
FORM OF AGREEMENT

PARTICULAR CONDITIONS

GENERAL CONDITIONS

Client/Consultant MODEL SERVICES AGREEMENT

Fifth Edition, 2017

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES



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The ultimate decision on the form and content of the publication Client/Consultant Model Services Agreement rests with FIDIC.

COMPLETION OF THE AGREEMENT

This Client/Consultant Model Services Agreement represents the basic form of a Contract of Appointment between a Client and its Consultant. It is intended to cover the minimum requirements of a typical appointment contract. Additional or amended clauses may be required in the Particular Conditions to address particular project and commercial issues between the parties.

Where other material is to be incorporated into a Contract of Appointment, care must be taken to ensure consistency both in the use of terminology and the allocation of duties and obligations. The parties to the contract may wish to take independent legal advice in connection with the preparation of this agreement. Independent legal advice may also help the parties understand their legal liabilities, duties and obligations arising under the Model Services Agreement.

Neither FIDIC nor any committee or individual connected with FIDIC can be held liable for project or commercial losses suffered as a result of adopting the Client/Consultant Model Services Agreement as the basis of a contractual arrangement.

FOREWORD

The terms of the Client/Consultant Model Services Agreement (the White Book) have been prepared by the Federation Internationale des Ingenieurs-Conseils (FIDIC). The Agreement is suitable for general use for the purposes of pre-investment and feasibility studies, detail design, and administration of construction and project management, both for Employer-led design teams and for Contractor-led design teams on design and build commissions. The Agreement is suitable for international projects but can equally be used on domestic projects. The version in English is considered by FIDIC as the official and authentic text for the purpose of translation.

In the preparation it was recognised that whilst there are numerous clauses which will be generally applicable there are some provisions which must necessarily vary to take account of the circumstances and locality in which the Services are to be performed. The clauses of general application are under General Conditions. They are intended for incorporation as printed in the documents comprising the Agreement.

The General Conditions are linked with the Particular Conditions by the corresponding numbering of the clauses so that the General Conditions and Particular Conditions together comprise the conditions governing the rights and obligations of the parties.

The Particular Conditions must be specially drafted to suit each individual Agreement and type of Service. References to the General Conditions are in Part A whilst any amendments to the General Conditions or additional clauses are in Part B. These pages must be completed for incorporation into the Agreement.

FIDIC intends to publish an updated “White Book Guide” which will include comment on the clauses in the White Book and guidance on completion of the Appendices. Compilers of the White Book in the meantime can refer to various other FIDIC publications available in the Bookshop of FIDIC’s website at www.fidic.org. Compilers of scope of work in Appendix 1 may wish to consult the FIDIC Definition of Services guide.

This Fifth Edition of the White Book has enhanced the duty of care obligations placed on the Consultant. The approach taken by the Task Group and FIDIC Contracts Committee (CC) on this matter is illustrated below:

Consultant’s Obligations for the Services.

The Terms of Reference laid down by the FIDIC CC for updating the White Book required the Task Group to consider, amongst many other matters, the issue of the professional’s duty of care to the client for the services rendered. In this endeavour the Task Group considered the following, without limitation:

- up to date practice worldwide in drafting consultancy agreements
- a fair balance of risk between the Client and the Consultant
- the professional’s obligation in respect to due skill and care and fitness for purpose
- available insurance

The Task Group recognised considerable pressure from some parts of the industry to enhance the obligations placed on the Consultant to ensure that the professional services and deliverables would be fit for purpose. The problem confronting the Task Group is that there is no common understanding of due skill and care or fitness for purpose either between clients and consultants or between legal advisors in various jurisdictions notwithstanding the wide usage of such terms.

In looking at this problem the Task Group accepted that the Client is entitled to expect that the professional services will be completed correctly and that all the specific contractual requirements will be met, and that if they are not correct, or any requirement has not been fulfilled, then the Client should be entitled to appropriate redress against the Consultant. This approach assumes that the Consultant is fully experienced and competent in the delivery of the relevant services and accordingly an appropriate stipulation has been added to the new White Book.

In assessing a fair balance of risk between the Client and the Consultant the Task Group considered the position where the services were rendered defective or inadequate for reasons beyond the Consultant's control or knowledge.

It is well known in the industry that Consultants cover their liability under contract by taking out professional indemnity insurance. The Task Group, and the FIDIC CC, is satisfied that professional indemnity insurance policies do not cover liability for defective or inadequate services without evidence of fault or breach on the part of the Consultant. Such insurance only covers liability where there is a failure on the part of the Consultant to use reasonable skill and care to be expected from an experienced consultant.

The Task Group also examined whether the normal obligation placed on Consultants to use reasonable skill and care in delivering the services was an industry standard. The Task Group examined over 20 standard forms of appointment for consultants worldwide and noted that none of these forms of appointment required professional services to be fit for purpose or imposed strict liability for defects. The standard, whether expressed or implied, was reasonable skill and care. Accordingly, the Task Group determined that it was not a fair or reasonable balance of risk to make the Consultant strictly liable for the outcome of the professional services in situations where there was no evidence of fault or breach on its behalf.

The Task Group noted that in certain civil law jurisdictions strict liability for defective services was imposed on the Consultant – in some jurisdictions relief was available for matters that were not within the Consultant's control whereas in others no relief was available. The Task Group acknowledged, that in a limited number of countries, provision of insurance to cover strict liability was a mandatory obligation placed on the insurance market, however this approach is not followed generally and cannot be taken to reflect the international position. The Task Group and FIDIC CC determined therefore that the appropriate standard of care to be imposed on a Consultant was that of reasonable skill and care to be expected from an experienced consultant.

The Fifth Edition has enhanced the Consultant's obligation to the reasonable skill and care to be expected from a consultant experienced in the provision of services for projects of similar size and complexity and further, but without extending this obligation, the services must satisfy the function and purpose described in the Agreement. This obligation will not make the Consultant liable for defective or inadequate services arising out of unforeseeable or uncontrollable events and therefore, the obligation should be fully insured under any professional indemnity insurance policy. This is to the benefit of both the Client and the Consultant and represents the correct balance of risk between the two parties.

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- 3 Remuneration and Payment
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Form of Agreement

Between [Name of Client] _____

of [Address of Client] _____

(hereinafter called "the Client")

and [Name of Consultant] _____

of [Address of Consultant] _____

(hereinafter called "the Consultant")

WHEREAS:

The Client desires that certain Services should be performed by the Consultant, namely:
[Brief description of Services]

and has accepted an offer/proposal by the Consultant for the performance of such Services.

THE CLIENT AND THE CONSULTANT AGREE AS FOLLOWS:

- 1 In the Agreement words and expressions shall have the same meanings as are respectively assigned to them in Clause 1.1 of the General Conditions of the Client/Consultant Model Services Agreement.
- 2 The following documents shall be deemed to form and be read and construed as part of the Agreement and shall be given the order of precedence as below:
 - (a) This Form of Agreement;
 - (b) The Client/Consultant Model Services Agreement;
 - (i) Particular Conditions;
 - (ii) General Conditions;
 - (c) Appendices 1 to 5;
 - (d) Any letter of acceptance by the Client incorporated into the Agreement under Sub-Clause 1.1.1; and
 - (e) Any letter of offer/proposal by the Consultant incorporated into the Agreement under Sub-Clause 1.1.1.
- 3 In consideration of the payments to be made by the Client to the Consultant under the Agreement, the Consultant hereby agrees with the Client to perform the Services in conformity with the provisions of the Agreement.
- 4 The Client hereby agrees to pay the Consultant in consideration of the performance of the Services such amounts as may become payable under the provisions of the Agreement at the times and in the manner prescribed by the Agreement.

AUTHORISED SIGNATURE(S) OF CLIENT:

Signature _____

Name _____

Position _____

Date _____

AUTHORISED SIGNATURE(S) OF CONSULTANT:

Signature _____

Name _____

Position _____

Date _____

Particular Conditions

Part A. References from Clauses in the General Conditions

1.1 Definitions

1.1.4 Client's Representative [Name of Representative] _____

1.1.5 Commencement Date [Number of days] days after Effective Date

1.1.8 Consultant's Representative [Name of Representative] _____

1.1.9 Country [Name of Country] _____

1.1.22 Project [Name of Project] _____

1.1.24 Time for Completion [Time in days] _____

1.3 Notices and other Communications

1.3.1(c) Communication [System of electronic communication accepted]

1.3.1(d) Address for communications
Client's address: [Address] _____

Email: (only when e-mail is accepted as a valid system for electronic communications)
[Email] _____

Facsimile number: [Number] _____

Consultant's address: [Address] _____

Email: (only when e-mail is accepted as a valid system for electronic communications)
[Email] _____

Facsimile number: [Number] _____

1.4 Law and Language

1.4.1 Law governing Agreement [Law] _____

1.4.2 Ruling language of Agreement [Language] _____

1.4.3 Language for communications [Language] _____

1.8 Confidentiality

1.8.3 Period for expiry of confidentiality [Years if different than Two] _____

1.9 Publication

1.9.1 Publication restrictions [State restrictions on publication, if any]

3.9 Construction Administration

[Included in Services/Not included in Services]

7.4 Third Party Charges on Consultant

[Exemption Applies/Exemption does not Apply]

8.2 Duration of Liability

8.2.1 Period of Liability

[Period] _____

8.3 Limit of Liability

8.3.1 Limit of Liability

[Amount] _____

9 Insurance

9.1.1 Insurances to be taken out by Consultant

Professional Indemnity Insurance

[Amount] _____

Public Liability Insurance

[Amount] _____

10 Disputes and Arbitration

10.4.1 Arbitration rules

[International Chamber of Commerce (or as stated below):] _____

10.4.1 Language of arbitration

[Language] _____

Part B Additional or Amended Clauses

The parties are to include in this section any variations, omissions and/or additions to the General Conditions.

APPENDICES

These Appendices form part of the Agreement.

1 **Scope of Services**

The following guidance is given to assist the parties to complete this appendix

Specify the scope of the Consultant's Services as finally negotiated and agreed – the description should be as comprehensive as reasonably practicable and, where beneficial to the understanding of the scope, should identify matters excluded from the scope. Clients/Consultants may refer to the FIDIC Definition of Services for guidance on preparing a scope of services.

Describe the function and purpose of the Services. Ensure that the function and purpose are consistent with the scope of Services and that such is described in terms that can be measured and verified. The Consultant must satisfy itself that the function and purpose is achievable using the standard of care in Sub-Clause 3.3.

Specify any information relied upon by the Consultant in the discharge of the Services that cannot be reviewed by the Consultant for accuracy and sufficiency under Sub-Clause 2.1.2, such as sub-surface or hydrological conditions.

Specify any Construction Administration requirements to be fulfilled by the Consultant including the form of Works Contract (e.g. FIDIC Red Book) under which the Consultant shall act.

Specify the responsibility for interface management between the Services and services provided by others (when the provision of services by others is necessary), if not the responsibility of the Client.

2 Personnel, Equipment, Facilities and Services of Others to be Provided by the Client

The following guidance is given to assist the parties to complete this Appendix

List the requirements of personnel, equipment and facilities to be provided by the Client as completely and in as much detail as possible.

List and describe as completely, and in as much detail as possible, the services of others to be provided on behalf of the Client.

3 Remuneration and Payment

The following guidance is given to assist the parties to complete this Appendix

Appendix 3, as a minimum, should cover, as applicable:

- agreed remuneration, whether lump sum or schedule of rates or any combination thereof, to be paid to the Consultant for the performance of the Services
- terms of payment, percentage fees, timescale, lump sums
- rates and prices to be applied to Variations (where appropriate) or Exceptional Costs
- times for payment if not 28 days (Sub-Clause 7.2.1)
- process for submission of invoices and methods of payment
- price changes, inflation etc., if applicable.
- currencies of payment (Sub-Clause 7.3.1)
- financing charges – rate to be applied (Sub-Clause 7.2.2). The Parties should agree a rate that is meaningful within the commercial context of the Agreement
- taxation additional to payments (if any)
- allowable expenses

4 Programme

The following guidance is given to assist the parties to complete this Appendix

Appendix 4 should be used to expand upon the requirements for the Programme for the Services to be submitted under Clause 4.3.

The Appendix should identify the Commencement Date and completion date for the Services together with any other key dates for receipt or delivery of information between the Parties. Interface obligations with others should be noted here.

The Appendix should stipulate any requirements of the Client on the order or sequence of activities and any requirements of the Client for review and approval periods for the Services.

If required by the Client, any particular programme software to be used to produce the Programme should be stipulated here.

Information to be supplied by the Consultant to the Client on a monthly basis to report on progress against the Programme should be stipulated here.

5 Rules for Adjudication

General

- 1 Any reference in the Agreement to the Rules for Adjudication shall be deemed to be a reference to these Rules.
- 2 Definitions in the Agreement shall apply in these Rules.

Appointment of Adjudicator

- 3 The Parties shall jointly ensure the appointment of the Adjudicator. The Adjudicator shall be a suitably qualified person.
- 4 If for any reason the appointment of the Adjudicator is not agreed at the latest within 14 days of the reference of a dispute in accordance with these Rules, then either Party may apply, with a copy of the application to the other Party, to any appointing authority named in the Agreement or, if none, to the President of FIDIC or his nominee, to appoint an Adjudicator, and such appointment shall be final and conclusive.
- 5 The Adjudicator's appointment may be terminated by mutual agreement of the Parties. The Adjudicator's appointment shall expire when the Services have been completed or when any disputes referred to the Adjudicator shall have been withdrawn or decided, whichever is the later.

Terms of Appointment

- 6 The Adjudicator is to be, and is to remain throughout his appointment, impartial and independent of the Parties and shall immediately disclose in writing to the Parties anything of which he becomes aware which could affect his impartiality or independence.
- 7 The Adjudicator shall not give advice to the Parties or their representatives concerning the conduct of the project of which the Services form part other than in accordance with these Rules.
- 8 The Adjudicator shall not be called as a witness by the Parties to give evidence concerning any dispute in connection with, or arising out of, the Agreement.
- 9 The Adjudicator shall treat the details of the Agreement and all activities and hearings of the Adjudicator as confidential and shall not disclose the same without the prior written consent of the Parties. The Adjudicator shall not, without the consent of the Parties, assign or delegate any of his work under these Rules or engage legal or technical assistance.
- 10 The Adjudicator may resign by giving 28 days' notice to the Parties. In the event of resignation, death or incapacity, termination or a failure or refusal to perform the duties of Adjudicator under these Rules, the Parties shall agree upon a replacement Adjudicator within 14 days or Rule 4 shall apply.
- 11 The Adjudicator shall in no circumstances be liable for any claims for anything done or omitted in the discharge of the Adjudicator's duties unless the act or omission is shown to have been in bad faith.
- 12 If the Adjudicator shall knowingly breach any of the provisions of Rule 6 or act in bad faith, he shall not be entitled to any fees or expenses hereunder and shall reimburse each of the Parties for any fees and expenses properly paid to him if, as a consequence of such breach any proceedings or decisions of the Adjudicator are rendered void or ineffective.

Payment

- 13 The Adjudicator shall be paid the fees and expenses set out in the Adjudicator's Agreement.
- 14 The retainer fee, if applicable, shall be payment in full for:
 - (a) being available, on 28 days' notice, for all hearings and visits;
 - (b) all office overhead expenses such as secretarial services, photocopying and office supplies incurred in connection with his duties;
 - (c) all services performed hereunder except those performed during the days referred to in Rule 15.
- 15 The daily fee shall be payable for each working day preparing for or attending visits or hearings or preparing decisions including any associated travelling time.
- 16 The retainer and daily fees shall remain fixed for the period of tenure of the Adjudicator.
- 17 All payments to the Adjudicator shall be made by the Parties as determined by the Adjudicator. The Adjudicator's invoices for any monthly retainer shall be submitted quarterly in advance and invoices for daily fees and expenses shall be submitted following the conclusion of a visit or hearing. All invoices shall contain a brief description of the activities performed during the relevant period. The Adjudicator may suspend work if any invoice remains unpaid at the expiry of the period for payment, provided that 7 days prior notice has been given to both Parties.
- 18 If a Party fails to pay an invoice addressed to it, the other Party shall be entitled to pay the sum due to the Adjudicator and recover the sum paid from the defaulting Party.

Procedure for Obtaining Adjudicator's Decision

- 19 A dispute between the Parties may be referred in writing by either Party to the Adjudicator for his decision, with a copy to the other Party. If the Adjudicator has not been agreed or appointed, the dispute shall be referred in writing to the other Party, together with a proposal for the appointment of an Adjudicator. A reference shall identify the dispute and refer to these Rules.
- 20 The Adjudicator may decide to conduct a hearing in which event he shall decide on the date, place and duration for the hearing. The Adjudicator may request that written statements from the Parties be presented to him prior to, at or after the hearing. The Parties shall promptly provide the Adjudicator with sufficient copies of any documentation and information relevant to the Agreement that he may request.
- 21 The Adjudicator shall act as an impartial expert, not as an arbitrator, and shall have full authority to conduct any hearing as he thinks fit, not being bound by any rules or procedures other than those set out herein. Without limiting the foregoing, the Adjudicator shall have power to:
 - (a) decide upon the Adjudicator's own jurisdiction, and as to the scope of any dispute referred to him,
 - (b) make use of his own specialist knowledge, if any,
 - (c) adopt an inquisitorial procedure,
 - (d) decide upon the payment of interest in accordance with the Agreement,
 - (e) open up, review and revise any opinion, instruction, determination, certificate or valuation, related to the dispute,

- (f) refuse admission to hearings to any persons other than the Client, the Consultant and their respective representatives, and to proceed in the absence of any Party who the Adjudicator is satisfied received notice of the hearing.
- 22 All communications between either of the Parties and the Adjudicator and all hearings shall be in the language of the Adjudicator's Agreement. All such communications shall be copied to the other Party.
- 23 No later than the fifty-sixth day after the day on which the Adjudicator received a reference or, if later, the day on which the Adjudicator's Agreement came into effect, the Adjudicator shall give written notice of his decision to the Parties. Such decision shall include reasons and state that it is given under these Rules.

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PARTICULAR CONDITIONS

GENERAL CONDITIONS

Client/Consultant MODEL SERVICES AGREEMENT

General Conditions

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES



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General Conditions

1 General Provisions

1.1

Definitions

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

- 1.1.1 **“Agreement”** means the Form of Agreement together with the Client/Consultant Model Services Agreement (General Conditions and Particular Conditions), Appendix 1 [Scope of Services], Appendix 2 [Personnel, Equipment, Facilities and Services of Others to be Provided by the Client], Appendix 3 [Remuneration and Payment], Appendix 4 [Programme], and Appendix 5 [Rules for Adjudication] and any letters of offer and acceptance attached to any of the above.
- 1.1.2 **“Background Intellectual Property”** means, in respect of each Party, the Intellectual Property owned by or otherwise in the possession of that Party at the Commencement Date.
- 1.1.3 **“Client”** means the Party named in the Form of Agreement and legal successors to the Client and permitted assignees.
- 1.1.4 **“Client’s Representative”** means the person referred to in the Particular Conditions, or appointed from time to time by the Client, and communicated by Notice to the Consultant to be its representative for the administration of the Agreement.
- 1.1.5 **“Commencement Date”** means the date identified in the Particular Conditions; where no date is identified then the Commencement Date shall be 14 days after the Effective Date.
- 1.1.6 **“Confidential Information”** means all information specifically identified by the disclosing Party as confidential at the time of disclosure, or information that a reasonable person would consider from the nature of the said information and circumstances to be confidential, including without limitation confidential or proprietary information, trade secrets, data, documents, communications, plans, know-how, formulas, designs, calculations, test results, specimens, drawings, studies, specifications, surveys, photographs, software, processes, programmes, reports, maps, models, agreements, ideas, methods, discoveries, inventions, patents, concepts, research, development, and business and financial information.
- 1.1.7 **“Consultant”** means the professional firm or individual named in the Form of Agreement and legal successors to the Consultant and permitted assignees.
- 1.1.8 **“Consultant’s Representative”** means the person referred to in the Particular Conditions or appointed from time to time by the Consultant, and communicated by Notice to the Client to be its representative for the administration of the Agreement.
- 1.1.9 **“Country”** means the country named in the Particular Conditions or, where no country is mentioned, the country where the Project site, or the main project site as the case may be, is located.

- 1.1.10 **“day”** means a calendar day.
- 1.1.11 **“Effective Date”** means the date on which the Agreement comes into force and effect pursuant to Clause 4.1 [Agreement Effective].
- 1.1.12 **“Exceptional Costs”** means the costs, not otherwise compensated under the Agreement, arising out of any necessary work, cost, expense or delay incurred by the Consultant which is additional to the Services (or Variations) and which is necessarily and unavoidably performed under the Agreement and in each case identified as such in the Agreement.
- 1.1.13 **“Exceptional Event”** means an event or circumstance which is (a) beyond a Party’s control; (b) which such Party could not reasonably have provided against before entering into the Agreement; (c) which having arisen, such Party could not reasonably have avoided or overcome; and (d) which is not substantially attributable to the other Party. An Exceptional Event may include, but is not limited to, events or circumstances of the kind listed below, subject to (a) to (d) above:
- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
 - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power or civil war;
 - (iii) riot, commotion, disorder, strike or lockout by persons other than the Consultant’s personnel and other employees of the Consultant and Consultant’s sub-consultants;
 - (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity except as may be attributable to the Consultant’s actions;
 - (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.
- 1.1.14 **“Foreground Intellectual Property”** means all Intellectual Property created as a result of the Services performed by the Consultant.
- 1.1.15 **“Form of Agreement”** means the document entitled Form of Agreement which forms part of the Agreement.
- 1.1.16 **“FIDIC”** means the Fédération Internationale des Ingénieurs-Conseils, the International Federation of Consulting Engineers.
- 1.1.17 **“Intellectual Property”** means all intellectual property rights including, without limitation, any patents, patent application, trademarks, trade secrets, registered designs, registered design application, copyrights, design rights, moral rights, process, formula, specification, drawing, including rights in computer software and databases howsoever arising in any part of the world.
- 1.1.18 **“Local Currency”** means the currency of the Country and **“Foreign Currency”** means any other currency.
- 1.1.19 **“Notice”** means a written communication identified as a Notice and issued in accordance with the provisions of Clause 1.3 [Notices and other Communications].
- 1.1.20 **“Party”** and **“Parties”** means the Client and/or the Consultant as the context requires.
- 1.1.21 **“Programme”** shall have the meaning given to it in Clause 4.3 [Programme].

- 1.1.22 **“Project”** means the project named in the Particular Conditions for which the Services are to be provided.
- 1.1.23 **“Services”** means the services defined in Appendix 1 [Scope of Services] to be performed by the Consultant in accordance with the Agreement which includes any Variations to the Services instructed or arising in accordance with the Agreement.
- 1.1.24 **“Time for Completion”** means the time for completing the Services as stated in the Particular Conditions, or as may be amended in accordance with the Agreement, calculated from the Commencement Date.
- 1.1.25 **“Variation”** or **“Variation to the Services”** means any change to the Services instructed or approved as a Variation under Clause 5.1 [Variations].
- 1.1.26 **“Variation Notice”** means a written communication identified as a Variation Notice and issued in accordance with the provisions of Clause 1.3 [Notices and other Communications].
- 1.1.27 **“Works Contract”** means a contract for the performance of permanent and temporary works (if any) to be carried out by a contractor appointed by the Client for the achievement of the Project.
- 1.1.28 **“year”** means a calendar year.

1.2

Interpretation

- 1.2.1 Words indicating the singular include the plural, and vice versa where the context requires.
- 1.2.2 Words indicating one gender include all genders.
- 1.2.3 Provisions including the word **“agree”**, **“agreed”** or **“agreement”** require the agreement to be recorded in writing, and signed by both Parties.
- 1.2.4 **“shall”** means that the Party or person referred to has the obligation under the Agreement to perform the duty referred to.
- 1.2.5 **“may”** means that the Party or person referred to has the choice of whether to act or not in the matter referred to.
- 1.2.6 **“written”** or **“in writing”** means handwritten, type-written, printed or electronically made and resulting in a permanent uneditable record.
- 1.2.7 any reference to **“price”**, **“rates”**, **“costs”**, **“expenses”**, **“damages”**, and the like shall be a reference to the value of such item net of any applicable taxes unless specified otherwise.

1.3

Notices and other Communications

- 1.3.1 Wherever the Agreement provides for the giving or issuing of a Notice, a Variation Notice or other form of communication including without limitation approvals, consents, instructions, and decisions, then such Notice, Variation Notice or communication shall be:
 - (a) where it is a Notice or Variation Notice, identified as such with reference to the Clause or Sub-Clause under which it is issued;

- (b) where it is another form of communication, identified as such with reference to the Clause or Sub-Clause under which it is issued where appropriate;
- (c) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted by any form of agreed system of electronic transmission stated in the Particular Conditions; and
- (d) delivered, sent or transmitted to the address for the recipient's communications as stated in the Particular Conditions. However:
 - (i) if the recipient gives Notice of another address, Notices and other forms of communication shall thereafter be delivered accordingly; and
 - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Notices and other form of communications shall not be unreasonably withheld or delayed.

1.4		
Law and Language	1.4.1	The Agreement shall be governed by the law stated in the Particular Conditions or, if no governing law is stated in the Particular Conditions, by the law of the Country.
	1.4.2	If any part of the Agreement is written in more than one language then the ruling language shall be that stated in the Particular Conditions.
	1.4.3	The language for all communications shall be the ruling language stated in the Particular Conditions or where no language is stated then all communications shall be in the language in which the Agreement (or most of it) is written.

1.5		
Changes in Legislation	1.5.1	If after the date of the Consultant's offer/proposal in relation to the Agreement the scope, extent, nature or type of Services is affected by any change to national (or state) legislation, any statute, statutory instrument, order, regulation, bylaw, code or other legislation having application to the Services then such change to the Services shall be treated as a Variation to the Services under Clause 5.1 [Variations].
	1.5.2	If after the date of the Consultant's offer/proposal in relation to the Agreement any change to national (or state) legislation, any statute, statutory instrument, order, regulation, bylaw, code or other legislation in any country in which the services are required by the Client, causes the Consultant to incur Exceptional Costs, then the agreed remuneration shall be adjusted in accordance with Sub-Clause 7.1.2 [Payment to the Consultant], and the Time for Completion amended in accordance with Clause 4.4 [Delays]. As soon as reasonably practicable the Consultant shall inform the Client by issue of a Notice of the occurrence of the Exceptional Costs. Either Party may by a separate Notice to the other require that the provisions of the Agreement be amended to comply with the change in legislation where applicable.

1.6		
Assignments and Sub-Contracts	1.6.1	Neither the Client nor the Consultant shall at any time assign the benefit of the Agreement without the prior written consent of the other. Such consent shall not be unreasonably withheld or delayed.

- 1.6.2 Neither the Client nor the Consultant shall assign obligations under the Agreement without the written consent of the other Party.
- 1.6.3 The Consultant shall not sub-contract performance of all or part of the Services without the written consent of the Client. The consent of the Client shall not be required where the appointment of a sub-consultant for the performance of part of the Services is included in the Consultant's offer/proposal, if any, as incorporated into the Agreement, or is otherwise anticipated in any of the documents constituting the Agreement.
- 1.6.4 The Client's consent to any sub-contract arrangement shall not relieve the Consultant of any of the Consultant's obligations under the Agreement. The Consultant shall remain responsible and liable to the Client for the acts, omissions and defaults of the sub-consultant in relation to the Agreement as if they were acts, omissions and defaults of the Consultant.

1.7

Intellectual Property

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

1.8

Confidentiality

- 1.8.1 Except with the prior written consent of the other Party, neither Party shall disclose or cause or permit their employees, professional advisers, agents or sub-consultants to disclose to third parties any Confidential Information.
- 1.8.2 The restrictions on use and disclosure set forth in Sub-Clause 1.8.1 shall not apply to any information:
- (a) which at the date of its disclosure is public knowledge or which subsequently becomes public knowledge other than by any act or

failure to act on the part of the receiving Party or persons for whom the receiving Party has assumed responsibility under the Agreement;

- (b) which the receiving Party can establish by written proof was already in its possession at the time of disclosure by the disclosing Party and was not acquired directly or indirectly from the disclosing Party;
- (c) which at any time after the Commencement Date has been acquired from any third party who did not acquire such information directly or indirectly from the disclosing Party or any of the disclosing Party's employees or professional advisers;
- (d) which by proof in writing has been independently developed by the receiving Party without the use of Confidential Information; or
- (e) which is required to be disclosed by law or order of a court of competent jurisdiction or government, department, agency or other public authority.

1.8.3 The obligations set forth in Sub-Clause 1.8.1 shall expire two (2) years after completion of the Services or the termination of the Agreement (whichever is the earlier) unless stated otherwise in the Particular Conditions.

1.9

Publication

1.9.1 Subject to Clause 1.8 [Confidentiality] and unless otherwise specified in the Particular Conditions, the Consultant, either alone or jointly with others, may publish material relating to the Services. Publication shall be subject to approval of the Client if it is within two (2) years of completion of the Services or termination of the Agreement (whichever is the earlier).

1.9.2 The Consultant may use material and information relating to the Services and the Project for commercial tendering purposes.

1.10

Anti-Corruption

1.10.1 In the performance of their obligations under the Agreement, the Consultant and the Client, their agents and employees shall comply with all applicable laws, rules, regulations, and orders of any applicable jurisdiction, including without limitation those relating to corruption and bribery. The Parties shall also comply with the standards provided in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The Consultant hereby represents, warrants and covenants that:

- a) it shall not participate, directly or indirectly in bribery, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money laundering, use of insider information, the possession of illegally obtained information or any other criminal activity; and
- b) it shall neither receive nor offer, pay or promise to pay either directly or indirectly, anything of value to a "public official" (as defined below) in connection with any business opportunities which are the subject of the Agreement. Furthermore, the Consultant shall immediately give Notice to the Client with full particulars in the event that the Consultant receives a request from any public official requesting illicit payments.

1.10.2 A "public official" is:

- (a) any official or employee of any government agency or government-owned or controlled enterprise;
- (b) any person performing a public function;
- (c) any official or employee of a public international organisation including without limitation donor or funding agencies or the Client;

- (d) any candidate for political office; or
- (e) any political party or an official of a political party.

1.10.3 In conjunction with the requirements of this Clause 1.10 the Consultant shall at the Client's request demonstrate that it adheres to a documented code of conduct in respect to the prevention of corruption and bribery. As a minimum the Consultant shall comply with the FIDIC Code of Ethics and the FIDIC Integrity Management System available at www.fidic.org.

1.11

Relationship of Parties 1.11.1 Nothing contained in the Agreement shall be construed as creating a partnership, agency or joint venture between the Parties.

1.11.2 Where either Party consists of a joint venture or consortium then members of such joint venture or consortium shall be jointly and severally liable under the Agreement.

1.12

Agreement Amendment 1.12.1 The Agreement can only be amended with the written agreement of the Parties.

1.13

Severability 1.13.1 If any term or provision under the Agreement is held to be illegal or unenforceable in whole or in part then such term or provision shall be disregarded without affecting the enforceability of the remainder of the Agreement. Where either Party cannot rely on any term or provision, the Parties shall negotiate in good faith for an alternative term or provision with similar contractual effect for both Parties.

1.14

Non-Waiver 1.14.1 No failure or delay by either Party in exercising any of its rights under the Agreement shall operate as a waiver of such rights. Any waiver given by either Party in connection with the Agreement is binding only if it is served as a Notice and then strictly in accordance with the terms of the Notice.

1.15

Priority of Documents 1.15.1 The documents forming the Agreement are to be taken as mutually explanatory of one another. If there is a conflict between these documents then the documents shall be interpreted and construed in accordance with the order of precedence of documents given in Clause 2 of the Form of Agreement. If the conflict cannot be so resolved then the Client shall issue an instruction or Variation to the Services under Clause 5.1 [Variations] as the case may require, in order to resolve the conflict.

1.16

Good Faith 1.16.1 In all dealings under the Agreement the Client and the Consultant shall act in good faith and in a spirit of mutual trust.

2 The Client

2.1

Information 2.1.1 In order not to delay the Consultant in the performance of the Services, the Client shall within a reasonable time and with due regard to the Programme, provide to the Consultant, free of cost, all information, and any further information reasonably requested by the Consultant, which may pertain to the Services and which the Client is able to obtain.

- 2.1.2 The Client accepts responsibility for and acknowledges that the Consultant will rely on the accuracy, sufficiency and consistency of all the information provided by the Client or by others on behalf of the Client. The Consultant shall use reasonable endeavours to review all significant information provided to it by the Client or by others on behalf of the Client within a reasonable time of receipt. To the extent achievable using the Standard of Care in Sub-Clause 3.3.1 [Standard of Care], the Consultant shall review such information with a view to ensuring that such information does not contain any manifest error, omission or ambiguity and shall give Notice to the Client promptly of any adverse findings.
- 2.1.3 In the event of any error, omission, or ambiguity (for the avoidance of doubt, including a manifest error, omission or ambiguity) in the information provided to the Consultant then the Client shall rectify such matter by Notice and where necessary shall issue a Variation to the Services in accordance with Clause 5.1 [Variations] as the case may require.

2.2

Decisions

- 2.2.1 On all matters properly referred to the Client in writing by the Consultant, the Client shall give its decision, approval, consent, instruction or Variation, as the case may be, in writing within a reasonable time and with regard to the Programme so as not to delay the Services.

2.3

Assistance

- 2.3.1 In the Country and in respect of the Consultant, its personnel and dependants, as well as sub-consultants, if any, as the case may be, the Client shall do all in its power to assist in:
- (a) the provision of documents necessary for entry, residency, working, and exit;
 - (b) providing unobstructed access wherever it is required for the Services;
 - (c) import, export and customs clearance of personal effects and of goods required for the Services;
 - (d) their repatriation in emergencies;
 - (e) the provision of the authority necessary for the Consultant to permit the import of foreign currency by the Consultant for the Services and by its personnel for their personal use and to permit the export of money earned in the performance of the Services; and
 - (f) providing access to other organisations for collection of information which is to be obtained by the Consultant.

Sub-Clauses 2.3.1(a) and (c) to (e) shall not apply where the Country is a principal place of business of the Consultant.

2.4

Client's Financial Arrangements

- 2.4.1 The Client shall submit to the Consultant, within twenty-eight (28) days of receiving any request from the Consultant, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Client to make timely payments under Appendix 3 [Remuneration and Payment] or any other provision of the Agreement.
- 2.4.2 If the Client intends to make any material change to its financial arrangements, the Client shall give Notice to the Consultant with detailed particulars. In the event that the Consultant, acting reasonably, is not satisfied with the proposed change and/or supporting particulars submitted by the Client, then the Consultant shall be entitled to suspend the Services pursuant to Sub-Clause 6.1.2(c) [Suspension of Services].

2.5

Supply of Client's

Equipment and Facilities

- 2.5.1 The Client shall make the equipment and facilities described in Appendix 2 [Personnel, Equipment, Facilities and Services of Others to be Provided by the Client] available to the Consultant for the purpose of the Services, with due regard to the Programme and free of cost.

2.6

Supply of Client's

Personnel

- 2.6.1 In consultation with the Consultant, the Client shall at its own cost arrange for the selection and provision of suitably qualified personnel in its employment to the Consultant in accordance with the requirements, if any, in Appendix 2 [Personnel, Equipment, Facilities and Services of Others to be Provided by the Client]. In connection with the provision of the Services and subject to the requirements of the applicable law(s), such personnel shall take instructions from the Consultant only.
- 2.6.2 The personnel to be supplied by the Client, and any future replacements that may be necessary, shall be subject to acceptance by the Consultant. Such acceptance shall not be unreasonably withheld.
- 2.6.3 In the event that the Client cannot supply the Client's personnel for which it is responsible or the performance of the Client's personnel supplied to the Consultant is not, in the reasonable opinion of the Consultant, adequate to discharge the services assigned to them, then the Consultant shall arrange for an alternative supply of personnel at the Client's cost and the Client shall issue a Variation to the Services in accordance with Clause 5.1 [Variations].

2.7

Client's Representative

- 2.7.1 The Client shall notify the Consultant of the extent of powers and authority delegated to the Client's Representative.

2.8

Services of Others

- 2.8.1 The Client shall arrange, at its own cost, for the provision of services from others as described in Appendix 2 [Personnel, Equipment, Facilities and Services of Others to be Provided by the Client], and the Consultant shall co-operate with the suppliers of such services but shall not be responsible for them or their performance. Where the provision of services by others is necessary for the proper performance of the Services then the Client shall ensure that such provision of services by others is given in sufficient time so as to allow the Consultant to proceed in accordance with the Programme.
- 2.8.2 Unless otherwise stated in Appendix 1 [Scope of Services], the responsibility for interface management between the Services and services provided by others remains with the Client.
-

3 The Consultant

3.1

Scope of Services

- 3.1.1 The Consultant shall perform the Services as stated in Appendix 1 [Scope of Services].
- 3.1.2 The Consultant shall perform the Services in accordance with the Programme as may be amended from time to time in accordance with the Agreement.

- 3.1.3 The Consultant declares that as at the date of signature of the Agreement there are no circumstances or matters that may give rise to a conflict of interest in the performance of its obligations under the Agreement. The Consultant shall inform the Client immediately if it becomes aware of any such circumstances or matters. If a conflict of interest arises then the Parties shall agree, in good faith, on measures to manage such conflict.

3.2
Function and Purpose of Services

3.2.1 Where appropriate, the Client shall describe the function and purpose of the Services and state the same explicitly in Appendix 1 [Scope of Services].

3.3
Standard of Care

3.3.1 Notwithstanding any term or condition to the contrary in the Agreement or any related document or any legal requirement of the Country or any other relevant jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Consultant), in the performance of the Services the Consultant shall have no other responsibility than to exercise the reasonable skill, care and diligence to be expected from a consultant experienced in the provision of such services for projects of similar size, nature and complexity.

3.3.2 To the extent achievable using the standard of care in Sub-Clause 3.3.1, and without extending the obligation of the Consultant beyond that required under Sub-Clause 3.3.1, the Consultant shall perform the Services with a view to satisfying any function and purpose that may be described in Appendix 1 [Scope of Services].

3.3.3 The Consultant shall comply with all regulations, statutes, ordinances and other forms of standards, codes of practice and legislation applicable to the Services and the Agreement.

3.4
Client's Property

3.4.1 Anything supplied by or paid for by the Client for the use of the Consultant shall be the property of the Client and, where practicable, shall be so marked. The Consultant shall make reasonable endeavours to safeguard and protect such property of the Client until completion of the Services and/or return of such property to the Client.

3.5
Consultant's Personnel

3.5.1 The key personnel who are proposed by the Consultant to work in the Country shall be subject to acceptance by the Client with regard to their qualifications and experience. Such acceptance by the Client shall not be unreasonably withheld. Personnel, if any, included in the Consultant's offer/proposal included as part of the Agreement shall be deemed to be accepted by the Client on entering into the Agreement.

3.6
Consultant's Representative

3.6.1 The Consultant shall notify the Client of the extent of powers and authority delegated to the Consultant's Representative.

3.6.2 If required by the Client, the Consultant shall designate an individual to liaise with the Client's Representative in the Country.

3.7

Changes in Consultant's Personnel

- 3.7.1 If it is necessary for any reason to replace any of the personnel provided by the Consultant, the Consultant shall arrange for replacement by a person(s) of suitable qualification and experience in the provision of the Services as soon as reasonably possible.
- 3.7.2 The cost of such replacement shall be borne by the Consultant except where the replacement is requested by the Client, and in such case:
- (a) the request by the Client shall be made by Notice stating the reasons for it; such reasons shall relate to the provision of the Services and shall be reasonable and not vexatious; and
 - (b) the Client shall bear the cost of replacement unless misconduct or inability to perform satisfactorily in accordance with Sub-Clause 3.3.1 [Standard of Care] is the reason for the replacement of the relevant personnel by the Consultant.

3.8

Safety and Security of Consultant's Personnel

- 3.8.1 If in the reasonable opinion of the Consultant the health, safety or security of its personnel whilst in the Country is compromised by an Exceptional Event then the Consultant shall be entitled to suspend all or part of the Services in accordance with Sub-Clause 6.1.2(b) [Suspension of Services] and remove such personnel from the Country until such time as the Exceptional Event has ceased.

3.9

Construction Administration

- 3.9.1 This Clause only applies where stated in the Particular Conditions and in Appendix 1 [Scope of Services], whereby the Consultant is required to perform the defined function of the engineer, employer's representative, project manager or similar under a Works Contract. Where such services are included in the scope of Services in Appendix 1 they shall be considered to be part of the Services.
- 3.9.2 Where explicitly described in Appendix 1 [Scope of Services], the Consultant shall perform the role of the engineer, employer's representative, project manager or similar as laid down in the Works Contract. The Consultant shall provide such construction administration services in accordance with the scope of Services.
- 3.9.3 When acting as the engineer, employer's representative, project manager or similar, the Consultant shall have the authority to act on behalf of the Client to the extent provided in the Works Contract. If the authority of the Consultant under the Works Contract is subject to prior approval of the Client, then the Client warrants that such restriction on the authority of the Consultant shall be stated in the Works Contract or shall be made known in writing to the contractor under the Works Contract. If the Consultant is authorised under the Works Contract to certify, determine or exercise discretion in the discharge of its duties then the Consultant shall act fairly as go-between the Client and the contractor, exercising independent professional judgement and using reasonable skill, care and diligence.
- 3.9.4 The Consultant shall not be liable to the Client for the performance of the Works Contract by the contractor. In the discharge of its duties under the Works Contract, the Consultant shall only be liable to the Client if the

Consultant commits a breach of the Agreement. In so far as the applicable law permits the Client shall indemnify the Consultant against any and all claims made by the contractor against the Consultant arising out of or connected with the Works Contract.

- 3.9.5 The Consultant shall not be liable to the Client or the contractor for the means, techniques, methods or sequencing of any aspect of the Works Contract or for the safety or adequacy of any of the contractor's operations.
- 3.9.6 If an ambiguity or discrepancy is found between the Consultant's obligations under the Agreement and the Consultant's duties under the Works Contract, the Consultant shall give Notice to the Client indicating the effect of such ambiguity or discrepancy. The Client shall rectify such ambiguity or discrepancy by instruction as soon as reasonably practicable and where necessary shall issue a Variation to the Services in accordance with Clause 5.1 [Variations].

4 Commencement and Completion

4.1

Agreement Effective

- 4.1.1 The Agreement shall be effective from the date of the latest signature necessary to complete the formal Agreement (the "Effective Date").

4.2

Commencement and Completion of Services

- 4.2.1 The Consultant shall commence the performance of the Services as soon as is reasonably practicable after the Commencement Date. The Consultant shall complete the whole of the Services within the Time for Completion.

4.3

Programme

- 4.3.1 Within fourteen (14) days of the Commencement Date the Consultant shall submit its Programme which shall include as a minimum:
- (a) the order and timing in which the Consultant intends to carry out the Services in order to complete the Services within the Time for Completion;
 - (b) any key dates stipulated in Appendix 4 [Programme] or elsewhere in the Agreement for the delivery of any part of the Services to the Client;
 - (c) the key dates when decisions, consents, approvals or information from the Client or third parties is required to be given to the Consultant;
 - (d) any other requirements stated in Appendix 4 [Programme].

The Consultant shall keep the Programme under review and shall amend the same as and when necessary to comply with the Agreement.

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

4.4

Delays

- 4.4.1 The Consultant shall be entitled to an extension of the Time for Completion if and to the extent that completion of the Services is or will be delayed by any of the following causes:
- a) a Variation to the Services;
 - b) any delay, impediment or prevention caused by or attributable to the Client, or the Client's other consultants, contractors, or other third parties;
 - c) an Exceptional Event; or
 - d) any other event or circumstance giving an entitlement to extension of the Time for Completion under the Agreement.
- 4.4.2 Any extension of the Time for Completion shall have due regard to the Programme and any constraints therein.
- 4.4.3 Where any circumstance referred to in Sub-Clause 4.4.1 causes the Consultant to incur Exceptional Costs, then the agreed remuneration shall be adjusted in accordance with Sub-Clause 7.1.2 [Payment to the Consultant]. As soon as reasonably practicable the Consultant shall inform the Client of the occurrence of the Exceptional Costs by issue of a Notice.

4.5

Rate of Progress of Services

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

4.6

Exceptional Event

- 4.6.1 If a Party is prevented from performing any of its obligations under the Agreement by, or due to, an Exceptional Event then it shall give a Notice to the other Party providing a description of the Exceptional Event together with an assessment of its effects on the Party's ability to comply with its obligations under the Agreement. The Notice shall be given within fourteen (14) days from when the Party becomes aware, or should have become aware, of the event or circumstance constituting an Exceptional Event.
- The Party having given Notice, shall be excused from performance of such obligations for so long as the effects of the Exceptional Event prevent such performance.
- 4.6.2 Where an Exceptional Event gives rise to an unavoidable change in the scope of Services then the Client shall issue a Variation to the Services in accordance with Clause 5.1 [Variations]. Where an Exceptional Event gives rise to a delay in the completion of the Services then the Consultant shall be entitled to an extension of the Time for Completion in accordance with Clause 4.4 [Delays]
- 4.6.3 Notwithstanding any other provision of this Clause 4.6, the obligations of either Party to make payments to the other Party under the Agreement shall not be excused by an Exceptional Event.

5 Variations to Services

5.1

Variations

- 5.1.1 A Variation to the Services may be initiated by the Client by issue of a Variation Notice at any time prior to completion of the Services. The Client may request the Consultant to submit a proposal in respect of a proposed Variation. If the proposal is accepted by the Client then the Variation shall be confirmed by the Client by issue of a Variation Notice. Any such Variation shall not substantially change the extent or nature of the Services.
- 5.1.2 A Variation to the Services may be issued in respect of any:
- (a) amendment to Appendix 1 [Scope of Services] or to Appendix 2 [Personnel, Equipment, Facilities and Services of Others to be Provided by the Client];
 - (b) omission of part of the Services but only where such omitted services are no longer required by the Client;
 - (c) changes in the specified sequence or timing of the performance of the Services;
 - (d) changes in the method of implementation of the Services;
 - (e) provision of the Agreement requiring the issue of a Variation; or
 - (f) proposal submitted by the Consultant (at the Client's request or otherwise) and accepted in writing by the Client.
- 5.1.3 The Consultant shall give Notice to the Client as soon as reasonably practicable where the Consultant considers that any instruction or direction from the Client or any other circumstance constitutes a Variation to the Services. The Consultant shall include in the Notice details of the estimated impact upon the Programme and cost of the Services for such matters. Within fourteen (14) days of receipt of the Notice the Client shall either issue a Variation Notice, or cancel the instruction or direction, or state by issue of a further Notice why the Client considers the instruction, direction or circumstance does not constitute a Variation to the Services. In such case the Consultant shall comply with and be bound by such further Notice unless the Consultant refers the matter as a dispute under Clause 10 [Disputes and Arbitration] within seven (7) days of receipt of such further Notice.
- 5.1.4 Unless the Consultant promptly gives Notice to the Client (with supporting evidence) that:
- (a) it does not possess the relevant skills or resources to carry out the Variation, or
 - (b) the Consultant considers that the Variation will substantially change the extent or nature of the Services,
- the Consultant shall be bound by each Variation. The Consultant shall not otherwise make any changes to the Services.

5.2

Agreement of Variation

Value and Impact

- 5.2.1 The Client and the Consultant shall agree the value of any Variation, or its method of calculation, including its impact (if any) upon other parts of the Services, the Programme and the Time for Completion.
- 5.2.2 The value of any Variation shall be determined in accordance with or based upon the rates and/or prices in Appendix 3 [Remuneration and Payment]. Where the rates and/or prices are not applicable to the Variation then new rates shall be agreed by the Parties.

- 5.2.3 The value of the Variation and its impact on the Programme shall be agreed and confirmed in writing by the Client to the Consultant. Pursuant to such agreement the Client shall issue an instruction to the Consultant to commence work on the Variation.
- 5.2.4 Where agreement under Sub-Clause 5.2.3 is not reached within fourteen (14) days of receipt by the Consultant of the Variation Notice or it is not practicable to establish and agree between the Parties all the effects of the Variation prior to the Consultant commencing work on the Variation then the Client may by Notice instruct the Consultant to commence work on the Variation and the Consultant shall comply with such instruction. The Consultant shall be compensated on a time-spent basis at the rates and prices stated in Appendix 3 [Remuneration and Payment] or if no rates and prices are stated then at reasonable rates and prices until such time as agreement is reached on all the effects of the Variation.

6 Suspension of Services and Termination of Agreement

6.1

Suspension of Services

- 6.1.1 The Client may suspend all or part of the Services at its sole discretion and for any reason by giving twenty-eight (28) days' Notice to the Consultant.
- 6.1.2 The Consultant may suspend all or part of the Services in the following circumstances:
- a) When the Consultant has not received payment of an invoice or a part of an invoice, as the case may be, by the due date for payment of such invoice and the Client has not issued a valid Notice in accordance with Clause 7.5 [Disputed Invoices] stating the reasons for non-payment of the invoice or part thereof, subject to the Consultant giving seven (7) days' Notice to the Client.
 - b) Where an Exceptional Event arises, including that contemplated under Clause 3.8 [Safety and Security of Consultant's Personnel]. Notice shall be given to the Client as soon as reasonably practicable. The Consultant shall take reasonable endeavours to avoid or minimise such suspension of all or part of the Services.
 - c) Failure by the Client to satisfy the requirements of Clause 2.4 [Client's Financial Arrangements].

6.2

Resumption of

Suspended Services

- 6.2.1 When the Services have been suspended under Sub-Clause 6.1.1 [Suspension of Services] the Consultant shall resume the Services or part thereof, as the case may be, within twenty-eight (28) days' of receipt of Notice from the Client instructing the Consultant to resume the Services or part thereof.
- 6.2.2 Where the Services have been suspended under Sub-Clause 6.1.2 [Suspension of Services] the Consultant shall resume the Services or part thereof, as the case may be, as soon as reasonably practicable after the matters giving rise to the suspension have ceased.

6.3

Effects of Suspension of the Services

- 6.3.1 The Consultant shall be paid for Services performed in accordance with the Agreement up to the date of suspension of the Services or part thereof, as the case may be.
- 6.3.2 During the period of suspension the Consultant shall not perform the Services or part thereof as the case may be, but shall ensure, so far as is reasonably practicable, the security, maintenance and custody of the Services so as to prevent spoilage or loss.
- 6.3.3 If during the suspension and resumption of Services or part thereof the Consultant incurs Exceptional Costs, then:
- (a) the agreed remuneration shall be adjusted in accordance with Sub-Clause 7.1.2 [Payment to the Consultant];
 - (b) the Time for Completion shall be amended in accordance with Clause 4.4 [Delays] to reflect the effect of the suspension on the Programme.
 - (c) as soon as reasonably practicable the Consultant shall inform the Client by issue of a Notice of the occurrence of these Exceptional Costs.
- 6.3.4 The Consultant shall take reasonable measures to mitigate the effects of the suspension of the Services or part thereof.

6.4

Termination of Agreement

- 6.4.1 Termination by the Client
- (a) If the Consultant without good reason is in breach of a material term or condition of the Agreement, the Client may give Notice to the Consultant outlining the breach and the remedy required under the Agreement. If the Consultant has not proceeded to remedy the breach within twenty-eight (28) days after the issue of the Notice then the Client may terminate the Agreement upon giving fourteen (14) days' Notice to the Consultant.
 - (b) Notwithstanding the notice periods in Sub-Clause 6.4.1(a), if the Consultant becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events, the Client may in so far as the applicable laws permit terminate the Agreement with immediate effect upon service of an appropriate Notice.
 - (c) Notwithstanding the notice periods in Sub-Clause 6.4.1(a), if the Consultant is in breach of Clause 1.10 [Anti-Corruption], the Client may terminate the Agreement with immediate effect upon service of an appropriate Notice.
 - (d) At its sole discretion upon giving the Consultant fifty-six (56) days' Notice provided always that the Client shall not be entitled to use this provision in order to obtain the Services from others, or in order to perform the Services by itself.
 - (e) Without prejudice to Sub-Clause 6.1.1 [Suspension of Services], where an Exceptional Event has led to a suspension of the Services for more than one hundred and sixty-eight (168) days the Client may terminate the Agreement upon giving fourteen (14) days' Notice to the Consultant.

6.4.2 Termination by the Consultant

- (a) If the Services have been suspended under Sub-Clause 6.1.1 [Suspension of Services] for more than one hundred and sixty-eight (168) days the Consultant may terminate the Agreement upon giving fourteen (14) days' Notice to the Client.
- (b) If the Services have been suspended under Sub-Clause 6.1.2(a) [Suspension of Services] or Sub-Clause 6.1.2(c) [Suspension of Services] for more than forty-two (42) days the Consultant may terminate the Agreement upon giving fourteen (14) days' Notice to the Client.
- (c) If the Client becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events, the Consultant may in so far as the applicable laws permit terminate the Agreement with immediate effect upon service of an appropriate Notice.
- (d) If the Client is in breach of Clause 1.10 [Anti-Corruption] the Consultant may terminate the Agreement with immediate effect upon service of an appropriate Notice.
- (e) If the Services have been suspended under Sub-Clause 6.1.2(b) [Suspension of Services] for more than one hundred and sixty-eight (168) days the Consultant may terminate the Agreement upon giving fourteen (14) days' Notice to the Client.

6.5

Effects of Termination

6.5.1 The Consultant shall be paid for Services performed in accordance with the Agreement up to the date of termination of the Agreement.

6.5.2 If the Agreement is terminated in accordance with Sub-Clause 6.4.1(a) or (b) or (c) [Termination of Agreement] the Client shall, without prejudice to any other rights the Client may have under the Agreement, be entitled to:

- (a) take over from the Consultant all documents, information, calculations and other deliverables, whether in electronic format or otherwise, pertaining to the Services performed up to the date of termination, necessary to enable the Client to complete the Services either by itself or with the assistance of another consultant (all documents in electronic format shall be editable);
- (b) claim compensation for reasonable costs directly incurred as a consequence of the termination, including but not limited to additional costs incurred in arranging for the Services to be completed by another consultant;
- (c) withhold payments due to the Consultant until all the costs incurred by the Client under Sub-Clause 6.5.2(b) above have been established and all documents, information, calculations and other deliverables necessary to enable the Client to complete the Services have been received. The Client shall act expeditiously and without delay in establishing its own costs under Sub-Clause 6.5.2(b).

The Client shall take all reasonable steps to mitigate such costs. The Client's entitlement under this Sub-Clause 6.5.2 shall be limited to those costs that are reasonably foreseeable at the time of signature of the Agreement.

6.5.3 If the Agreement is terminated in accordance with Sub-Clause 6.4.1(d) or (e) or Sub-Clause 6.4.2 [Termination of Agreement] and the Consultant incurs

Exceptional Costs, then, without prejudice to any other rights the Consultant may have under the Agreement, the agreed remuneration shall be adjusted in accordance with Sub-Clause 7.1.2 [Payment to the Consultant]. The Consultant shall inform the Client as soon as reasonably practicable by issue of a Notice of the occurrence of the Exceptional Costs.

- 6.5.4 Where the Agreement is terminated under Sub-Clause 6.4.1(d) or Sub-Clause 6.4.2(a) to (d) [Termination of Agreement] then the Consultant shall be entitled to be paid the loss of profit that would otherwise have been earned on the Services not performed due to the termination.

6.6
Rights and Liabilities
of the Parties

- 6.6.1 Termination of the Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
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7

Payment

7.1
Payment to the
Consultant

- 7.1.1 The Client shall pay the Consultant for the Services (including Variations to the Services) in accordance with the details stated in Appendix 3 [Remuneration and Payment].
- 7.1.2 Unless otherwise agreed in writing, the Client shall pay the Consultant in respect of Exceptional Costs:
- (a) for the extra time spent by the Consultant's personnel in the performance of the Services at the rates and prices stated in Appendix 3 [Remuneration and Payment]. Where the rates and prices are not applicable then new rates and prices shall be agreed by the Parties. If agreement is not reached within fourteen (14) days of the issue of the relevant Notice then reasonable rates and prices shall be applied; and
 - (b) the cost of all other expenses reasonably incurred by the Consultant.
- 7.1.3 The Client shall pay any other amounts that become due under the Agreement.

7.2
Time for Payment

- 7.2.1 Amounts due to the Consultant shall be paid within twenty-eight (28) days of the date of issue of the Consultant's invoice unless otherwise stated in Appendix 3 [Remuneration and Payment].
- 7.2.2 If the Consultant does not receive payment within the time stated in Sub-Clause 7.2.1 it shall be paid financing charges at the rate(s) stated in Appendix 3 [Remuneration and Payment] compounded monthly on the amount overdue and in its currency calculated from the due date for payment of the invoice to the actual date payment is received from the Client. Such financing charges shall not affect the rights of the Consultant stated in Sub-Clause 6.1.2(a) [Suspension of Services] or Sub-Clause 6.4.2 [Termination of Agreement].
- 7.2.3 Without prejudice to Sub-Clause 6.5.2(c) [Effects of Termination] the Client shall not withhold payment of any part of an invoice for any amount properly due to the Consultant under the Agreement by reason of claims or alleged claims against the Consultant unless the amount to be withheld has been

agreed with the Consultant as due to the Client, or has been awarded by an adjudicator or an arbitrator to the Client pursuant to a referral under Clause 10 [Disputes and Arbitration].

7.3

- Currencies of Payment**
- 7.3.1 The currencies applicable to the Agreement are those stated in Appendix 3 [Remuneration and Payment].
- 7.3.2 If at the Effective Date of the Agreement or during the performance of the Services the conditions in the Country (except where the Country is the principal place of business of the Consultant) are such as may:
- (a) prevent or delay the transfer abroad of Local or Foreign Currency payments received by the Consultant in the Country;
 - (b) restrict the availability or use of Foreign Currency in the Country; or
 - (c) impose taxes or differential rates of exchange for the transfer from abroad of Foreign Currency into the Country by the Consultant for Local Currency expenditure and subsequent re-transfer abroad of Foreign Currency or Local Currency up to the same amount, such as to inhibit the Consultant in the performance of the Services or to result in financial disadvantage to it, then the Client agrees that such circumstances shall be deemed to justify the application of Clause 4.6 [Exceptional Event] if alternative financial arrangements are not made to the satisfaction of the Consultant.

7.4

**Third-Party Charges
on the Consultant**

- 7.4.1 Except where specified in the Particular Conditions or Appendix 3 [Remuneration and Payment] and except where the Country is the principal place of business of the Consultant:
- (a) the Client shall whenever possible arrange that exemption is granted to the Consultant and those of its personnel who are not normally resident in the Country from any payments required by the government or authorised third parties in the Country which arise from the Agreement in respect of:
 - (i) their remuneration;
 - (ii) their imported goods other than food and drink;
 - (iii) goods imported for the Services;
 - (iv) documents imported for the Services;
 - (b) whenever the Client is unsuccessful in arranging such exemption, it shall reimburse the Consultant for such payments properly made, provided that the goods or documents imported for the Services when no longer required for the purpose of the Services, and not the property of the Client:
 - (i) shall not be disposed of in the Country without the Client's approval;
 - (ii) shall not be exported without payment to the Client of any refund or rebate recoverable and received from the government or authorised third parties.

7.5

Disputed Invoices

- 7.5.1 Without prejudice and subject to Sub-Clause 7.2.3 [Time for Payment], if any item or part of an item in an invoice submitted by the Consultant is contested by the Client as not properly due under the Agreement, the Client shall, within seven (7) days of the date of issue of the Consultant's invoice, give a Notice of its intention to withhold payment with reasons but shall not

delay payment of the remainder of the invoice. Sub-Clause 7.2.2 [Time for Payment] shall apply to all contested amounts which are finally determined to have been payable to the Consultant.

7.6

Independent Audit

- 7.6.1 Except where the Agreement provides for lump sum payments the Consultant shall maintain up-to-date records which clearly identify relevant time and expense and shall make these available to the Client on reasonable request.
- 7.6.2 Except where the Agreement provides for lump sum payments, not later than one year after the completion or termination of the Services, the Client may, by Notice of not less than fourteen (14) days to the Consultant, require that an independent reputable firm of professionally qualified accountants nominated by it audit any time and expense records claimed by the Consultant. The audit shall be conducted by attending during normal working hours at the office where the records are kept and the Consultant shall afford all reasonable assistance to the auditors. Any such audit shall be at the Client's cost.
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8

Liabilities

8.1

Liability for Breach

- 8.1.1 The Consultant shall be liable to the Client for any breach by the Consultant of any provision of the Agreement.
- 8.1.2 The Client shall be liable to the Consultant for any breach by the Client of any provision of the Agreement.
- 8.1.3 If either Party is liable to the other, damages shall be payable only on the following terms:
- (a) such damages shall be limited to the amount of reasonably foreseeable loss and damage suffered as a direct result of such breach;
 - (b) in any event, the amount of such damages shall be limited to the amount stated in Sub-Clause 8.3.1 [Limit of Liability]; and
 - (c) if either Party is considered to be liable jointly with third parties to the other Party, the proportion of damages payable by that Party shall be limited to that proportion of liability which is attributable to its breach.

8.2

Duration of Liability

- 8.2.1 Notwithstanding any term or condition to the contrary in the Agreement or any legal requirement of the Country or any other relevant jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Consultant), neither the Client nor the Consultant shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on one Party by the other Party before the expiry of the relevant period stated in the Particular Conditions, such period to commence upon completion of the Services or termination of the Agreement (whichever is earlier). Each Party agrees to waive all claims against the other in so far as such claims are not formally made in accordance with this Sub-Clause 8.2.1.

8.3

Limit of Liability

- 8.3.1 The maximum amount of damages payable by either Party to the other in respect of any and all liability, including liability arising from negligence, under or in connection with the Agreement shall not exceed the amount stated

in the Particular Conditions. This limit is without prejudice to any financing charges specified under Sub-Clause 7.2.2 [Time for Payment], and without prejudice to Sub-Clause 8.4.1. [Exceptions].

8.3.2 Each Party agrees to waive all claims against the other in so far as the aggregate of damages which might otherwise be payable exceeds the maximum amount payable under Sub-Clause 8.3.1.

8.3.3 Without prejudice to the right the Consultant may have under Sub-Clause 6.5.4 [Effects of Termination], neither Party shall be liable in contract, tort, under any law or in any statutory private right of action or otherwise, for any loss of revenue, loss of profit, loss of production, loss of contracts, loss of use, loss of business, third-party punitive damages or loss of business opportunity or for any indirect, special or consequential loss or damage.

8.4

Exceptions

8.4.1 Sub-Clause 8.1.3 [Liability for Breach], Clause 8.2 [Duration of Liability], and Clause 8.3 [Limit of Liability] shall not apply to claims arising out of deliberate manifest and reckless default, fraud, fraudulent misrepresentation or reckless misconduct by the defaulting Party.

9

Insurance

9.1

Insurances to be taken out by Consultant

9.1.1 The Consultant shall take out and maintain professional indemnity insurance and public liability insurance in amounts sufficient to cover its liabilities under the Agreement, provided always in each case that such insurance is available at commercially reasonable rates and on terms (including normal exclusions) commonly included in such insurances at the time the insurances were taken out or renewed as the case may be. Such insurances shall be placed with insurers of international repute and standing. In assessing a commercially reasonable rate the Consultant's own claims record shall be disregarded.

The Consultant shall ensure that the minimum amount of cover under the policies is not less than the amount specified in the Particular Conditions.

The Consultant shall ensure that its professional indemnity insurance is maintained for the period of liability stated in the Particular Conditions in accordance with Sub-Clause 8.2.1. [Duration of Liability].

9.1.2 The Consultant shall take out and maintain workers' compensation insurance or employer's liability insurance and any other insurances as may be required by the applicable law for the duration of the Services.

9.1.3 When requested to do so by the Client, the Consultant shall produce brokers' or insurers' certificates to show that the insurance cover required by this Clause 9.1 is being maintained.

9.1.4 The Consultant shall notify the Client immediately should any of the insurance required by this Clause 9.1 be cancelled by the insurers or underwriters.

10

Disputes and Arbitration

10.1

Amicable Dispute

Resolution

- 10.1.1 If any dispute arises out of or in connection with the Agreement then senior representatives of the Parties with authority to settle the dispute shall, within twenty-eight (28) days of a written request from one Party to the other, meet in order to attempt to resolve the dispute amicably.
- 10.1.2 If the dispute is not resolved within fifty-six (56) days of receipt of the written request, then either Party may refer the dispute to adjudication in accordance with Clause 10.2 [Adjudication], even if the meeting referred to in Sub-Clause 10.1.1 has not taken place.

10.2

Adjudication

- 10.2.1 Unless settled amicably, any dispute arising out of or in connection with the Agreement may be referred by either Party to adjudication in accordance with the Rules for Adjudication in Appendix 5 [Rules for Adjudication]. The adjudicator shall be agreed between the Parties or failing agreement shall be appointed in accordance with the said Rules for Adjudication.
- 10.2.2 The Parties shall bear their own costs arising out of the adjudication and the adjudicator shall not be empowered to award costs to either Party. Without prejudice to the above, the adjudicator may decide which Party shall bear the adjudicator's fees and in what proportion.
- 10.2.3 If either Party is dissatisfied with the adjudicator's decision:
- (a) the dissatisfied Party may give a notice of dissatisfaction to the other Party, with a copy to the adjudicator;
 - (b) this notice shall state that it is a "Notice of Dissatisfaction with the Adjudicator's Decision" and shall set out the matter in dispute and the reason(s) for dissatisfaction; and
 - (c) this notice shall be given within twenty-eight (28) days of receiving the adjudicator's decision.
- 10.2.4 If the adjudicator fails to give its decision within the period stated in the Rules for Adjudication, then either Party may, within twenty-eight (28) days of this period expiring, give a notice to the other Party in accordance with Sub-Clause 10.2.3, sub-paragraphs (a) and (b), above.
- 10.2.5 Except as stated in Clause 10.5 [Failure to Comply with Adjudicator's Decision], neither Party shall be entitled to commence arbitration of a dispute unless a notice in respect of that dispute has been given in accordance with Sub-Clause 10.2.3 or 10.2.4. If such a notice has been given, and neither Party commences arbitration of the dispute within one hundred and eighty-two (182) days of giving or receiving the notice, such notice shall be deemed to have lapsed and no longer be valid.
- 10.2.6 Whether a Notice of Dissatisfaction with the adjudicator's decision has been issued or not by either Party, any adjudicator's decision shall become binding on both Parties upon its release.
- 10.2.7 If the adjudicator has given its decision as to a matter in dispute to both Parties, and no notice under Sub-Clause 10.2.3 has been given by either Party within twenty-eight (28) days of receiving the adjudicator's decision, then the decision shall become final and binding on both Parties.

- 10.2.8 Adjudication may be commenced before or after completion of the Services. The obligations of the Parties shall not be altered by reason of any adjudication being conducted during the progress of the Services.

10.3

Amicable Settlement

- 10.3.1 Where a notice has been given under Sub-Clause 10.2.3 [Adjudication] or 10.2.4 [Adjudication], both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the twenty-eighth (28th) day after the day on which this notice was given, even if no attempt at amicable settlement has been made.

10.4

Arbitration

- 10.4.1 Unless settled amicably, subject to Clause 10.2 [Adjudication] and Clause 10.5 [Failure to Comply with Adjudicator's Decision], any dispute in respect of which the adjudicator's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:
- (a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce;
 - (b) the dispute shall be settled by one or three arbitrators appointed in accordance with these Rules; and
 - (c) the arbitration shall be conducted in the ruling language defined in the Particular Conditions.
- 10.4.2 The arbitrator(s) shall have full power to open up, review and revise any ruling or decision of the Adjudicator.
- 10.4.3 In any award dealing with costs of the arbitration, the arbitrator(s) may take account of the extent (if any) to which a Party failed to cooperate with the other Party in appointing the adjudicator under Clause 10.2 [Adjudication].
- 10.4.4 Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the adjudicator to obtain its decision, or to the reasons for dissatisfaction given in the Party's notice under Sub-Clause 10.2 [Adjudication]. Any decision of the adjudicator shall be admissible in evidence in the arbitration.
- 10.4.5 Arbitration may be commenced before or after completion of the Services. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the Services.

10.5

Failure to Comply with Adjudicator's Decision

- 10.5.1 In the event that a Party fails to comply with any decision of the adjudicator, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under Clause 10.4 [Arbitration] and Clause 10.1 [Amicable Dispute Resolution], Clause 10.2 [Adjudication] and Clause 10.3 [Amicable Settlement] shall not apply to this reference. The arbitral tribunal (constituted under Clause 10.4 [Arbitration]) shall have the power, by way of summary or other expedited procedure, to order, whether by an interim or provisional measure or an award (as may be appropriate under the applicable law or otherwise), the enforcement of that decision.
- 10.5.2 In the case of a binding but not final decision of the adjudicator, such interim or provisional measure or award shall be subject to the express reservation

that the rights of the Parties as to the merits of the dispute are reserved until they are resolved by an award.

- 10.5.3 Any interim or provisional measure or award enforcing a decision of the adjudicator which has not been complied with, whether such decision is binding or final and binding, may also order or award damages or other relief.