to extend the deadline for submitting the details; or

(b) does not agree with the reasons given; or

(c) does not respond within 5 days of the Contractor's request being sent,

the Contractor may issue a notice of disagreement within 10 days, in accordance with the provisions of this clause, in which case the provisions of clause 70 [Disputes and Arbitration] shall apply. The content of the notice of disagreement is set out in sub-clause 69c [Supervisor's Decision]. In order to settle the Claim, the Contractor may make use of the provisions of clause 70 [Disputes and Arbitration]. If no notice of disagreement is given within this period, the Contractor shall be entitled to receive any extension of the Time for Completion or financial compensation as a result of the event or situation which is the subject of the Claim.

(iii) If the Contractor fails to submit the details within the 30-day period or within such period as the Supervisor may approve, then the Contractor shall be entitled to receive any extension of the Time for Completion or financial compensation as a result of the event or situation which is the subject of the Claim. (iv) If the event or situation is ongoing or is a continuing event or situation, the Contractor shall update the details of the Claim every 30 days. If the Contractor fails to submit the details within the 30-day period, the provisions of paragraph (iii) of this sub-clause shall apply.

The 30-day period for submitting details may only be extended in accordance with the provisions of paragraph (ii) of this sub-clause.

Upon the termination of the continuing event or situation, the Contractor shall submit final details within 30 days. If the Contractor fails to submit final details within 30 days, the provisions of paragraph (iii) of this sub-clause shall apply.

The 30-day period for submitting final details may only be extended in accordance with the provisions of paragraph (ii) of this sub-clause.

(v) After submitting the (final) details in accordance with the provisions of this sub-clause, the provisions of Clause 69c [Supervisor's Decision] shall apply.

Clause 69b Beneficiary's Claims

69b.1 Notification of Beneficiary's Claim

In the event that the Contractor breaches its obligations under the Contract or an event or circumstance occurs which represents a Contractor's Risk, and the Beneficiary considers itself entitled to an extension of the Warranty Period and/or financial compensation, the Beneficiary shall notify the Contractor, with a copy to the Supervisor.

The notification shall refer to:

(a) the provisions of this sub-clause, in which basis the Beneficiary's Claim was filed,

(b) the specific sub-clauses of the Contract Conditions, applicable to the Claim concerned,

(c) the description of the event or circumstance and the date of its occurrence.

Unless the Beneficiary can demonstrate that it was unaware of the event or circumstance, the notification shall be sent within 30 days of the date of the occurrence of the event or circumstance. If the notification has not been sent within 30 days of the date of the occurrence of the event or situation, the Beneficiary assumes full responsibility and all risks for any consequences (related to the Warranty Period and financial compensation) caused by the event or situation in question until the date 30 days before the date of notification. The Beneficiary shall not be entitled to any extension of the Warranty Period or financial compensation as a result of the event or situation during the period between the date of the occurrence of the event or situation and the date 30 days before the date of notification. In the event that the notification has not been sent within 30 days of the date of the occurrence of the event or situation, the Warranty Period shall not be extended and the Contractor shall not pay any financial compensation in relation to the consequences of the event or situation until the date 30 days before the date of notification.

If the Beneficiary can prove that it was not aware of the event or situation, the notification shall be sent within 30 days of the Beneficiary becoming aware of the event or situation, in which case it shall be entitled to an extension of the Warranty Period and/or financial compensation from the date of the occurrence of the event or situation.

69b.2 Details of the Beneficiary's Claim

Within 30 days of the date of notification of the Claim, the Beneficiary shall submit to the Contractor the details of its Claim. The Beneficiary's Claim must be sufficiently detailed and drawn up in such a way that its elements can be verified and be presented clearly so that it can be read and understood by any person who is not familiar with the Contract execution.

The Beneficiary shall be entitled to an extension of the Warranty Period and financial compensation only for those elements that are not the responsibility and risk of the Beneficiary.

The Beneficiary must prove its requests in the details of the Beneficiary's Claim.

In the event that the Beneficiary intends to submit several Claims in a single package simultaneously (global Claims, compendium of Claims, etc.), the Beneficiary is obliged to detail the financial impact and related to the extension of the Warranty Period for each Claim, separately. The Beneficiary is obliged to present the event or situation related to the compensation requested with sufficient details so that the Contractor is aware of the case that makes the scope of the Claim.

In the event of a Claim for an extension of the Warranty Period, the Beneficiary shall present and justify the new Warranty Period resulting from the Claim.

If the Beneficiary requests financial compensation, this shall be presented in detail, including the contractual basis for it.

The Beneficiary shall clearly state under which sub-clauses it submitted the Claim for the extension of the Warranty Period and/or financial compensation. Otherwise, the Claim shall be rejected in accordance with the provisions of sub-clause 69c.1 [Acceptance/rejection in principle by the Supervisor of the Claim] and the Beneficiary shall be deprived of the right to receive any extension of the Warranty Period or financial compensation as a result of the event or situation that is the subject of the Claim.

(ii) The 30-day period for submitting details may only be extended following the Beneficiary's request and with the Supervisor's approval. The Beneficiary shall have the right to submit the details after the expiry of this period only if it presents justified reasons regarding the impossibility of submitting the details of the Claim within this period. The reasons presented by the Beneficiary may not concern situations or events within the control of the Beneficiary or involving the fault of the Beneficiary.

In the event that the Supervisor:

(a) does not approve the Beneficiary's request to extend the deadline for submitting the details; or

(b) does not agree with the reasons presented, or

(c) does not respond within 5 days of the Beneficiary's request being submitted,

The Beneficiary may issue a notice of disagreement within 10 days, in accordance with the provisions of this clause, in which case the provisions of clause 70 [Disputes and Arbitration] shall apply. The content of the notice of disagreement is specified in sub-clause 69c.5 [Notice of Disagreement]. In order to settle the Claims, the Beneficiary may make use of the provisions of clause 70 [Disputes and Arbitration]. If no notice of disagreement is given within this period, the Beneficiary shall be entitled to receive any extension of the Warranty Period or financial compensation as a result of the event or situation that is the subject of the Claim;

(iii) If the Beneficiary does not submit the details within the 30-day period or within the period approved by the Supervisor, then the Beneficiary shall be entitled to request an extension of the Warranty Period or any financial compensation from the Contractor as a result of the event or situation that is the subject of the Claim; (iv) If the event or situation is ongoing or is a continuing event or situation, the Beneficiary shall update the details of the Claim every 30 days. In the event that the Beneficiary does not submit the details within the 30-day period, the provisions of paragraph (iii) of this sub-clause shall apply.

The 30-day period for submitting details may be extended only in accordance with the provisions of paragraph (ii) of this sub-clause.

Upon the termination of the event or situation, the Beneficiary shall submit final details within 30 days. If the Beneficiary fails to submit the details within the 30-day period, the provisions of paragraph (iii) of this sub-clause shall apply.

The 30-day period for submitting final details may be extended only in accordance with the provisions of paragraph (ii) of this sub-clause.

(v) After submitting the (final) details in accordance with the provisions of this sub-clause, the provisions of clause 69c [Supervisor's Decision] shall apply.

Clause 69c Supervisor's decision

69c.1 Supervisor's Acceptance/Rejection in Principle of Claim

Upon receipt of the (final) particulars of a Claim, the Supervisor shall:

(a) verify that the Contractual provisions relating to the notification of the Claim and its particulars, as well as the content of the Claim, have been complied with; and

(b) verify whether there is contractual merit under the sub-clauses referred to in the Claim.

If the conditions set out in (a) and (b) above are met, the Supervisor shall accept the Claim in principle within 30 days of receipt of the (final) particulars and sub-clause 69c.2 [Supervisor's Decision] shall apply.

If one of the conditions set out in (a) and (b) above is not met, the Supervisor shall issue a reasoned notice of

rejection in principle of the Claim within 30 days of receipt of the (final) particulars. In such event, either Party may, within 10 days of receipt of the notice, give notice of disagreement in accordance with the provisions of this sub-clause and sub-clause 69c.5 [Notice of Disagreement], in which case the provisions of clause 70 [Disputes and Arbitration] shall apply. If no notice of disagreement is given within such period, the Parties shall be deemed to have forfeited any right to any extension of time or financial compensation arising from the event or circumstance giving rise to the Claim.

If the Supervisor does not give notice of acceptance/rejection in principle of the Claim within 30 days of receipt of the (final) particulars, the Claim shall be deemed to have been rejected in principle. In such event, either Party may give notice of disagreement in accordance with the provisions of this sub-clause and sub-clause 69c.5 [Notice of Disagreement] within 10 days of the expiry of such period, in accordance with the provisions of this sub-clause, in which case the provisions of clause 70 [Disputes and Arbitration] shall apply. If no notice of disagreement is given within such period, the Parties shall have forfeited the right to receive any extension of time or financial compensation as a result of the event or situation that is the subject of the Claim.

Any notice issued by the Supervisor regarding the admission/rejection in principle of the Claim issued after the expiry of the 30-day period shall have no effect.

69c.2 Supervisor's Decision

Where the Supervisor has issued a notice of acceptance in principle of the Claim, or whenever it is provided in the Contract that the Supervisor will Decide or issue a Decision on a matter, the Supervisor shall within 30 days of acceptance in principle of the Claim, or from the time when the matter is submitted to the Supervisor, issue a Decision by completing the steps set out below.

(a) Consultation Period

Within 15 days of accepting in principle the Claim, or from the date when the matter is submitted to the Supervisor, or within such time as the Beneficiary and the Contractor may agree, the Supervisor shall consult with the Parties, jointly and/or separately, with a view to reaching an agreement. After the consultation period has ended and if there are any matters on which agreement has not been reached, the provisions of point (b) of this sub-clause shall apply to such matters.

If one or both Parties do not participate to the consultations, the consultation procedure shall be deemed to have been followed and the provisions of point (b) of this sub-clause shall apply.

(b) Decision

The Supervisor shall issue the Decision for the elements on which no agreement has been reached between the Parties within 15 days of the end of the consultation period. The Decision shall also include the reasons. The Supervisor's Decision shall refer separately to the impact on the time period (if any) and to financial compensation (if any). The Decision shall be transmitted immediately (on the day it is issued) to the Beneficiary and the Contractor.

If either Party disagrees with the Decision issued by the Supervisor, either Party may give notice of disagreement to the other Party in accordance with the provisions of this sub-clause and sub-clause 69c.5 [Notice of Disagreement] within 10 days of the date of the Decision. The provisions of clause 70 [Disputes and Arbitration] shall apply to settle the matter for which the Supervisor has issued a Decision.

If no notice of disagreement is given within this period, the Decision issued shall be final and binding on the Parties, who shall implement it without delay. If a Party refuses to comply with the Decision of the Supervisor which has become final and binding, the other Party may take the refusal directly to arbitration in accordance with the provisions of clause 70 [Disputes and Arbitration].

If the Supervisor does not issue a Decision within the period referred to in point (b) of this sub-clause, either Party may give notice of disagreement in accordance with the provisions of this sub-clause and sub-clause 69c.5 [Notice of Disagreement] within 10 days of the expiry of the period for issuing the Decision. Any Decision issued by the Supervisor after the expiry of the contractual term shall have no effect. Either Party may have recourse to the provisions of clause 70 [Disputes and Arbitration], in order to resolve the matter for which the Supervisor should have issued a Decision.

If the Supervisor's Decision is not issued within the period for the Decision and no notice of disagreement is issued within the period for the notice of disagreement, the Parties shall be deprived of the right to receive any extension of time or financial compensation related to the matters for which the Supervisor's Decision was requested.

69c.3 Implementation of Supervisor's Decision on Contractor's Claim.

i. Implementation of the Decision on the Extension of the Performance Bond

If the Supervisor has issued a Decision in accordance with the provisions of sub-clause 69c.2 [Supervisor's Decision] granting an extension of the Performance Period, the Decision shall be binding on the Parties and the Parties expressly agree and confirm that due compliance with the Supervisor's Decision is a contractual obligation of each Party, with the following notes: if a Party refuses to accept the Supervisor's Decision by sending a notice of disagreement in accordance with sub-clause 69c.2 [Supervisor's Decision] and sub-clause 69c.5 [Notice of

Disagreement], no liquidated damages shall apply for the period of time specified by the Supervisor, until a final and binding agreement or award is issued for the Parties in accordance with the provisions of clause 70 [Disputes and Arbitration].

ii. Implementation of Financial Compensation

Unless otherwise agreed between the Parties, if the Supervisor has issued a Decision in accordance with the provisions of sub-clause 69c.2 [Supervisor's Decision] for the payment of additional costs to the Contractor, the Decision shall be binding and shall be immediately implemented by the Parties only in respect of those costs which are incidental to the design and execution of the Works. The Parties expressly agree and confirm that due compliance with the Supervisor's Decision in relation to these items is a contractual obligation of each Party, with the following mentions:

(a) If the Beneficiary refuses (explicitly or implicitly) to pay the additional costs relating to the design and execution of the Works in accordance with the Supervisor's Decision and/or the Supervisor refuses (explicitly or implicitly) to certify for payment those items of his Decision relating to the design and execution of the Works, the Contractor may suspend the execution of the Works in accordance with the provisions of sub-clause 38.2 and, after three notices to the Beneficiary, terminate the Contract in accordance with the provisions of clause e (Termination by the Contractor).

(b) The Contractor may, within 90 days of submitting the Statement of Works in which the works relating to the Supervisor's Decision are included, provided that he has not received payment therefor, send a notice of disagreement in accordance with the provisions of sub-clause 69c.5 [Notice of Disagreement]. In such case the Contractor may take the refusal to implement the Supervisor's Decision to arbitration only for the costs relating to the design and execution of the works Decided by the Supervisor.

69c.4 Implementation of the Supervisor's Decision on the Beneficiary's Claim

If the Supervisor has issued a Decision in accordance with the provisions of sub-clause 69c.2 [Supervisor's Decision], the Decision shall be binding on the Parties and the Parties expressly agree and confirm that due compliance with the Supervisor's Decision represents a contractual obligation of each Party until it is reviewed, if reviewed, by amicable settlement or arbitration in accordance with the provisions of clause 70 [Disputes and Arbitration].

69c.5 Notice of Disagreement

A Notice of Disagreement shall be given by a Party to the other Party, on the terms and within the time limits provided for in this clause. The notice of disagreement shall contain at least the following:

- (a) a statement of the sub-clause under which it was issued;
- (b) a description of the elements and/or circumstances that are in disagreement;
- (c) the reasons for which the notice was issued.

If the notice of disagreement is not issued within the deadlines set out in the Contract, the notice shall be null and void and of no effect.

After the issuance of a notice of disagreement, the provisions of clause 70 [Disputes and Arbitration] shall apply.

Clause 70. Disputes and Arbitration

70.1 Disputes

A dispute shall be deemed to have arisen between the Parties from the date when a Party sends a notice of disagreement to the other Party subject to the provisions of sub-clause 69c.5 [Notice of Disagreement] or, in the case of any other dispute for which the Contractual Conditions do not provide for the issuance of a notice of disagreement, from the date when a Party notifies the other Party of a dispute.

70.2 Amicable Settlement. In case of any dispute, both Parties shall attempt to settle the dispute amicably, before the commencement of arbitration or court proceedings. The Parties may agree to resort to dispute settlement directly or through a mediator. If either Party refuses to settle the dispute amicably through a mediator and the Parties do not reach an amicable settlement of the dispute directly, either Party may resort to dispute settlement through arbitration or through a court of law, but not earlier than 90 days from the date of the Supervisor's Decision. If the Parties resort to the dispute settlement through a mediator, either Party may resort to dispute settlement through arbitration or through a court of law within 30 days of sending by either Party of a notification to the other Party waiving the amicable settlement of the dispute through a mediator, but not earlier than 90 days from the date of the Supervisor's Decision. If no Decision has been issued by Supervisor, the Parties shall be obliged to settle the dispute amicably directly or through a mediator before the commencement of arbitration or court proceedings. Arbitration or court proceedings may commence within 90 days of the conclusion of the mediation or direct negotiation procedure.

70.2 ^1 The manner of settlement of disputes, through the courts of common law or through arbitration, shall be provided by the Beneficiary in the awarding documentation.

70.3 Arbitration

Except for cases where disputes are settled amicably, according to sub-clause 70.2 [Amicable Settlement], any dispute arising out of or in connection with this Contract shall be settled by arbitration, according to the rules of arbitration procedure of the Court of International Commercial Arbitration under the Romanian Chamber of Commerce and Industry. The applicable law shall be that set out in Clause 71 [Law].

In relation to a Contractor's Claim or a Client's Claim, either Party may resort to arbitration in any of the following circumstances:

- (a) there is a Supervisor's Decision issued within the relevant deadline provided by the terms of this Contract, in respect of which a notice of disagreement has been given within the relevant deadline provided by this Contract, and the applicable provisions of Sub-Clause 70.2 [Amicable Settlement] have been complied with; or
 - (b) the Supervisor has not issued the Decision within the relevant deadline provided by the terms of this Contract, and a Party has given a notice of disagreement within the relevant deadline provided by this Contract, and the applicable provisions of Sub-Clause 70.2 [Amicable Settlement] have been complied with;
 - (c) Under the terms of this Contract, a notice of disagreement has been given in accordance with the provisions of sub-clause 69c.5 [Notice of Disagreement], and the applicable provisions of sub-clause 70.2 [Amicable Settlement] have been complied with;
 - (d) the dispute concerns the failure of either Party to comply with a Decision of the Supervisor which is final and binding. In such event, either Party may choose to resort to arbitration alone, without regard to the provisions of sub-clause 70.2 [Amicable Settlement];
 - (e) the dispute concerns the failure of either Party to comply with the binding provisions of a Decision of the Supervisor under sub-clause 69c.3 [Enforcement of Decision of the Supervisor on the Contractor's Claim] or 69c.4 [Enforcement of Decision of the Supervisor on the Beneficiary's Claim]. In such event, either Party may choose to proceed with the refusal to arbitrate, without regard to the provisions of Sub-Clause 70.2 [Amicable Settlement];
- Disputes not involving a claim by the Contractor or a claim by the Beneficiary shall be settled by arbitration, subject to the provisions of Sub-Clause 70.2 [Amicable Settlement]. The arbitrator(s) shall have full authority to access and review any certificate, decision, instruction, opinion or assessment made by the Supervisor relevant for the settlement of the dispute. The Supervisor shall not be precluded from being summoned as a witness and giving evidence before the arbitrator(s) on any matter relevant for the dispute.

None of the Parties shall be limited in its legal actions before the arbitrator(s) to the evidence or arguments previously submitted to the Supervisor in order to obtain a decision or to the reasons given in the notice of disagreement. Any Decision of the Supervisor shall be admissible as evidence in the arbitration proceedings.

By way of exception to the provisions of this sub-clause, where the Beneficiary has provided in the awarding documentation for the settlement of disputes through the courts of common law, the provisions of sub-clause 70.6 [Courts of common law] shall apply

70.4 Appointment of arbitrators and their number

Unless otherwise provided in the Contractual Agreement, disputes shall be settled by three arbitrators. The appointment of the arbitrator or arbitrators shall be carried out in accordance with the rules of arbitration procedure of the Court of International Commercial Arbitration under the Romanian Chamber of Commerce and Industry.

70.5 Place and Language of Arbitration

Unless otherwise provided in the Contractual Agreement, the place of arbitration shall be Bucharest and the arbitration shall be conducted in Romanian language.

70.6 Common Law Courts. Except for cases where disputes are settled amicably, in accordance with subclause 70.2 [Amicable Settlement], in applying the provisions of art. 53 para. (1st) of Law no. 101/2016 on remedies and appeals in matters of awarding public procurement contracts, sectoral contracts and works concession and service concession contracts, as well as for the organization and functioning of the National Council for the Settlement of Complaints, as amended and completed, the processes and requests arising from the execution of administrative contracts, as well as those arising from the termination, resolution, unilateral cancellation or early termination of public procurement contracts shall be settled in first instance, urgently and preferentially, by the civil section of the court in which jurisdiction is headquartered the contracting authority, if such a modality has been provided by the Beneficiary in the awarding documentation.

Clause 71. Law

71.1 Unless otherwise provided in the Contract Agreement, the Contract shall be governed by the Romanian law.

CONTROL AND AUDIT

Clause 72. Control and audit

72.1 The Contractor shall allow all authorized inspection and audit bodies to verify, by examination of documents or by on-the-spot verification, the implementation of the Contract and, if necessary, to carry out a full financial and

accounting audit, making available the accounting documents and any other relevant document regarding the financing of the Contract, in accordance with the procedures established by the relevant Romanian legislation and, in the case of projects financed from non-reimbursable funds of the European Union budget and/or from funds of the Financial Institutions, by the European and Romanian legislation for the protection of the financial interests of the European Union against irregularities, fraud or other deviations from the applicable legislation, respectively the procedures established by the Financial Institutions. These verifications may take place within a period of up to 7 years after the final payment.

For this purpose, the Contractor shall allow unrestricted access to the representatives of the authorized verification and control bodies on the Site or in the places where the Contractor carries out its activity, including to its IT systems and to all documents related to the project and to the database regarding the technical and financial-accounting management of the project and shall take all necessary measures to facilitate the activity of these verification and control bodies. Access granted to the representatives of the verification and control bodies shall be on the basis of confidentiality with regard to third parties, without violating the Law. The documents shall be available to facilitate their examination, and the Contractor shall inform the Beneficiary of the location of the documents.

The Contractor guarantees that the rights of the inspection and control bodies to carry out audits, controls and verifications will be applicable to the same extent, under the conditions and in accordance with the rules provided by this clause, to all Subcontractors or any persons who carry out/have carried out/will carry out, directly or indirectly, activities for the Contractor in connection with the Contract..

SPECIFIC TERMS FOR THE CONTRACT OF DESIGN AND EXECUTION SERVICES (TP+ED+TDBP+TDEO) , TECHNICAL SUPPORT AND WORKS EXECUTION FOR THE PROJECT „IN-DEPTH ENERGY REFURBISHMENT OF THE TECHNICAL ENERGY COLLEGE"

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These Specific Terms, also called Special Terms, regarding design and execution contracts, complete, clarify, amend or establish exceptions to the applicability of the General Conditions of Contract. The provisions of the clauses unchanged by these Special Terms are valid in the form given by the General Terms. In the event of inconsistencies between the Special Terms and the General Terms, the provisions of the Special Terms shall prevail. The numbering of the clauses of the Special Terms is not consecutive, corresponds to or completes the numbering of the clauses of the General Terms.

The Beneficiaries are entitled to draw up Special Terms only with regard to the subclauses and only related to the subjects listed in the table below. Any other Special Term is null and void.

| Clause and subclause | Topic |
|----------------------|-------|
|----------------------|-------|

Clause 5 – Supervisor and Supervisor’s representative

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|-----|---|
| 5.1 | <p>Duties of the Supervisor:</p> <p>(d) approves or rejects in a justified manner the design documentation prepared by the Contractor;</p> <p>(e) checks the pace of the Works execution;</p> <p>(f) checks the compliance with the quality of the Equipment and Materials and the methods of their implementation;</p> <p>(g) rejects the Equipment, Materials or Works that prove not to be in compliance with the Contractual provisions;</p> <p>(h) participates to the tests and inspection of the works that have reached the final stages;</p> <p>(i) measures the quantities of works actually carried out;</p> <p>(j) ensures the correctness of the data and details in the Site Log;</p> <p>(k) issues Changes in accordance with the Contractual provisions;</p> <p>(l) issues Payment Certificates in accordance with the Contractual provisions;</p> <p>(m) issues Decisions in accordance with the Contractual provisions;</p> <p>(n) analyzes the Claims of the Contractor and the Beneficiary;</p> <p>(o) assists the Beneficiary in the Acceptance upon Completion of Works and Final Acceptance procedure;</p> <p>(p) performs the other duties of the Supervisor established by the Contract.</p> |
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Clause 8 – Provision of the Beneficiary’s documents

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| 8.2 | <p>schedule for providing a complete copy of all documents to the Beneficiary</p> <p>- Within maximum 5 days from signing the Contract</p> |
|-----|--|

Clause 9 - Acces on the Site

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|-----|---|
| 9.1 | <p>deadlines and sectors for making the Site available:</p> <p>- the beneficiary will provide the Contractor with access to the site and will make the site available to the Contractor within maximum 30 days from the start date”</p> |
| 9.2 | <p>Access to the site of other persons:</p> <p>- <i>sub-clause 9.1 of the general conditions shall apply; access of other persons to the site shall be carried out in accordance with the Supervisor's instructions.”</i></p> |

Clause 10 - Authorizations and assistance regarding the Law

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| 10.1 | responsibilities regarding building permits: - <i>subclause 10.1 of the general conditions will apply</i> |
|------|--|

Clause 19 – Design by the Contractor

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|------|---|
| 19.2 | modalities and timetable for approval of the design developed by the Contractor: - general sub-clause 19.2 of the general conditions shall apply |
|------|---|

Clause 24 - Interference with traffic and access routes

| | |
|------|--|
| 24.1 | the extent to which traffic and communication routes may be affected is completed with: - general sub-clause 24.1 of the general conditions shall apply |
|------|--|

Clause 44 – General principles

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|------|---|
| 44.1 | the currency or currencies of the Contract - sub-clause 44.1 of the general conditions shall apply |
|------|---|

Clause 45 Contract Value

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|------|---|
| 45.4 | - the provisions relating to measurement and valuation for the parts of the Works payable according to the quantities supplied or the works performed and the identification of these parts |
|------|---|

Beneficiary

Contractor

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