

Private and Confidential

Procurement and Construction Contract

By and Between

ARGEX CANADA INC.

(OWNER)

And

TR CANADA INC.

(CONTRACTOR)

Date: March 3, 2015

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THIS PROCUREMENT AND CONSTRUCTION CONTRACT is made and entered into on the 3rd day of March, 2015:

BETWEEN: **ARGEX CANADA INC.**, a legal person duly incorporated under the laws of Canada, having its head office and principal place of business at 630 Sherbrooke St. West, Suite 410, Montreal, Quebec, H3A 1E4, Canada herein acting and represented by Richard Poulin, Executive Vice President, duly authorized for the purposes hereof as he so declares;

(hereinafter, the “**Owner**”)

AND: **TR CANADA INC.**, a legal person duly incorporated under the laws of Canada, having its head office and principal place of business at 310 - 633 6th Avenue SW, Calgary, Alberta T2P 2Y5, Canada, herein acting and represented by Carlos Molinero, duly authorized for the purposes hereof by the letter of authorization of Tecnicas Reunidas S.A. dated March 2, 2015;

(hereinafter, the “**Contractor**”)

(the Owner and the Contractor are hereinafter, collectively, referred to as the “**Parties**” and, individually, a “**Party**”).

WITNESSETH:

WHEREAS, the Owner requires Works (as defined hereinafter) to be performed to establish and realize a complete new TiO₂ production plant, at Salaberry-de-Valleyfield, province of Québec, Canada (hereinafter referred to as the “**Project**”);

WHEREAS, the Owner accordingly intends that the Works shall be performed by the Contractor for the Project;

WHEREAS, the Contractor has represented itself to be competent, qualified and fully capable of providing the Works in accordance with the terms and conditions set out hereinafter and that it has the necessary technical expertise and know-how to provide the necessary engineering, procurement and construction services in relation to the Works;

WHEREAS during the Initial Period and in accordance with Article 2, the Parties will negotiate the Guaranteed Target Contract Price (GTCP);

WHEREAS subject to the termination rights of the Parties under Sections 2.3 and 2.4 the Parties will execute a Change Order reflecting the Guaranteed Target Contract Price (GTCP).

NOW, THEREFORE, in consideration of the mutual premises and covenants herein contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalized terms used in this Contract shall have the meanings ascribed to them below in this Section 1.1:

- 1.1.1 “**Advance Payment**” has the meaning ascribed thereto in Section 13.2.
- 1.1.2 “**Advance Payment Letters of Credit**” means, collectively, the First Advance Payment Letter of Credit and the Second Advance Payment Letter of Credit.
- 1.1.3 “**Anti-Corruption Legislation**” has the meaning ascribed thereto in Section 31.11.2.
- 1.1.4 “**Applicable Laws**” means (i) any law applicable to the Project and to the Contractor in the place where the Works are being performed, including any statute, subordinate legislation or treaty, regulation or by-law, and (ii) any guideline, direction, rule, standard, requirement, policy, code, order in council, decision, ordinance, declaration, order, judgement, injunction, award or decree of a Governmental Authority having the force of law applicable to the Project and to the Contractor in the place where the Works are being performed.
- 1.1.5 “**Artefact**” has the meaning ascribed thereto in Section 3.17.
- 1.1.6 “**As-Builts**” means a set of project drawings and specifications, which depict the as-built conditions of the completed Plant, in 2D and 3D (PDS, PDMS or Smart Plant) format.
- 1.1.7 “**Bank Guarantees**” has the meaning ascribed thereto in Section 17.6.
- 1.1.8 “**Business Day**” means days of the week except Saturday, Sunday or a statutory holiday observed in the Province of Québec.
- 1.1.9 “**CCQ**” means *Commission de la Construction du Québec*.
- 1.1.10 “**Change**” means any addition, substitution, deletion, variation, modification, cancellation or omission of part or all of the Works, which is instructed or approved by a Change Order or a Change Directive under Article 16.
- 1.1.11 “**Change Directive**” means a written instruction signed by the Owner’s Representative directing the Contractor to proceed with a Change as further described in Section 16.3.

- 1.1.12 “**Change Order**” means a Change to this Contract authorized in writing by the Owner and signed by the Owner’s Representative as further described in Article 16.
- 1.1.13 “**Claim**” includes any claim, action, suit, demand or proceeding of any nature claiming any relief or remedy or for payment of money (including damages):
- (a) under, arising out of, or in any way connected with this Contract or the Project; or
 - (b) otherwise at law or in equity, including by statute, in tort (whether for negligence, negligent misrepresentation or otherwise); or
 - (c) for restitution.
- 1.1.14 “**Commencement Date**” means the date upon which the Contractor shall commence performance of the FEED/FEL3 Works in accordance with the LNTP.
- 1.1.15 “**Commissioning**” means those activities prior to the First Fill and after Mechanical Completion which include:
- (a) Mechanical start-up of the Equipment;
 - (b) the various systems and items of the Equipment are first put into initial operation; utility systems, instrument air, cooling water and general purpose water are made live and the core process systems are first made operational, with safe chemicals, air or water; the units are started up, shut down, all to gain the confidence that when process chemicals are introduced at First-fill, the Plant will operate as designed and intended; and
 - (c) the calibration of instruments, modifications and adjustments to all equipment and systems that are required to achieve the mechanical design performance levels stated in the Specifications attached as Exhibit F and further defined in the FEED/FEL3 report at the end of the Initial Period and completing an integrated mechanical run of process equipment lines by the Contractor without the filling media.
- 1.1.16 “**Commissioning Completion**” means that stage of the Works, as certified by the Contractor, when each of the following conditions has been satisfied in respect of such Works:
- (a) The Operation and Maintenance Manual, the Equipment and Material suppliers’ letters of warranty, the Subcontractors’ letters of warranty and Commissioning reports and records of measurement have been delivered to the Owner;

- (b) Mechanical Completion has been achieved;
- (c) Commissioning for the Owner Issued Items has been completed under the supervision of the applicable Other Contractors;
- (d) commissioning activities as stipulated in Section 1.1.15 have been successfully completed;
- (e) the Works are ready for the First Fill and Performance Tests activities;
- (f) the Contractor has delivered the Warranty Letter of Credit; and
- (g) the Owner has issued the certificate stating that the conditions described in the foregoing paragraphs (a), (b), (c), (d), (e) and (f) have been achieved.

1.1.17 “**Confidential Information**” has the meaning ascribed thereto in Section 26.4.

1.1.18 “**Construction Reimbursable Costs**” has the meaning ascribed thereto in Section 12.3.

1.1.19 “**Contract**” means, collectively, this written agreement between the Owner and the Contractor, the Exhibits, all written amendments, modifications and supplements to this Contract made pursuant to Section 31.5, and all Changes.

1.1.20 “**Contract Price**” consists of the sum of the compensation for FEED/FEL3 Works, the Provisional Procurement Price, the Provisional Construction Price and the Fixed Lump Sum Fees.

1.1.21 “**Contractor**” means the second named party to this Contract.

1.1.22 “**Contractor’s Documents**” means the calculations, computer programs and other software (including source code and object code versions), drawings, specifications, manuals, models and other documents of a technical nature supplied by the Contractor under this Contract; as described in Exhibit C, as well as, diagrams, graphs, charts, projections, estimates, records, concepts, accounts, plans, formulae, field engineering, methods, techniques, processes, supplier lists, price lists, customer lists, market research information, correspondence, letters and papers of every description including all copies of and extracts from the same.

1.1.23 “**Contractor’s Equipment**” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any Defects. However, the Contractor’s Equipment excludes Temporary Works, the Owner’s Equipment (if any), Equipment, Materials and any other things intended to form or forming part of the Works.

- 1.1.24 “**Contractor’s Personnel**” means the Subcontractors, the Contractor’s Representative and all personnel of the Contractor, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.
- 1.1.25 “**Contractor’s Representative**” means the person named by the Contractor in this Contract or appointed from time to time by the Contractor under Section 5.3, who acts on behalf of the Contractor for the purposes of the Works and this Contract.
- 1.1.26 “**Cost**” means all documented expenditures reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.
- 1.1.27 “**CSST**” means the *Commission de la santé et sécurité au travail*.
- 1.1.28 “**Defective**” means the Equipment or the Works, which is deficient in design, material or workmanship, or does not comply with the requirements of this Contract, the Applicable Laws in force at the time the Works were performed or the Good Industry Practice and “**Defect**” has the corresponding meaning.
- 1.1.29 “**Deficiency Holdback**” has the meaning ascribed thereto in Section 15.2.
- 1.1.30 “**Detailed Design**” means the detailed design to be undertaken by the Other Contractor (Offshore Contractor) and all field engineering as it relates to the Contractor’s onshore activities in accordance with this Contract to produce all necessary documentation sufficient for the procurement, installation, construction and Commissioning of the Project, as more fully described in Exhibit C.
- 1.1.31 “**Detailed Design Documentation**” means the Other Contractor’s (Offshore Contractor) Documents required to be prepared by the Other Contractor (Offshore Contractor) and all field engineering, as it relates to the Contractor’s onshore activities, in order to carry out the performance of the Works, including the construction, testing, Commissioning of the Plant in accordance with this Contract.
- 1.1.32 “**Dispute**” has the meaning ascribed thereto in Section 29.1.
- 1.1.33 “**Dispute Notice**” has the meaning ascribed thereto in Section 29.1.
- 1.1.34 “**Dispute Representative**” has the meaning ascribed thereto in Section 29.2.1.
- 1.1.35 “**Effective Date**” has the meaning ascribed thereto in Section 2.1.
- 1.1.36 “**Equipment**” means all equipment and systems, machinery, instruments, commissioning equipment and spare parts, other spares, and all other items to be

supplied by the Contractor for incorporation in the Plant, or required to operate the Plant in order for the Plant to be built and put into operation in accordance with this Contract, except for the Owner Issued Items supplied by the Owner.

- 1.1.37 **“Execution Letter of Credit”** means an irrevocable unconditional transferable letter of credit described in Section 17.2 in the form attached hereto as Exhibit R.
- 1.1.38 **“Factory Acceptance Tests”** means the operational tests and inspections on all the Equipment, performed by its manufacturer at such manufacturer’s work site.
- 1.1.39 **“FEED/FEL3 Works”** means the Works in connection with FEED/FEL3 to be performed by the Contractor during the Initial Period, as it relates to the Contractor’s FEED/FEL3 support onshore activities.
- 1.1.40 **“Final Completion”** means that stage of the Works, as demonstrated by the Contractor, when each of the following conditions has been satisfied: (a) all documents and deliverables which are required by Final Completion under this Contract have been delivered and, except for the Start-up/First-fill, the Works are complete in all respects as required by this Contract; (b) the Commissioning Completion has been achieved by the Contractor under the supervision of the applicable Other Contractor; (c) the Tests on Completion have been successfully performed; (d) the Punch List has been completed; (e) the Owner has received the Final Lien Waiver and documents described in Section 13.7.2(e); (f) all training programs for the Owner’s competent and experienced operation and maintenance personnel have been completed by the Contractor in accordance with this Contract; and (g) the Owner has issued the certificate substantially in the form set forth in Exhibit Z stating that the Works have been performed in accordance with this Contract.
- 1.1.41 **“Final Completion Date”** means the date of issuance of the certificate of Final Completion by the Owner in accordance with Section 15.4.
- 1.1.42 **“Final Contract Price”** means the sum of the compensation for FEED/FEL3 Works, the Procurement Reimbursable Costs, the Construction Reimbursable Costs and the Fixed Lump Sum Fees at Final Completion Date.
- 1.1.43 **“Final Lien Waiver”** means a statement and waiver of Liens prepared by the Contractor, which provides that the Contractor, subject to final payment by Owner of sums owed under this Contract, waives and releases all Liens with respect to all Works and that all Subcontractors have unconditionally waived and released all Liens with respect to all Works, in the form set forth in Exhibit U.
- 1.1.44 **“Final Payment Request”** has the meaning ascribed thereto in Section 13.6.

- 1.1.45 **"First Advance Payment Letter of Credit"** means an irrevocable unconditional transferable letter of credit described in Section 17.1.1 provided by the Contractor to the Owner pursuant to Section 13.2 in the form attached hereto as Exhibit Q.
- 1.1.46 **"First Fill"** means all activities for the Performance Tests to be undertaken by the Owner with the supervision of the Other Contractors, immediately following Commissioning, in order to confirm that all the Owner Issued Items function together in accordance with the applicable Other Contractor's Documents with the filling media which activities include the Performance Tests; For greater certainty, the attainment of steady-state operation of the Plant (that is, the stage at which the Owner's employees execute operations without deviation from Standard Operating Practices (SOPs) put in place) shall be the responsibility of the Owner.
- 1.1.47 **"Fixed Lump Sum Fees"** has the meaning ascribed thereto in Section 12.1.2.
- 1.1.48 **"Force Majeure Event"** means any act, event or condition that causes delay in or failure of performance of obligations under this Contract (except for obligations to pay money due), to the extent that such act, event or condition (a) is beyond the reasonable control of the Party to this Contract relying thereon; (b) is not the result of any acts, unreasonable omissions or delays of the Party to this Contract relying thereon (or any third person over whom such Party has control, including, in the case of the Contractor, any Contractor's Personnel); (c) is not an act, event or condition, the risks or consequences of which the Party relying thereon has expressly agreed to assume hereunder, and (d) cannot be cured, remedied, avoided, offset, negotiated or otherwise overcome by the prompt action or exercise of due diligence by the Party relying thereon (or any third person over whom such Party has control, including, in the case of the Contractor, any Contractor's Personnel). The term "Force Majeure Event" shall include the following (if the requirements described in clauses (a) through (d) of the above sentence are satisfied): hurricanes, lightning strike, floods or other unusually severe conditions; government decreed official state of emergency or governmental acts, decrees, injunctions, restrictions; trade embargoes or restrictions; fire, tornadoes, earthquakes and explosions; acts of war (whether declared or undeclared), piracy, blockades or other threatened acts of war or military action; sabotage or acts of terrorism; strikes, work stoppages or other labour actions that are of an industry wide nature or affecting a third person and are not directed solely at the Contractor or any Contractor's Personnel. Notwithstanding the foregoing, the term "Force Majeure Event" shall not include: (i) strikes, work stoppages (or deteriorations), slowdowns or other labour actions directed solely at the Contractor or the Contractor's Personnel or solely involving the Contractor's Personnel; (ii) weather conditions which could be anticipated by experienced construction contractors familiar with building industrial plants in the Province of Québec and/or do not exceed the twenty-five (25) year severity for that weather condition in that area of the Project, as determined by, or according to the records of

the Meteorological Service of Canada (or its successors); (iii) any condition of the Site or event arising from a weather condition described in the immediately preceding clause (ii), unless such weather conditions concurrently cause the Owner to shut down work activities at the Site; (iv) the occurrence of any manpower or Equipment shortages, except if such shortage results from an act, event or condition which constitutes a Force Majeure Event; (v) any failure by the Contractor to obtain and/or maintain any Permits, except if such delay, default or failure results from an act, event or condition which constitutes a Force Majeure Event; (vi) any delay, default or failure (direct or indirect) in obtaining Equipment or retaining any Subcontractor or any other delay, default or failure (financial or otherwise) of any Subcontractor or any other Contractor's Personnel, except if such delay, default or failure results from an act, event or condition which constitutes a Force Majeure Event, or (vii) any mechanical, electrical or other breakdown, except if any such breakdown results from an act, event or condition which constitutes a Force Majeure Event.

1.1.49 **"Good Industry Practice"** means the exercise of that degree of skill, diligence and prudence that would reasonably and ordinarily be expected from a skilled and experienced engineering and procurement contractor in North America and Europe applying the standards generally adopted by professional and skilled engineering and procurement contractors involved in the safe construction of chemical, petrochemical and industrial facilities of a type and scale similar to the Plant; they include those practices, methods, equipment, specifications and standards of safety and performance and reliability, as well as good, safe and prudent practices commonly used in North America and Europe in connection with the design, engineering, procurement, testing and delivery of facilities of a type and size similar to the Plant, as same exist or are used as of the time when the Contractor is performing the Works; provided, however, that if any portion of such standards, specifications or codes conflicts with or is less stringent than Applicable Laws, such conflicting or less stringent portions of such standards shall not be deemed "applicable".

1.1.50 **"Governmental Authority"** means any federal, provincial, regional, local or municipal governmental, quasi-governmental, judicial, public or statutory authority, commission, tribunal, agency, department, ministry, body or any other entity having the legal authority to exercise any governmental function or having jurisdiction or authority in any way over the Project or this Contract.

1.1.51 **"GST"** means the taxes levied under Part IX of the *Excise Tax Act* (Canada).

1.1.52 **"Guaranteed Target Contract Price (GTCP)"** means the sum of the compensation for the FEED/FEL3 Works, the Provisional Procurement Price, the Provisional Construction Price and the Fixed Lump Sum Fees, as they relate to

onshore activities and to be agreed by the Parties during the Initial Period based on the agreed Scope of the Works and which is the guaranteed target contract price under this Contract, as may be adjusted by a Change Order or a Change Directive.

- 1.1.53 “**Holdback**” means a holdback by the Owner of ten percent (10%) of each Milestone Payment due to the Contractor.
- 1.1.54 “**Holdback Letter of Credit**” means an irrevocable unconditional transferable letter of credit described in Section 17.4 in the form attached hereto as Exhibit AA.
- 1.1.55 “**Initial Period**” means the period starting from the date of issuance of the LNTP and terminating on the earlier of (a) the date the Parties shall have entered into a Change Order reflecting the agreed Guaranteed Target Contract Price (GTCP) in accordance with Section 2.3, and (b) the date this Contract is terminated pursuant to Section 2.4.
- 1.1.56 “**Intellectual Property Claim**” has the meaning ascribed thereto in Section 26.3.
- 1.1.57 “**Lenders**” means any person providing financing for the Project and its respective agents, if any, and where the context requires, any prospective lenders.
- 1.1.58 “**Lenders’ Cure Period**” has the meaning ascribed thereto in Section 27.1.4.
- 1.1.59 “**Lien**” means any hypothec, mortgage, pledge, privilege, prior claim, priority, encumbrance, security interest, charge, title retention right or conditional sales right or other similar right of any nature whatsoever and howsoever arising, including any legal hypothec registered pursuant to articles 2726 and following of the *Civil Code of Québec*.
- 1.1.60 “**LNTP**” means a written notice given by the Owner to the Contractor fixing the date on which the Contractor shall start to perform the FEED/FEL3 Works, which date will not occur earlier than thirty (30) days after the foregoing written notice permitting the mobilization by the Contractor.
- 1.1.61 “**Maître d’oeuvre**” has the meaning set forth in the *Act Respecting Occupational Health and Safety*, L.R.Q. c.S.-2.1.
- 1.1.62 “**Materials**” means things of all kinds intended to form or forming part of the Works.
- 1.1.63 “**Mechanical Completion**” means that stage of the Works, as demonstrated by the Contractor, when each of the following conditions has been satisfied:

- (a) Preliminary Operation and Maintenance Manual, Commissioning tests procedures, Factory Acceptance Tests reports, Site acceptance tests reports and various Pre-Commissioning tests reports and records of measurements have been delivered to the Owner;
- (b) all process, utility and electric power systems that are part of the Works relating to the Plant are fully operational and in permanent service;
- (c) the Equipment has been assembled, erected and installed;
- (d) all the Plant is mechanically erected in strict compliance with the relevant Contractor's Documents and Applicable Laws to the extent necessary to permit Commissioning activities to be completed;
- (e) all Pre-Commissioning activities have been successfully completed;
- (f) mechanical completion for the Owner Issued Items has been completed under the supervision of the applicable Other Contractors;
- (g) the Parties have agreed on the Punch List;
- (h) the part of the Site relating to the Project is in a reasonably clean and safe condition, with all surface and subsurface construction debris, equipment and excess materials removed; and
- (i) the Owner has issued the certificate substantially in the form set forth in Exhibit X stating that the conditions described in the foregoing paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) have been achieved.

The existence of the Punch-List including temporary scaffolding, painting, insulation, grading and paving which in the reasonable opinion of the Owner do not affect the subsequent Commissioning would be left as balance work and will be performed prior to Final Completion.

1.1.64 “**Mechanical Completion Date**” means the date of issuance of the certificate of Mechanical Completion by the Owner in accordance with Section 15.1.

1.1.65 “**Milestone Date**” means the date designated as such in the Milestone Schedule, as such date may be adjusted in accordance with this Contract.

1.1.66 “**Milestone Event**” means any key event for the execution of the Works set forth in the Milestone Schedule.

- 1.1.67 “**Milestone Schedule**” means the milestone schedule to be agreed by the Parties during the Initial Period in connection with the payment of the Contract Price other than the compensation for FEED/FEL3 Works.
- 1.1.68 “**Non-Disclosure Agreement**” has the meaning ascribed thereto in Section 26.4.
- 1.1.69 “**Notice to Proceed**” means a written notice given by the Owner to the Contractor to start to perform the Works other than FEED/FEL3 Works in order to complete the Project as described in Exhibit A, Exhibit C and Exhibit D.
- 1.1.70 “**Operation and Maintenance Manual**” means the manual(s), including parts lists, general arrangement, shop drawings, drawings and specifications, commissioning and training manuals prepared by the Contractor and accepted by the Owner and setting forth full and detailed instructions on how to install, operate and maintain the Equipment in a manner consistent with Applicable Laws, Good Industry Practice and this Contract.
- 1.1.71 “**Other Contractors**” means any person having a direct contract with the Owner for the performance of services or work in relation to the Project other than in respect of the Works, including in respect of the Owner Issued Items.
- 1.1.72 “**Owner**” means the first named Party to this Contract.
- 1.1.73 “**Owner-Caused Delay**” means a delay that adversely affects the performance of the Works, which delay was caused directly as a result of and to the extent of: (a) any failure of the Owner to perform its obligations under this Contract; or (b) any interference by the Owner or the Owner’s Personnel, provided that Owner Caused Delay shall not include any delay to the extent attributable to (i) any failure of the Contractor to comply with its obligations under this Contract; (ii) any act or omission of the Owner or the Owner’s Personnel, acting in accordance with the instructions of the Contractor; or (iii) any delay of the Owner in the performance of its obligations under this Contract if a Change Order executed by both Parties has been issued delaying the date by which such obligations were required to be performed.
- 1.1.74 “**Owner Information**” has the meaning ascribed thereto in Section 26.1.
- 1.1.75 “**Owner Issued Items**” means material, equipment and systems to be furnished by the Owner and free issued to the Contractor for installation in the Works, as described in Section 4.3 and identified in Exhibit N. Without limiting the generality of the foregoing, each of the following constitutes the Owner Issued Items:

- (a) ;

- (b) [REDACTED];
- (c) [REDACTED];
- (d) [REDACTED];
- (e) [REDACTED];
- (f) [REDACTED];
- (g) [REDACTED]; and
- (h) [REDACTED]. [List of items redacted for competitive reasons]

1.1.76 **“Owner’s Equipment”** means the apparatus, machinery and vehicles made available by the Owner for the use of the Contractor in the execution of the Works, as stated in the Scope of Works;

1.1.77 **“Owner’s Personnel”** means the Other Contractors, the Owner’s Representative, and other employees referred to in Section 5.2 and all other staff, labour and other employees of the Owner; and any other personnel notified to the Contractor, by the Owner, as the Owner’s Personnel.

1.1.78 **“Owner’s Representative”** means a person named by the Owner, who acts on behalf of the Owner with respect to the Works and this Contract. All formal communications under this Contract in connection with any matter that may arise under this Contract shall be directed to or come from such Owner’s Representative.

1.1.79 **“Payment”** means any amount payable under or in connection with this Contract by the Owner, including any amount payable by way of remuneration, reimbursement, and indemnity or otherwise.

1.1.80 **“Payment Request”** has the meaning ascribed thereto in Section 13.4.1.

1.1.81 **“Payment Request Period”** has the meaning ascribed thereto in Section 13.4.2(a).

1.1.82 **“Partial Lien Waiver”** means a statement and waiver of Liens prepared by the Contractor, which provides that the Contractor unconditionally waives and releases all Liens with respect to the Work for which the Contractor requested payment and that all Subcontractors have unconditionally waived and released all Liens with respect to the Works for which the Contractor requested payment, in the form set forth in Exhibit T.

- 1.1.83 **“Parties”** means both the Owner and the Contractor and **“Party”** means either the Owner or the Contractor, as the context dictates.
- 1.1.84 **“Performance Tests”** means the tests carried out by the Owner under the direction and guidance of the applicable Other Contractor in accordance with the applicable supply agreement to test the overall performance of the Owner Issued Items and to confirm that the performance of such Owner Issued Items meets the applicable performance guarantees.
- 1.1.85 **“Permit”** means any license, right, permit, franchise, privilege, registration, direction, decree, consent, order, permission, authorization or other approval of any Governmental Authority.
- 1.1.86 **“Plant”** means all of the Equipment, Materials, apparatus, machinery and vehicles intended to form or forming part of the Works.
- 1.1.87 **“Pre-Commissioning”** means the activities carried out during construction that prepare and enable the Plant to move to the Commissioning phase, including piping and vessels and equipment leak tests, installation of filters, filling a reactor, cleaning pipes and equipment, vendor and factory acceptance testing, punch listing and instrument, electrical and motor loop testing, which activities shall be thoroughly documented with a formal transfer of documents signed off by the Contractor’s construction team and accepted by the Contractor’s commissioning manager.
- 1.1.88 **“Preliminary Operation and Maintenance Manual”** has the meaning ascribed thereto in Section 3.19.
- 1.1.89 **“Procurement Reimbursable Costs”** has the meaning ascribed thereto in Section 12.2.
- 1.1.90 **“Project”** has the meaning ascribed thereto in the Preamble.
- 1.1.91 **“Project Controlled Estimate”** has the meaning ascribed thereto in Section 10.2.
- 1.1.92 **“Project Schedule”** means the schedule in respect of the execution of the Works, a preliminary draft of which is attached as Exhibit E.
- 1.1.93 **“Provisional Construction Price”** has the meaning ascribed thereto in Section 12.1.3.
- 1.1.94 **“Provisional Procurement Price”** has the meaning ascribed thereto in Section 12.1.3.

1.1.95 “**Punch List**” means a list of items that remain to be performed or corrected to complete the Works in accordance with this Contract which is apparent at Mechanical Completion other than for those obligations which are expressly set out in this Contract to be performed after Mechanical Completion, but shall not include any item of Works, alone or in the aggregate, the non-completion of which may:

- (a) affect the safety, availability or reliability of the Plant (or any part thereof); or
- (b) affect Equipment performance; or
- (c) impact Commissioning activities; or
- (d) prevent the Plant from being used for the purposes as described in this Contract in accordance with all Applicable Laws and applicable Permits or legally placed into commercial operation.

1.1.96 “**QST**” means the Québec Sales Tax imposed under an *Act Respecting the Québec Sales Tax*.

1.1.97 “**Quality Assurance Plan**” means the manual to be prepared by the Contractor and accepted by the Owner setting forth the methodology used by the Contractor to assure that the quality of the Works is maintained to the level contemplated by this Contract as further described in Section 3.3.

1.1.98 “**Rely Upon Information**” has the meaning ascribed thereto in Section 4.4.

1.1.99 “**Safety and Health Plan**” means the plan to be prepared by the Contractor in compliance with this Contract, Applicable Laws and the Owner’s HSE requirements more fully described in Exhibit J, and accepted by the Owner setting forth the safety plan specific to the Site for all elements of the Works.

1.1.100 “**Scope of Works**” means the document entitled Scope of Works specifying the purpose, scope, design and/or other technical criteria, for the onshore (Canada) Works as included as Exhibit A and Exhibit D to this Contract, and any additions and modifications to such document in accordance with this Contract.

1.1.101 “**Second Advance Payment Letter of Credit**” means an irrevocable unconditional transferable letter of credit described in Section 17.1.2 provided by the Contractor to the Owner pursuant to Section 13.2 in the form attached hereto as Exhibit Q.

1.1.102 “**Site**” means all those parcels of land owned or to be owned by the Owner on which the Plant will be located and any other place or places provided or made available by the Owner pursuant hereto, to which Equipment and/or Materials are to be

delivered or where Works are to be done by the Contractor, together with so much of the area surrounding the same as the Contractor shall, with the consent of the Owner, actually use in connection with the Project and the Works, otherwise than merely for the purposes of access.

- 1.1.103“**Steering Committee**” means the committee referred to in Section 5.11.
- 1.1.104“**Subcontract**” means any agreement (except this Contract) entered into by the Contractor for the performance of any part of the Works and shall include any agreement (of whatever tier) by which a Subcontractor further subcontracts such Works.
- 1.1.105“**Subcontractor**” means any person (except the Contractor) being a party to a Subcontract, including any person supplying materials, equipment, products or supplies for the Project, but excluding, for greater certainty, any Other Contractor.
- 1.1.106“**Subsurface Conditions**” has the meaning ascribed thereto in Section 16.5.
- 1.1.107“**Supplemental Instruction**” means any written instruction issued by the Owner to the Contractor in connection with the Works for the purpose of facilitating the execution of the Works or clarifying or interpreting this Contract, which instruction does not result in a Change.
- 1.1.108“**Temporary Works**” means temporary supports, structures, facilities and other temporary items required for the execution of the Works but not incorporated into the Works.
- 1.1.109“**Tests on Completion**” means the tests which are specified in this Contract or agreed by both Parties or instructed as a Change, and which are carried out under Article 14 before Final Completion.
- 1.1.110“**Warranty Letter of Credit**” means an irrevocable unconditional transferable letter of credit described in Section 17.3 in the form attached hereto as Exhibit S.
- 1.1.111“**Warranty Period**” has the meaning ascribed thereto in Section 21.1.
- 1.1.112“**Work Product**” has the meaning ascribed thereto in Section 26.2.
- 1.1.113“**Works**” means all work, services and things to be field engineered, procured, manufactured, supplied, provided, executed, constructed, installed, completed, tested, commissioned, rectified, replaced, made good, carried out, undertaken, done or performed onshore by the Contractor or its Subcontractors under this Contract (including the Exhibits) to provide the Owner with the Plant.

1.2 Priority of Contract Documents

This Contract shall be comprised of the following documents (each, a “**Contract Document**” and, collectively, the “**Contract Documents**”) and each shall be read and construed as an integral part of this Contract:

- 1.2.1 this written agreement
- 1.2.2 Exhibit A Scope of Works
- 1.2.3 Exhibit B Intentionally deleted
- 1.2.4 Exhibit C Execution Deliverables relating to Onshore Works
- 1.2.5 Exhibit D Works Split/Scope of Works between the Owner and the Contractor
- 1.2.6 Exhibit E Preliminary Project Schedule
- 1.2.7 Exhibit F Rely Upon Information
- 1.2.8 Exhibit G Permits under Owner’s Responsibility
- 1.2.9 Exhibit H Contractor’s Fee Estimate for FEED/FEL3 Works relating to Onshore Works
- 1.2.10 Exhibit I Applicable Rates for Contractor’s Works
- 1.2.11 Exhibit J Owner’s HSE Requirements
- 1.2.12 Exhibit K Preliminary Project Execution Plan
- 1.2.13 Exhibit L Preliminary Project Communication Plan
- 1.2.14 Exhibit M Preliminary Project Change Management Plan
- 1.2.15 Exhibit N Owner Furnished Equipment List (Long Lead Items)
- 1.2.16 Exhibit O Documents Subject to Owner’s Review
- 1.2.17 Exhibit P Intentionally Deleted
- 1.2.18 Exhibit Q Form of Advance Payment Letters of Credit
- 1.2.19 Exhibit R Form of Execution Letter of Credit

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|--------|------------|--|
| 1.2.20 | Exhibit S | Form of Warranty Letter of Credit |
| 1.2.21 | Exhibit T | Form of Partial Lien Waiver |
| 1.2.22 | Exhibit U | Form of Final Lien Waiver |
| 1.2.23 | Exhibit V | Cost Estimate Classification System – AACE |
| 1.2.24 | Exhibit W | Definition of Schedule Levels |
| 1.2.25 | Exhibit X | Form of Certificate with respect to Mechanical Completion |
| 1.2.26 | Exhibit Y | Form of Certificate with respect to Commissioning Completion |
| 1.2.27 | Exhibit Z | Form of Certificate with respect to Final Completion |
| 1.2.28 | Exhibit AA | Form of Holdback Letter of Credit |

This Contract shall be read as a single document, provided that the body of this written agreement shall prevail over the Exhibits in the event of a conflict, inconsistency or ambiguity between the Contract Documents. Figures shall prevail over scaled dimensions in a case of discrepancy. In case of any conflict, inconsistency or ambiguity within any particular Contract Document, and subject to Section 1.5, the Owner and the Contractor shall discuss a resolution of such conflict, inconsistency or ambiguity.

1.3 Rules of Interpretation

Unless the context of this Contract otherwise requires, the following rules of interpretation shall apply to this Contract.

- 1.3.1 The headings contained in this Contract are used solely for convenience and do not constitute a part of this Contract, nor should they be used to aid in any manner to construe or interpret this Contract.
- 1.3.2 References to “**Article**”, “**Section**” or “**Exhibit**” are to this Contract unless specified otherwise. References to any Article or Section shall include all Sections, subsections and paragraphs contained therein.
- 1.3.3 A reference to any law includes all statutory and administrative provisions consolidating, amending or replacing that law and includes all rules and regulations promulgated thereunder.

- 1.3.4 References to any Applicable Law or Permit shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, supplemented or re-enacted.
- 1.3.5 The gender of all words used herein shall include the masculine, feminine and neuter.
- 1.3.6 The terms “**hereof**,” “**herein**,” “**hereto**” and similar words refer to this Contract in its entirety and not any particular Article, Section, Exhibit or any other subdivision of this Contract.
- 1.3.7 The words “**includes**” and “**including**” shall be construed without limitation.
- 1.3.8 The singular form of any term shall include the plural form of such term and the plural form of any term shall include the singular form of such term, except where the context otherwise requires.
- 1.3.9 References to any contract, agreement or document (including this Contract) shall be construed as a reference to such agreement or document as the same may be amended, modified, supplemented or restated, and shall include a reference to any agreement or document that amends, modifies, supplements or restates, or is entered into, made or given pursuant to or in accordance with its terms.
- 1.3.10 Reference to a day, month or year is a reference to a calendar day, calendar month or a calendar year.
- 1.3.11 A “**year**” means three hundred sixty-five (365) days.
- 1.3.12 All obligations under this Contract of either Party are continuing obligations throughout the term hereof.
- 1.3.13 No provision of this Contract may be construed adversely to a Party on the grounds that the Party was responsible for the preparation of this Contract or that provision.
- 1.3.14 References containing terms such as “**all reasonable efforts**” or similar expressions, when used in connection with an obligation of either Party, means taking in good faith and with due diligence all reasonable steps to achieve the objective and to fulfil the obligation at the earliest possible time, including doing all that can reasonably be done in the circumstances and, in any event, taking no less steps and efforts than those that would be taken by a reasonable and prudent person in comparable circumstances.
- 1.3.15 Where the phrase “**to the knowledge of**” or similar expressions are used, it is a requirement that the person in respect of whom the phrase is used must have made

the enquiries that are reasonably necessary to enable that person to make the statement or disclosure.

- 1.3.16 The meaning of general words is not limited by specific examples introduced by “**for example**”.
- 1.3.17 Reference to a person (including a Party) includes an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Governmental Authority.
- 1.3.18 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 1.3.19 Reference to time is to Eastern Time.
- 1.3.20 Reference to a party to a document includes that party’s executors, successors and permitted assigns.
- 1.3.21 Reference to a thing (including a right or obligation) includes a part of that thing, but nothing in this Section 1.3.21 implies that performance of part of an obligation constitutes performance of the obligation.

1.4 Law and Language of Contract

This Contract shall be governed and construed in accordance with the laws of the Province of Ontario and federal laws of Canada applicable therein. The language for communications shall be English and, except as may be otherwise provided in this Contract, all the Contractor’s Documents shall be drafted in English.

1.5 Ambiguous and Inconsistent Terms

- 1.5.1 Subject to the order of precedence set forth in Section 1.2, if the Owner’s Representative reasonably considers, or the Contractor notifies the Owner’s Representative in writing, that there is a conflict, ambiguity, inconsistency or discrepancy in or between or among any of the terms of this Contract, the Owner’s Representative will provide a Supplementary Instruction in respect of the interpretation which the Parties must follow. The Contractor must comply with such Supplementary Instruction unless:
 - (a) the Contractor, acting reasonably, considers that such Supplementary Instruction will compromise safety at the Site; and

- (b) within ten (10) days after receipt of such Supplementary Instruction, the Contractor disputes the Owner's interpretation by giving the Owner a Dispute Notice.

1.5.2 The Owner's Representative, in giving a Supplementary Instruction in accordance with Section 1.5.1, shall determine the ambiguity or inconsistency entitling such Supplemental Instruction.

1.5.3 Subject to Section 1.5.1, the Contractor must bear the Cost of compliance with a Supplemental Instruction under Section 1.5.1, unless the conflict, ambiguity, inconsistency or discrepancy could not have been reasonably identified by a person experienced in projects of a similar character, size and complexity to the Project and/or if such Supplementary Instruction constitutes a Change, in which case the Parties shall follow the process provided in Article 16.

1.6 Related Matters

1.6.1 Where, in the Scope of Works:

- (a) an obligation is prescribed, the Contractor must fulfil that obligation unless it is expressly stated that the Owner must fulfill that obligation;
- (b) an action is required or contemplated to be taken, the Contractor must take that action unless it is expressly stated that the Owner will take that action.

1.6.2 Except where expressly provide otherwise in the Contract, all Materials and Equipment must be in accordance with and comply with the SI system of units.

1.6.3 Unless specifically provided otherwise, any entitlement of the Owner or the Owner's Representative to exercise any judgment, discretion or decision-making power, or power to assess compliance by the Contractor with its obligations under this Contract, and to give Supplemental Instructions, must be exercised reasonably and in accordance with this Contract.

1.6.4 If the Contractor consists of multiple legal persons, each such person shall be jointly and severally liable for all the Contractor's obligations under this Contract.

1.6.5 Unless a contrary intention is specifically expressed, no provision of this Contract limits any right of a Party whether under this Contract, Applicable Laws or otherwise.

2. INITIAL PERIOD

2.1 Effectiveness of Contract

The provisions of this Contract shall come into effect immediately upon the date of its execution by both Parties (the “**Effective Date**”).

2.2 LNTP

2.2.1 The LNTP, when issued by the Owner, in its sole and absolute discretion, will authorize the Contractor to begin the FEED/FEL3 Works. The Owner expects to issue the LNTP to the Contractor by [REDACTED], subject to obtaining by the Owner of financing in respect of the Project, at its sole and absolute discretion. **[Date redacted for competitive reasons]**

2.2.2 After the issuance of the LNTP and subject to the confirmation of the financing described in Section 27.3.1, the Contractor will complete the FEED/FEL3 Works for the compensation equal to the number of hours multiplied by the hourly rates described in Exhibit I plus reasonable expenses as approved in advance by the Owner, provided that the Contractor submits to the Owner the documents described in Section 2.2.3 and Section 2.2.4 and subject to the other provisions of this Contract.

2.2.3 Within the mobilization period of thirty (30) days after the LNTP, the Contractor will submit to the Owner, for its approval, a staffing plan describing the employees of the Contractor that are foreseen to be involved in the execution of the FEED/FEL3 Works for the first ninety (90) days identifying their names, functions and classifications (e.g. function: process engineer; mechanical engineer; scheduler; e.g. classification: senior, intermediate and junior). The Contractor will update such staffing list every two weeks or earlier in the event of the substitution of any Contractor’s team personnel identified in such staffing list and the Contractor shall advise the Owner in writing prior to assigning any new staff to the FEED/FEL3 Works.

2.2.4 The Contractor will submit to the Owner for approval weekly timesheets of its project staff within three (3) days following the end of each week, provided, for greater certainty, that no payment will be made for the Contractor’s personnel who are not identified on the pre-approved and updated list of employees.

2.2.5 If the Owner does not issue the LNTP by [REDACTED], the Contractor may elect to terminate this Contract upon providing a thirty- (30-) Business Day written notice to the Owner. In the event of such termination by the Contractor under this Section 2.2.5, none of the Parties will be liable to the other for any costs, charges or

compensation on the account of such termination. **[Date redacted for competitive reasons]**

2.3 Determination of Guaranteed Target Contract Price (GTCP)

2.3.1 During the Initial Period, the Owner and the Contractor agree to use commercially reasonable efforts to negotiate, in good faith, the Guaranteed Target Contract Price (GTCP). Subject to Section 2.3.2, the Owner and the Contractor agree to execute a Change Order reflecting the Guaranteed Target Contract Price (GTCP).

2.3.2 In order to determine the Guaranteed Target Contract Price (GTCP) the Contractor shall provide a detailed Class 3 estimate as described in Exhibit V.

2.3.3 If, **[Redacted]**, the Owner and the Contractor have not executed a Change Order reflecting the Guaranteed Target Contract Price (GTCP) in accordance with this Article 2, any Party may elect to terminate this Contract upon providing a written notice to the other Party. In the event of any such termination by a Party under this Section 2.3.3, the Contractor shall be paid for the unpaid portion of the FEED/FEL3 Works performed in accordance with this Contract up to the effective date of termination. None of the Parties will be liable to the other for any other costs, charges or compensation on account of such termination. **[Delays redacted for competitive reasons]**

2.4 Notice to Proceed

2.4.1 The Notice to Proceed, when issued by the Owner, in its sole and absolute discretion, and subject to the confirmation of the financing described in Section 27.3.2, will authorize the Contractor to begin all the Works necessary to fulfill the requirements of this Contract. The Owner expects to issue the Notice to Proceed to the Contractor by **[Redacted]**, subject to the following conditions to the benefit of the Owner: **[Date redacted for competitive reasons]**

- (a) executing a Change Order reflecting the Guaranteed Target Contract Price (GTCP) to be agreed between the Parties in accordance with Article 2;
- (b) obtaining by the Owner of financing in respect of the Project, at its sole and absolute discretion; and
- (c) obtaining by the Owner of all necessary corporate approvals for the issuance of the Notice to Proceed within ten (10) Business Days after completion of the FEED/FEL3 Works and the execution of the Change Order reflecting the Guaranteed Target Contract Price (GTCP).

- 2.4.2 If the Owner does not issue the Notice to Proceed [REDACTED], the Contractor may elect to terminate this Contract upon providing a thirty- (30-) Business Day written notice to the Owner. In the event of such termination by the Contractor under this Section 2.4.2, the Contractor shall be paid for the unpaid portion of the FEED/FEL3 Works performed in accordance with this Contract up to the effective date of termination. The Owner shall not be liable for any other costs, charges or compensation on account of such termination. **[Delays redacted for competitive reasons]**

3. CONTRACTOR'S OBLIGATIONS

3.1 Performance of the Works

- 3.1.1 The Contractor shall perform the Works in accordance with this Contract, and shall remedy any Defects in the Works. The Contractor shall provide the Works and the Contractor's Documents specified in this Contract, and all the Contractor's Personnel, Materials, Equipment, consumables and other things and services, whether of a temporary or permanent nature, required in and for such execution and completion of the Works and remedying of Defects.

The Works shall include any work which is necessary to satisfy the Scope of Works, or is implied by this Contract.

- 3.1.2 The Contractor shall promptly perform the Works and at all times ensure that the Works proceed at a rate of progress which ensures that each Milestone Date stated in the Milestone Schedule will be completed by the corresponding Milestone Date stated in the Milestone Schedule.
- 3.1.3 The Contractor shall recommend and seek the Owner's approval to undertake all studies, reviews, investigations and other processes which, in the opinion of the Contractor, are necessary to enable the Contractor to perform the Works and shall inform the Owner of all reasonable available advantages or benefits to the Project, in particular:
- (a) uses of the Site;
 - (b) selections of materials;
 - (c) building techniques and equipment; and
 - (d) alternative designs and materials.

3.1.4 The Contractor must regularly consult with the Owner's Representative throughout the performance of the Works (including requesting instructions from the Owner's Representative and seeking comments on, or review or approval, of any of the Contractor's Documents).

3.1.5 The Contractor must at all times perform the Works in accordance with:

- (a) the Owner's requirements given to the Contractor during any consultation between the Owner and the Contractor referred to in Section 3.1.4; and
- (b) any instructions given by the Owner's Representative in accordance with Section 5.6.

3.2 Setting Out

The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works unless such setting out is based on the Rely Upon Information.

3.3 Quality Assurance

The Contractor shall institute a Quality Assurance Plan to demonstrate compliance with the requirements of this Contract. The Quality Assurance Plan shall be in accordance with the details stated in this Contract, including Exhibit K. The Owner shall be entitled to audit any aspect of such Quality Assurance Plan.

The Contractor shall, within thirty (30) days of the date of issuance of the LNTP, provide the Owner with a detailed quality assurance plan for the Owner's review, comment and approval, which plan shall conform to the requirements of this Contract.

Compliance with the Quality Assurance Plan shall not relieve the Contractor of any of its duties, obligations or responsibilities under this Contract.

3.4 Site Obligations

3.4.1 Before the Owner gives the Contractor first time access and control of the Site, the Contractor must:

- (a) give not less than fourteen (14) days' notice in writing to the Owner that it requires access to the Site;
- (b) provide evidence to the Owner of all insurance coverage which the Contractor must obtain under Section 23.3; and

- (c) if not already obtained, submit and receive approval from the Owner's Representative to the following before accessing the Site:
 - (i) the Safety and Health Plan;
 - (ii) the Quality Assurance Plan; and
 - (iii) the Project Schedule.

3.4.2 When the Contractor gives notice to the Owner under Section 3.4, the Owner must provide to the Contractor evidence of all insurance coverage which the Owner must obtain under Section 23.2. The Contractor must not be required to mobilize to the Site or commence activities at the Site until such evidence has been provided.

3.4.3 For the avoidance of doubt, the Owner and the Contractor acknowledge and agree that the Contractor:

- (a) will have non-exclusive access to, and control of, the Site from the date on which:
 - (i) the Contractor has performed all of its obligations under Section 3.4.1; and
 - (ii) the Owner has performed all of its obligations under Section 3.4.2; and
- (b) will be deemed to have returned control of the Site to the Owner, when the Owner and the Contractor agree that the Works have achieved Final Completion.

3.5 Security of the Site

The Contractor shall be responsible for providing and maintaining an adequate level of security for the Site and the Plant in accordance with Applicable Laws and Good Industry Practice, and keeping unauthorized persons off the Site, and authorized persons shall be limited to the Contractor's Personnel and the Owner's Personnel; and to any other personnel notified to the Contractor (by or on behalf of the Owner) as authorized personnel of the Other Contractors.

The Site will need to be fenced in with a controlled access point with card reader for labor. All personnel on Site will need to hold photo identification badges.

3.6 Induction Training

- 3.6.1 The Contractor must ensure that all Contractor's Personnel undergo induction training required for the Site in accordance with the Site safety requirements, the requirements set out in the Safety and Health Plan before they are given access to the Site;

The Contractor acknowledges that it assumes the risk of any delays arising out of or in connection with the induction training required under Section 3.6.1, and if the Contractor fails to comply with Section 3.6.1, it will not be entitled to make any Claim (insofar as permitted by Applicable Law) arising out of or in connection with any delays.

3.7 Site and Public Safety Requirements

- 3.7.1 The Contractor must comply with and ensure that the Contractor's Personnel while upon the Site, comply with:

- (a) all obligations of the Contractor under, and all other requirements of the Applicable Laws;
- (b) Owner's HSE requirements attached as Exhibit J and any Site safety regulations issued from time to time to the Contractor by the Owner's Representative; and
- (c) the requirements of the approved Safety and Health Plan.

- 3.7.2 The Contractor must implement and comply with all necessary safety, security and environmental requirements of the Owner for the Site.

- 3.7.3 The Contractor must ensure that the Works are performed in a safe manner, including:

- (a) causing the erection and maintenance, as required by existing conditions and the progress of the performance of the Project, of all safeguards necessary for safety and protection (including barriers, fences, walkways and railings); and
- (b) causing the posting of danger signs and other warnings against hazards (including all such signs and other warnings required by Applicable Law) and notifying the Owner and other users of any dangerous or hazardous conditions arising out of the performance of the Works or the Project.

- 3.7.4 The Contractor must ensure that at all times when Works are being performed on the Site a member of the Contractor's Personnel is present at Site who is fully qualified and experienced in occupational health and safety and familiar with Applicable Law relating to or governing occupational health and safety.
- 3.7.5 The Contractor must not leave any Works or partly completed Works in an unsafe condition or in a condition which might cause damage to other work, plant, machinery or equipment, and continue such Works until they are in a safe condition.
- 3.7.6 If the Contractor fails to fulfill its obligations regarding safety onsite under this Contract and therefore it is necessary for the Owner or for any third person to take urgent action to remedy any safety or operational risk at the Site or any part of the Site that is under the control of the Contractor, then:
- (a) the Owner may take any action it considers appropriate to remedy the safety or operational risk; and
 - (b) the Contractor must indemnify the Owner against any Claims the Owner suffers or incurs in respect of remedying the urgent safety or operational risk if, and only to the extent, the urgent safety and operational risk was caused, or contributed to, by a breach by the Contractor of its obligations arising out of or in relation to this Contract.

3.8 Protection of People and Property

- 3.8.1 The Contractor must ensure that all measures necessary to protect people and property on the Site are taken.
- 3.8.2 Without limiting Article 22, if any of the Contractor's Personnel damage any property of the Owner or any other person, the Contractor must promptly make good the damage and pay any compensation for such damage in accordance with the Applicable Laws.
- 3.8.3 If the Contractor fails to comply with its obligations under Section 3.8.1 or Section 3.8.2, the Owner may perform or have the obligations performed on the Contractor's behalf and in the case of a failure to comply with Section 3.8.1, the Cost incurred, being the amount by which the actual Costs incurred by the Owner in having the Contractor's obligations performed under Section 3.8.1 may be deducted by the Owner from any amounts payable to the Contractor under this Contract.

3.9 Access for the Owner, the Owner's Personnel and Site Conditions

- 3.9.1 The Contractor must ensure that:

- (a) the Owner's Representative and any other person authorized by the Owner (including Other Contractors and the Lenders) has safe access to any part of the Site at all times during the execution of the Project at the Site; and
- (b) any person authorized by Applicable Law to have access to the Site for the purpose of exercising a function or discharging a responsibility which that person has under Applicable Law, has safe access to any part of the Site at all times during the execution of the Project at the Site.

3.9.2 The Contractor must provide (and cause Subcontractors to provide) the Owner and the Lenders, at all reasonable times, with access to all workshops and places whether at the Site or not, where work is being carried out or from where materials, manufactured articles or machinery are being obtained for the Project.

3.9.3 The Contractor must cause or require Subcontractors to keep all parts of the Site occupied or used by Subcontractors in a clean and tidy condition.

3.10 Safety Procedures

The Contractor shall:

- 3.10.1 comply with the applicable safety regulations under Applicable Laws;
- 3.10.2 take care for the safety of all persons entitled to be on the Site;
- 3.10.3 use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to such persons;
- 3.10.4 provide fencing, lighting, guarding and watching of the Works until Final Completion; and
- 3.10.5 provide any Temporary Works on the Site (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works.

3.11 Contractor to Remain Liable

Nothing in this Article 3 (including the approval of the Safety and Health Plan) limits or removes any obligation or duty imposed on the Contractor (whether under this Contract or otherwise) to secure or have regard to the health and safety of any of the Contractor's Personnel.

3.12 Other Contractors

- 3.12.1 The Contractor acknowledges that Other Contractors may be present on the Site during the performance of the Works by the Contractor.

3.12.2 The Contractor must ensure that all Subcontractors:

- (a) co-operate with all Other Contractors;
- (b) through the Contractor co-ordinate their work with the Other Contractors' work to minimize any delays;
- (c) not obstruct, delay or interfere with or damage Other Contractors' work;
- (d) comply with all Supplemental Instructions from the Owner's Representative regarding Other Contractors and their work; and
- (e) allow any Other Contractors engaged by the Owner to use the amenities, facilities and services that are available for use of Subcontractors on the Site.

3.12.3 Where and to the extent that any such work from Other Contractors may cause a delay in the Works and/or any additional Cost, the Contractor shall be entitled to:

- (a) an extension of time for any such delay, if any Milestone is or will be delayed, under Section 11.3; and
- (b) payment of any such Cost, which shall be added to the Contract Price.

3.12.4 The Owner shall indemnify, defend and hold harmless the Contractor for and against all costs, losses, damages and third party Claims arising out or resulting from the performance of the works by the Other Contractors including any violation of any Applicable Laws.

3.12.5 Where the Works are being performed on the Site or any part of the Site for which the Contractor has been given or assumed control, the Contractor acknowledges that:

- (a) it is not entitled to make any Claim as a consequence of any Supplemental Instruction given by the Owner's Representative under Section 3.12.2 unless such Supplemental Instruction causes the Contractor to incur additional costs in the performance of the Works; and
- (b) any action of the Contractor under Section 3.12.2 does not lessen or otherwise affect the Contractor's other obligations under this Contract.

3.13 Progress Reports

Daily, weekly and monthly progress reports shall be prepared by the Contractor and submitted to the Owner in three (3) copies, as more fully described in Exhibit K. The first monthly report shall

cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within five (5) days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all the Works which is known to be outstanding at the completion date stated in the Final Completion Certificate.

Each monthly report shall include:

- 3.13.1 Executive summary;
- 3.13.2 charts and detailed descriptions of progress, including each stage of design, the Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation;
- 3.13.3 photographs showing the status of manufacture and of progress on the Site;
- 3.13.4 copies of quality assurance documents, test results and certificates of Materials;
- 3.13.5 for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of (a) commencement of manufacture; (b) the Contractor's inspections; and (c) shipment and arrival at the Site;
- 3.13.6 comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with this Contract, and the measures being (or to be) adopted to overcome delays;
- 3.13.7 Man-loading curve showing comparisons of actual and planned manpower;
- 3.13.8 Schedule: (a) key milestones; (b) Project Schedule status; (c) earned value Cost Performance Index (CPI) and Schedule Performance Index (SPI); and (d) total project progress curve;
- 3.13.9 Health and Safety summary reporting of all incidents and statistics;
- 3.13.10 Areas of concern;
- 3.13.11 Risks and mitigation;
- 3.13.12 Opportunities;
- 3.13.13 Industrial relations issues affecting (or which may affect) the performance of the Works; and

3.13.14 Strategies implemented or proposed to overcome problems, including corrective action statements for catching up lost time or avoiding potential delays.

3.14 Avoidance of Interference

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Contractor shall prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel, including the proper use of appropriate vehicles and routes. The Contractor shall be responsible for any maintenance which may be required for its use of access routes. The Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant Authorities for its use of routes, signs and directions. The Owner shall not be responsible for any Claims which may arise from the use or otherwise of any access route. The Owner does not guarantee the suitability or availability of particular access routes. Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

3.15 Contractor's Equipment

The Contractor shall be responsible for the Contractor's Equipment. When brought on to the Site, the Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works.

3.16 Protection of the Environment

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of the performance of the Works and shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated in the Scope of Works, and shall not exceed the values prescribed by Applicable Laws.

The Contractor shall indemnify, defend and hold harmless the Owner and its officers, directors, employees and agents thereof, from and against all costs, losses, damages and third party Claims arising out of or resulting from the presence, discharge, release or escape of hazardous wastes or toxic or hazardous substances caused by the Contractor, any Subcontractor or any of their respective employees or agents, except that the Contractor shall not be responsible for hazardous materials and/or contamination on Site existing prior to the commencement of the Works by the Contractor and discovered by the Contractor during performance of the Works or any hazardous materials released by the Other Contractors.

In the event that the Contractor discovers any hazardous materials and/or contamination on Site, the Contractor shall:

3.16.1 promptly notify the Owner in writing of such hazardous materials and/or contamination on Site, its nature and extent, its impact on the Works and the scope and time of remedial works required in order to mitigate the adverse impact of such hazardous materials and/or contamination on Site on the Works, including, if required, the engagement of a third party specialized in the removal of hazardous materials and/or contamination; and

3.16.2 in the event that the continuation of the Works has an adverse impact on the environmental situation, stop executing the Works until hazardous materials and/or contamination on Site has been removed.

3.17 Artefact

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

The Contractor shall, upon discovery of any such finding, promptly give notice to the Owner, who shall issue instructions for dealing with it.

3.18 Owner's Review

The Contractor shall submit to the Owner for review and comments drawings, Equipment specifications and other documents identified in Exhibit O to this Contract. The Owner shall respond in writing stating the comments as appropriate or suggest modifications within a period of ten (10) Business Days after the date of submission.

3.19 Preliminary Operation and Maintenance Manual

Not later than three (3) months prior to the Mechanical Completion, the Contractor shall, following consultation with the Owner on form and substance, prepare in individually numbered bound volumes and deliver to the Owner three (3) hardcopy sets of preliminary (draft) equipment and systems instructions for the start-up, operation and maintenance of the Plant and one (1) reproducible electronic copy of the same sets (hereinafter referred to as the "**Preliminary Operation and Maintenance Manual**").

3.20 Operation and Maintenance Manual for the Contractor Purchased Items

Not later than thirty (30) days after Mechanical Completion Date, the Contractor shall prepare in individually numbered bound volumes and deliver to the Owner five (5) hardcopy sets of complete equipment and system instructions for the start-up, operation and maintenance of the Plant and one (1) reproducible electronic copy of the same sets (hereinafter referred to as the "**Operation and Maintenance Manual**").

The Operation and Maintenance Manual shall contain the latest revisions of all relevant Detailed Design Documentation. The Contractor shall consult with the Owner in the preparation of the Operation and Maintenance Manual and the Owner will be permitted to make recommendations as to the final form and substance of the Operation and Maintenance Manual which will be incorporated by the Contractor.

The Operation and Maintenance Manual shall be of high quality and prepared in accordance with Applicable Laws and Good Industry Practices. Adherence to the Operation and Maintenance Manual shall allow operation of the Plant at the capacity, efficiency, reliability, safety and maintainability levels specified by this Contract and shall in no way impair any warranty or guarantee on equipment, materials or services relating to the Plant.

3.21 Records and Audit

The Contractor shall maintain suitable accounting and other relevant records pertaining to the payments received by the Contractor from the Owner and the quantum of Works performed against which such payments were made. The Contractor shall preserve these records for a period of at least three (3) year after Final Completion or the termination of this Contract.

The Contractor shall, if required by the Owner, provide facilities to the Owner to have access to and inspect the Contractor's accounting and other records for evaluating the Construction Reimbursable Costs and the Procurement Reimbursable Costs or any other reimbursable Cost agreed by the Parties.

3.22 Permits

The Contractor shall, in performing this Contract, comply with Applicable Laws and shall give all notices, pay all taxes, duties and fees. The Contractor shall obtain all Permits as required by the Applicable Laws for the performance of its obligations under this Contract, except for the Permits which are expressly identified as responsibility of the Owner in Exhibit G; and the Contractor shall indemnify and hold the Owner harmless against and from the consequences of any failure to do so in accordance with Section 18.1.

4. OWNER'S OBLIGATIONS

4.1 Access to Site

The Owner shall give the Contractor right of access to the Site. If, under this Contract, the Owner is required to give the Contractor possession of any foundation, structure, plant or means of access, the Owner shall do so in the time and manner stated in the Scope of Works. However, the Owner may withhold any such right or possession until the Execution Letter of Credit and the Advance Payment Letter of Credit have been received.

4.2 Electricity and Water

The Owner shall be responsible for the provision of all power and water for the purposes of the Works reasonably required by the Contractor.

The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site. The Contractor shall provide any apparatus necessary for its use of these services and for measuring the quantities consumed on a reimbursable basis.

4.3 Owner Issued Items

The Owner shall supply the Owner Issued Items. The Contractor shall inspect the Owner Issued Items, and shall promptly give notice to the Owner of any overage, shortage, damage, Defect or default in such Owner Issued Items. Unless otherwise agreed by both Parties, the Owner shall promptly rectify the notified overage, shortage, damage, Defect or default in respect of such Owner Issued Items.

After such inspection, the Owner Issued Items shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve the Owner of liability for any shortage, Defect or default not apparent from a visual inspection.

4.4 Rely Upon Information

To the extent not already provided to the Contractor, the Owner shall furnish the Contractor with technical data, information, geotechnical reports and drawings in the Owner's possession or control, which are reasonably required for the proper performance of the Works. The Contractor acknowledges that the Owner is not responsible for any claims, costs, losses or damages which may result from the use of or the reliance on the information and documentation provided by the Owner to the Contractor pursuant to this Section 4.4, except for the Rely Upon Information, and the Contractor shall use such information solely for the purposes specifically indicated therein. The Contractor is entitled to rely on the information and documentation provided by the Owner that the Owner designates as "Rely Upon Information" (the "**Rely Upon Information**"), including the information in the documents listed in Exhibit F.

5. COOPERATION OF THE PARTIES

5.1 Cooperation Generally

The Parties hereby agree to undertake all reasonable cooperation to implement the Works as stipulated in this Contract. The Owner's Representative and the Contractor's Representative will meet regularly as agreed to review the progress of the Works and without relieving the Contractor

from its responsibilities under this Contract, suggest ways and means to improve the Works and to expedite the Works and resolve any outstanding issues between the Parties.

The Contractor shall prepare a detailed project instructions manual to be agreed with the Owner, which project instructions manual shall include:

- 5.1.1 Names and contact details for the Contractor's Representative, and the Owner's Representative;
- 5.1.2 A project execution plan, as more fully described in Exhibit K;
- 5.1.3 A procedure for communication between the Contractor and the Owner and third parties, as more fully described in Exhibit K and Exhibit L;
- 5.1.4 a project controls plan, a procurement management plan, a material management plan, a project construction plan, a project commissioning plan, a training plan and a project close-out plan, as further described in Exhibit K;
- 5.1.5 A statement of the authorities and responsibilities delegated by the Contractor's Representative and the Owner's Representative;
- 5.1.6 A procedure for submission and return of the Contractor's Documents and other Project related documents which may be required for the Owner's review or information in accordance with this Contract; including document management system;
- 5.1.7 An invoicing procedure;
- 5.1.8 A procedure for submitting and processing of Changes including a statement of delegated authority levels for approving Changes, as more fully described in Exhibit M;
- 5.1.9 Project organizational charts for the Contractor and the Owner; and
- 5.1.10 The initial list of Equipment, including sizes and materials of construction, and Subcontractors where not specified in this Contract.

5.2 Owner's Representative

The Owner shall appoint an Owner's Representative to act on its behalf under this Contract. The Owner shall give notice to the Contractor of the name, address, duties and authority of the Owner's Representative.

The Owner's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation.

5.3 Contractor's Representative

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

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

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

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Section 5.6.

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

The Contractor's Representative and all such delegates shall be fluent in English language.

The Contractor's Representative or the Contractor's Representative's delegate must be available at all times at the Site when the Contractor is performing the Works on the Site and when the Subcontractors are working at the Site.

5.4 Contractor's and Owner's Acknowledgments

The Contractor and the Owner acknowledge and agree that:

- 5.4.1 any notice, consent, approval or other written communication signed and given by the Contractor's Representative or by any of the Contractor's Representative's delegate will bind the Contractor;
- 5.4.2 any notice, consent, approval or other written communication signed and given by the Owner's Representative or any Owner's Representative's delegate will bind the Owner;

- 5.4.3 matters within the Contractor's Representative's knowledge will be deemed to be within the knowledge of the Contractor;
- 5.4.4 matters within the Owner's Representative's knowledge will be deemed to be within the knowledge of the Owner;
- 5.4.5 any Supplemental Instruction or other written communication signed and given by the Owner's Representative or by a delegate appointed on behalf of the Owner's Representative to the Contractor's Representative will be deemed to have been given to the Contractor;
- 5.4.6 any written communication signed and given by the Contractor's Representative or by a delegate appointed on behalf of the Contractor's Representative to the Owner's Representative will be deemed to have been given to the Owner; and
- 5.4.7 the Parties will communicate in accordance with the procedures set forth in the preliminary project communication plan attached as Exhibit L.

5.5 Kick-off Meeting

Within fourteen (14) days from the date of issuance of the LNTP, a meeting shall be held at the Contractor's office between the Owner and the Contractor to discuss all matters of common interest, including the finalization of the co-ordination procedure, the detailed Project Schedule and a critical examination of the execution basis and design criteria provided by the Owner.

5.6 Supplementary Instructions

The Owner may issue to the Contractor Supplementary Instructions which may be necessary for the Contractor to perform its obligations under this Contract. Each Supplementary Instruction shall be given in writing and shall state the obligations to which it relates and the Sections (or other term of this Contract) in which the obligations are specified.

The Contractor shall take Supplementary Instructions from the Owner, or from the Owner's Representative or an assistant to whom the appropriate authority has been delegated under this Section.

5.7 Cooperation with Others

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

- 5.7.1 the Owner's Personnel;
- 5.7.2 Other Contractors; and

- 5.7.3 the personnel of any Governmental Authorities, who may be employed in the execution on or near the Site of any work not included in this Contract. The Contractor shall be responsible for its construction activities on the Site, and shall coordinate its own activities with those of Other Contractors to the extent (if any) specified in the Scope of Works.

5.8 Accommodation of Owner's Personnel

The Owner shall have the right but not the obligation to assign the relevant Owner's Personnel to the Contractor's construction office during the performance of the Works. All costs in connection with the travel and stay of such Owner's Personnel shall be borne by the Owner. Office facilities (including free parking) for the Owner's use at the Contractor's construction offices shall be provided by the Contractor to the Owner and all costs in connection therewith shall be for the Contractor's account.

5.9 Compliance with Supplemental Instructions

- 5.9.1 Except as expressly specified otherwise in this Contract, if the Owner's Representative gives a Supplemental Instruction, then the Contractor must comply with such Supplemental Instruction.
- 5.9.2 If the Contractor fails or refuses to comply with a Supplemental Instruction by the Owner's Representative given in accordance with this Contract, the Owner may notify the Contractor in writing of:
- (a) the Contractor's failure or refusal to comply with a Supplemental Instruction of the Owner's Representative; and
 - (b) a reasonable period of time (but not less than seven (7) days) for the Contractor to rectify such failure or refusal.
- 5.9.3 Subject to Section 5.9.4, if the Contractor does not rectify or take reasonable steps to commence rectifying the failure or refusal within the specified time, then the Owner may:
- (a) withhold further payment to the Contractor until the Contractor complies with the Supplemental Instruction or the work which is the subject of the Supplemental Instruction is carried out under Section 5.9.2; and
 - (b) Subject to Section 5.9.4, if the Contractor does not rectify or take reasonable steps to commence rectifying the failure or refusal within the specified time, then the Owner may carry out, or have a third person carry out, the work which is the subject of the Supplemental Instruction, in which case the reasonable documented additional costs incurred by the Owner over and

above that which the Owner would have incurred had the Contractor performed the Works in accordance with this Contract will be reimbursed by the Contractor to the Owner.

- 5.9.4 The compliance by the Contractor with a Supplemental Instruction given by the Owner's Representative is without prejudice to the Contractor's rights under Article 29.
- 5.9.5 Despite Section 5.9.4, a Supplemental Instruction of the Owner's Representative cannot be submitted to dispute resolution unless:
- (a) except as provided in Section 5.9.5(b), within seven (7) days of the date of the Supplemental Instruction, it is disputed by the Contractor under Article 29; or
 - (b) in the case where the Contractor considers, acting reasonably, that the Supplemental Instruction may compromise the safety or operation of the Plant or the Project, within thirty (30) days of the date of the Supplemental Instruction, it is disputed by the Contractor under Article 29.

5.10 Comments, Review, Representations or Approval by the Owner

- 5.10.1 As the Owner's Representative carries out its functions under this Contract as agent of the Owner, neither the Owner's Representative nor a delegate appointed owes, except as expressly provided otherwise in this Contract, any duty to the Contractor in discharging any of the functions of the Owner's Representative under this Contract.
- 5.10.2 No comment, review, representation or approval by the Owner in respect of the Contractor's obligations under this Contract (including comments on, or review or approval of, any of the Contractor's Documents), or any other Supplemental Instruction of the Owner's Representative given in accordance with this Contract, will lessen or otherwise affect the Contractor's obligations under this Contract.
- 5.10.3 None of the following items constitute a Change, Change Directive or Change Order:
- (a) a Supplemental Instruction of the Owner;
 - (b) any review, consultation, monitoring or audit undertaken by or on behalf of the Owner;
 - (c) any comments made by the Owner's Representative; or

- (d) any verification by or on behalf of the Owner.

5.11 Steering Committee

5.11.1 The Steering Committee is made up of the Owner's Representative, Project Director (Owner's Representative Delegate) and the Contractor's Representative, as well as Project Manager (the Contractor's Representative Delegate).

5.11.2 The Owner's Representative or the Contractor's Representative may invite any other person, whom either person reasonably requires, to attend the Steering Committee meetings and/or take part in the Steering Committee conference calls.

5.11.3 The Steering Committee must meet or take part in:

- (a) at a minimum, on a twice-a-month basis or otherwise mutually agreed between the Owner and the Contractor's Representative; and
- (b) at such other times as the Owner's Representative and the Contractor's Representative agree or, failing agreement, at such other times as the Owner's Representative may direct.

5.11.4 The Owner must:

- (a) take minutes of all meetings held by the Steering Committee; and
- (b) provide a copy of those minutes to the Contractor's Representative.

5.11.5 In respect of minutes provided pursuant to Section 5.11.4(a), the Owner's Representative must:

- (a) if the Owner's Representative disagrees with the minutes, discuss with the Contractor's Representative the minutes and then amend the minutes to reflect the agreed position or the results of the meeting; and
- (b) give to the Steering Committee members a copy of the amended minutes at which point the amended minutes will be deemed to be the official record of the relevant meeting.

5.12 Contractor's Request for Information

5.12.1 The Contractor acknowledges that, other than as expressly provided elsewhere in this Contract, it is the Contractor's responsibility to make all enquiries, obtain all information and make all judgments that are relevant to and necessary for the performance of the Works.

5.12.2 The Contractor must not delay the progress of the Works or any part of it by reason of the Contractor awaiting information from the Owner:

- (a) unless this Contract expressly provides otherwise;
- (b) unless the Owner's Representative otherwise in writing directs the Contractor; or
- (c) except to the extent that the Contractor cannot reasonably proceed with the Works without the information.

6. FIELD ENGINEERING

6.1 General Obligations

6.1.1 The Contractor shall provide all field engineering services required for completion of the Works in conformity with this Contract, including field engineering, support for the FEED/FEL3 Works and field engineering related to the Equipment other than the Owner Issued Items for incorporation into the Plant by the Contractor and preparation of the Contractor's Documents other than for activities executed Offshore.

6.1.2 The Contractor must liaise closely with the Owner in connection with the FEED/FEL3 Works and Detailed Design to ensure the Contractor continues to meet the requirements of the Owner as specified in this Contract and any other requirements as made available to and directed by the Owner's Representative from time to time.

6.1.3 The Contractor must participate in the reviews of the FEED/FEL3 Works and Detailed Design as required under this Contract.

6.2 Contractor's Field Engineering Undertaking

The field engineering, the Contractor's Documents, the execution and the completed Works shall comply with this Contract, the Applicable Laws, Good Industry Practice and other standards specified in the Scope of Works.

The Contractor must ensure that the Contractor's Documents are free from Defects and accurate and complete in all respects, and will reasonably minimize the repair and maintenance costs of the Project and will maximize the life of the Project.

6.3 Preparation of Contractor's Documents

6.3.1 Without limiting Article 6;

- (a) the Contractor must develop and complete the Contractor's Documents in accordance with the Applicable Laws and Good Industry Practice required for the completion of the Works; and
- (b) the Contractor's Documents must be prepared by the Contractor's Personnel with appropriate professional qualifications.

6.3.2 The Contractor must:

- (a) give the Owner's Representative for review five (5) copies of all Contractor's Documents (including amended versions) as soon as it is prepared and in any event no later than the time indicated in then current approved Project Schedule under Article 11 for the submission of the Contractor's Documents to the Owner's Representative;
- (b) allow no fewer than ten (10) Business Days, before the time indicated in then current approved Project Schedule under Article 11 for the issue of the Contractor's Documents to Subcontractors, for the Owner's Representative to review the Contractor's Documents;
- (c) not take any further steps in relation to any of the Contractor's Documents which it has submitted to the Owner's Representative, including issue of the Contractor's Documents to Subcontractors or commencing the Works to which the Contractor's Documents applies; and
- (d) if any Contractor Document is rejected, submit amended Contractor's Documents to the Owner's Representative for review, in which case this Section 6.3 will apply.

6.4 Review and Acceptance or Approval by the Owner

- 6.4.1 The Owner does not undertake any responsibility or duty of care to the Contractor to review, or in reviewing, the Contractor's Documents for errors, omissions or compliance with this Contract.
- 6.4.2 No review of, comments upon, rejection of, or failure to review or comment upon or reject, any of the Contractor's Documents prepared by the Contractor or any other Supplemental Instruction by the Owner's Representative about the Contractor's Documents (provided the Contractor has not objected in writing to, and within a reasonable time after, such Supplemental Instruction) will:
 - (a) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether arising out of or in connection with this Contract; or

- (b) prejudice the Owner's rights against the Contractor whether arising out of or in connection with this Contract.

6.4.3 Without limiting Sections 6.4.1 and 6.4.2, any review, acceptance, monitoring, approval or audit of any of the Contractor's Documents or part of the Works by the Owner or the Owner's Representative must not be interpreted or otherwise construed to be, an acceptance or approval of any of the Contractor's Documents or part of the Works that is not in full conformance with all the requirements of this Contract.

6.5 Training

The Contractor shall carry out the training of the Owner's Personnel in the operation and maintenance of the Works to the extent specified in the Scope of Works. If this Contract specifies training which is to be carried out before Mechanical Completion, the Works shall not be considered to be completed for the purposes of Mechanical Completion until this training has been completed.

6.6 As-Built Documents

The Contractor shall prepare, and keep up-to-date, a complete set of As-Builts of the execution of the Works, showing the exact as-built locations, sizes and details of the Works as executed. The As-Builts shall be kept on the Site and shall be used exclusively for the purposes of this Article. Two (2) hard copies along with one (1) copy of DVD shall be supplied to the Owner prior to Mechanical Completion.

6.7 Translation

- 6.7.1 All drawings shall be produced in the bilingual form (English and French).
- 6.7.2 All specifications shall be produced in the English language only.
- 6.7.3 The Parties shall by mutual consent decide upon which other documents require translation and whether other documents shall be made in bilingual form (English and French).
- 6.7.4 In the event of any discrepancy between the translated documents, the English version of the translation shall take precedence over the French version.

7. STAFF AND LABOUR

7.1 Engagement of Staff

Except as otherwise stated in this Contract Documents, the Contractor shall make arrangements for the engagement of all its own staff and direct hired labour for their payment, housing, feeding and transport.

7.2 Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the Works are carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by owners whose trade or industry is similar to that of the Contractor.

7.3 Labour Laws

The Contractor shall comply with all the relevant labour laws applicable to the Contractor's Personnel, including Applicable Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights. The Contractor shall require its employees to comply with all Applicable Laws, including those concerning safety at work.

7.4 Facilities for Staff and Labour

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

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

7.5 Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for the Contractor's Personnel and the Owner's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents.

Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Owner, details of any accident, high potential or near miss within twenty-four (24) hours of its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Owner may reasonably require.

7.6 Maître d'oeuvre obligations

It is expected that the CSST will determine that the Owner is the Maître d'oeuvre at the Site with respect to the Project. Notwithstanding this designation, the Contractor agrees to use all its reasonable efforts to identify and perform all Maître d'oeuvre activities and tasks as if it was itself the Maître d'oeuvre, and will assume sole responsibility for developing, implementing, and administering the safety requirements for the Site. The Contractor shall cooperate with, and provide such assistance as may be required by the Owner to comply with any obligations, orders or requests for information which may be imposed or addressed to the Owner from time to time by the CSST or any other competent health and safety authority in connection with the performance of the Works and the work of the Other Contractors at the Site. The Contractor agrees to indemnify the Owner for its activities under this Section 7.6 in accordance with Section 18.1.

7.7 Contractor's Personnel

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

- 7.7.1 persists in any misconduct or lack of care,
- 7.7.2 carries out duties incompetently or negligently,
- 7.7.3 fails to conform with any provisions of this Contract, or
- 7.7.4 persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person, approved by the Owner's Representative.

7.8 Records of Contractor's Personnel and Equipment

The Contractor shall submit, to the Owner, details showing the number of each class of the Contractor's Personnel and of each type of the Contractor's Equipment on the Site. Details shall be

submitted each calendar month, in a form approved by the Owner, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Mechanical Completion Certificate.

7.9 Disorderly Conduct

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

8. EQUIPMENT, MATERIAL AND PROCUREMENT

8.1 Procurement Generally

All Equipment and Materials to be supplied under this Contract shall be new and unused and in accordance with the provisions of this Contract, and all Equipment and Materials shall have been inspected and tested before dispatch in accordance with this Contract.

The Equipment and Materials obtained by the Contractor in accordance with the Scope of Work shall be reviewed by the Owner in writing prior to purchase.

8.2 Transport of Equipment and Materials

The Contractor shall give the Owner not less than sixty (60) days' notice of the date on which any Equipment or a major item of other Materials will be delivered to the Site. The Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Equipment, Materials and other things required for the Works. The Contractor shall indemnify and hold the Owner harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Equipment and Materials, and shall negotiate and pay all Claims arising from their transport.

The Contractor shall take all necessary measures to ensure that all export licenses and shipping documentation are arranged and issued in a timely manner.

8.3 Importer of Record

The Contractor and the Subcontractors shall deliver the Materials and Equipment to the Owner DAP the Site Incoterms® 2010.

The Owner shall be the importer of record of all such Materials, Equipment, Other Contractors' equipment and materials imported into Canada, provided, however, that the Contractor shall, as agent on behalf of the Owner, discharge and complete all administrative duties and formalities related to being the importer of record, on behalf of the Owner, in accordance with Applicable Law

and shall furnish the Owner with all relevant import documentation. The Contractor or Subcontractors shall:

- (a) be responsible for all transportation and carriage costs to deliver the Materials and Equipment to the Site;
- (b) pay, as agent on behalf of the Owner, all Canadian duties, tariffs and expenses associated with the importation of the Materials and Equipment into Canada; and
- (c) be required to claim the benefit of any applicable provision of law which reduces or eliminates the payment of any Canadian duties and tariffs.

The Contractor shall indemnify, defend and hold harmless the Owner and its officers, directors, employees and agents thereof, from and against all penalties, interest or other costs incurred by the Owner and arising out of or resulting from the Contractor's or Subcontractors' obligations under this Section 8.3.

9. INSPECTION OF THE WORKS

9.1 Inspection

The Owner's Personnel shall at all reasonable times:

- 9.1.1 have full access to all parts of the Site and to all places from which Equipment and Materials are being obtained; and
- 9.1.2 during production, manufacture and construction (at the Site and, to the extent specified in this Contract), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of Works and production and manufacture of Equipment and Materials.

The Contractor shall give the Owner's Personnel full opportunity to carry out these activities, including providing access, facilities, and permissions. No such activity shall relieve the Contractor from any obligation or responsibility.

In respect of the Works which the Owner's Personnel are entitled to examine, inspect, measure and/or test, the Contractor shall give notice to the Owner whenever any such Works are ready and before they are covered up, put out of sight, or packaged for storage or transport. The Owner shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Owner does not require to do so. In regards to the Factory Acceptance Testing of manufactured Equipment and Materials, the Contractor shall give the Owner not less than sixty (60) days' notice of the date on which any Equipment or a major item of other Materials will be dispatched to the Site. Factory Acceptance Tests will be conducted and documented in accordance with the Factory Acceptance Test protocol,

which draft version will be provided by the applicable manufacturer at least eight (8) weeks before the tests are carried out in accordance with this Contract. The cost for all the tests and inspections, including Factory Acceptance Test is included in the Provisional Procurement Price. The Owner's employees are entitled to, but not obligated to attend any Factory Acceptance Test.

9.2 Testing

This Section 9.2 shall apply to all tests specified in this Contract.

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

9.3 Notice for Testing

Contractor shall provide the Owner with:

- 9.3.1 seven (7) days' prior written notice of all tests and inspections which are to be conducted on the Site and shall reconfirm the intention to conduct such tests and inspections one (1) day prior to the performance thereof; and
- 9.3.2 sixty (60) days' prior written notice of all tests and inspections which are to be conducted off the Site and shall reconfirm the intention to conduct such tests and inspections seven (7) days prior to the performance thereof.

The Owner and the Owner's Personnel shall be entitled to attend any or all such tests or inspections on or off the Site and shall give prior notification to the Contractor of the intention of such parties to attend any off Site inspection where possible. The tests and inspections performed by or on behalf of the Contractor shall include, without limitation, the key points in the manufacturing and construction process.

9.4 Change in Testing

The Owner may, under Article 16, vary the location or details of specified tests, or instruct the Contractor to carry out additional tests.

The Owner shall give the Contractor not less than seven (7) days' notice of the Owner's intention to attend the tests.

The Contractor shall promptly forward to the Owner duly certified reports of the tests. When the specified tests have been passed, the Owner shall endorse the Contractor's test certificate, or issue a certificate to the Contractor, to that effect.

9.5 Rejection

If, as a result of an examination, inspection, measurement or testing in accordance with the Quality Assurance Plan and this Contract, any Equipment, Materials, field engineering or workmanship is found to be Defective or otherwise not in accordance with this Contract, the Owner may reject the Equipment, Materials, field engineering or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with this Contract.

9.6 Remedial Work

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

- 9.6.1 Remove from the Site and replace any Equipment or Material which is not in accordance with this Contract;
- 9.6.2 Remove and re-execute any Works which are not in accordance with this Contract; and
- 9.6.3 Execute any Works which are urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

10. SUBCONTRACTS**10.1 Subcontract Generally**

The Contractor shall not subcontract the whole of the Works. The Contractor shall have the right to have the part of the Works performed by the Subcontractors, provided, however, that:

- 10.1.1 the Contractor shall be responsible for the acts and defaults of any Subcontractor, its agents or employees, as if they were the acts or defaults of the Contractor;
- 10.1.2 the Contractor shall remain fully liable to the Owner to perform all of the duties and obligations or liabilities of the Subcontractor under any such Subcontract;
- 10.1.3 nothing in any Subcontract shall in any way diminish or relieve the Contractor from any duties and obligations under this Contract; and
- 10.1.4 the Contractor shall be responsible for and ensure that the Subcontractors obtain and pay for all necessary permits, fees, licences and certificates of inspection and insurance in connection with the Works they are to perform.

10.2 Notice in Respect of Subcontractors

The Subcontractors will be chosen following a request for quotation issued to bidders from a list of Subcontractors agreed between the Parties.

During the Initial Period, the Parties will develop and mutually agree on pre-qualified Subcontractors' lists based on a combination of in-house market intelligence, relevant experience and global sourcing resources. Such list shall include the names of such Subcontractors and a summary of the equipment(s) and/or service(s) procured.

Any subsequent changes to the approved packages of such Subcontractors' lists can occur only with mutual approval of the Parties.

Each package for Subcontractors will refer to a distinct line item in the project controlled estimate (Class 3) initially developed during the Initial Period and further detailed during the execution of the Works (the "**Project Controlled Estimate**").

The Contractor shall give the Owner not less than forty-eight (48) hours' notice of:

10.2.1 the intended appointment of a Subcontractor;

10.2.2 the intended commencement of the Subcontractor's work on the Site; and

10.2.3 the detailed particulars which shall include: (a) technical bid packages with commercial terms and conditions, and (b) final technical and commercial bid analysis and recommendations to purchase.

The Contractor shall implement the following procurement approach: (a) one (1) bid (without a written RFP) for Subcontracts up to [REDACTED], (b) three (3) bids (without a written RFP) for Subcontracts between [REDACTED] and [REDACTED], and (c) three (3) bids under a written RFP for Subcontracts exceeding [REDACTED] in respect of the proposed Subcontractors for the same portion of the Works. **[Amounts redacted for competitive reasons]**

10.3 Rights of the Owner

The Contractor will allow the Owner to participate in the procurement process of any: (a) Subcontractors who are not arm's length third parties of the Contractor and (b) Subcontracts that the Owner has specifically identified in this Contract as requiring Owner's approval. Such participation will include selection of bidders, definition of the scope of work, and analysis of submitted bids.

The Contractor shall request in writing the approval of the Owner for the proposed engagement of any Subcontractor whose contract is valued in excess of [REDACTED] if: **[Amount redacted for competitive reasons]**

- 10.3.1 the award price exceeds the amount provided for such Subcontract under the Project Controlled Estimate; and/or
- 10.3.2 the award price is not the lowest among the technically acceptable bidders within the approved Subcontractor list; and/or
- 10.3.3 the recommended bidder does not meet the technical requirements; and/or
- 10.3.4 the recommended bidder is not part of the approved Subcontractors.

In respect of the proposed engagement of any Subcontractor whose contract is valued below [REDACTED], the Contractor will provide, for Owner's information only, the documentation indicated in Sections 10.2.1, 10.2.2 and 10.2.3 in the time period prior to award as indicated in Section 10.2. **[Amount redacted for competitive reasons]**

The Owner will cooperate with the Contractor and act reasonably promptly in connection with the rights granted to the Owner pursuant to this Section 10.3 so as not to cause delays in the Works.

Without limiting any other provision of this Contract, the termination provisions of all Subcontracts shall be submitted to the Owner for its review and approval, acting reasonably, before each such Subcontract is entered into.

Any Subcontract to be entered into between the Contractor and the relevant Subcontractor shall be based on the general terms and conditions for construction Subcontracts and the general and special purchase conditions as drafted by the Contractor, following review by the Owner and acceptance by the Owner of the material terms of such Subcontracts which may adversely affect the Owner. The Contractor shall provide the Owner with a copy of each Subcontract and any material amendment thereof.

The Contractor shall promptly submit to the Owner, for prior written approval, (i) any and all requests for changes under a Subcontract which changes, if accepted by the Owner, will constitute the Procurement Reimbursable Costs or the Construction Reimbursable Costs, as the case may be, and (ii) any and all claim settlements with Subcontractors.

Each Subcontract between the Contractor and a Subcontractor (as well as the interest of the Contractor in any bond or other performance security held by the Contractor in respect of any such Subcontract), shall, by its terms, provide for assignment to the Owner without the Subcontractor's consent.

11. SCHEDULE AND PLANNING

11.1 Project Schedule

11.1.1 The Contractor shall submit a level 3 Critical Path Project Schedule to the Owner within sixty (60) calendar days after the Effective Date and a level 4 Project Schedule within ninety (90) calendar days after the Commencement Date. The Contractor shall also submit a revised Project Schedule (including a copy of the Primavera native file format) whenever the Project Schedule is inconsistent with actual progress or with the Contractor's obligations. Each Project Schedule shall include:

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage and task of the Works,
- (b) the schedule critical path,
- (c) the periods for reviews under Section 3.18,
- (d) key interfaces and approvals between the Owner and the Contractor,
- (e) the sequence and timing of inspections and tests specified in this Contract, and
- (f) a supporting report which includes:
 - (i) a general description of the methods which the Contractor intends to adopt for the execution of each major stage of the Works,
 - (ii) the approximate number of each class of the Contractor's Personnel and of each type of the Contractor's Equipment for each major stage, and
 - (iii) Manpower chart showing actual and planned load,
 - (iv) Identification of near critical paths (activities that have less than 10 days of total float) including mitigation activities.

Unless the Owner gives notice to the Contractor stating the extent to which it does not comply with this Contract, the Contractor shall proceed in accordance with the Project Schedule, subject to its other obligations under this Contract. The Owner's Personnel shall be entitled to rely upon the Project Schedule when planning their activities.

The Contractor shall promptly give notice to the Owner of specific probable future events or circumstances which may adversely affect or delay the execution of the Works. In this event, or if the Owner gives notice to the Contractor that the Project Schedule fails (to the extent stated) to comply with this Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised Project Schedule to the Owner in accordance with this Article.

The Project Schedule will be prepared on Primavera software.

11.1.2 The Contractor must ensure that the Project Schedule also shows and contains:

- (a) off-Site fabrication for key Equipment and Materials (including their delivery times);
- (b) each Milestone Date in the Milestone Schedule, as well as any other key dates for items such as Authorities' approvals and provision of information; and
- (c) an estimated cost and cash flow summary.

11.1.3 The estimated cost and cash flow summary required under Section 11.1.2(c) must be regularly updated by the Contractor to reflect any changes to the Project and the Project Schedule and must be in a suitable form for use by the Owner's Representative as a means of assessing the rate of progress of the field engineering, engineering, planning, procurement, construction, Pre-Commissioning and Commissioning of the Project.

11.1.4 The Owner's Representative may reject a Project Schedule or require amendments to be made to it within fourteen (14) days of receiving a copy of such Project Schedule.

11.1.5 Where a Project Schedule is rejected by the Owner's Representative, the Contractor must submit a corrected and revised Project Schedule within seven (7) days of being notified that the Project Schedule is rejected.

11.1.6 The Contractor acknowledges that review of, comments on or approval of, or any failure to review or comment on, any Project Schedule by the Owner's Representative will not:

- (a) relieve the Contractor from or alter its liabilities or obligations under this Contract; or
- (b) evidence or constitute a Supplemental Instruction by the Owner's Representative to disrupt, prolong or vary the Project.

11.2 Rate of Progress

If, at any time actual progress is too slow to achieve Mechanical Completion, Commissioning Completion or Final Completion in accordance with the Project Schedule, then the Owner may instruct the Contractor to submit, under Section 11.1, a revised Project Schedule and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and to comply with Milestone Dates.

11.3 Extensions of Time

11.3.1 The Contractor is entitled to an extension of time to a Milestone Date if the Contractor gives written notice to the Owner's Representative:

- (a) of the fact or likelihood of delay not later than thirty (30) days after the Contractor becomes aware or should have become aware of the cause of the delay;
- (b) provides details of the cause of delay and how completion of the Milestone Event is likely to be delayed, both in the progress of one or more activities and as a whole; and
- (c) other conditions of this Section 11.3 are satisfied.

11.3.2 The Contractor gives the Owner's Representative, within thirty (30) days after the notice under Section 11.3.1(a):

- (a) a written claim for extension of time specifying the number of days claimed;
- (b) details of reasons of the delay, including a statement of the facts and the provisions of this Contract on which the claim is based;
- (c) detailed evidence in satisfaction of the requirements of Section 11.3.3; and
- (d) all other information reasonably required by the Owner's Representative.

11.3.3 The Contractor shall reasonably satisfy the Owner's Representative, in the Contractor's claim under Section 11.3.2, that:

- (a) the completion of the Milestone Event has actually been delayed:
 - (i) prior to the Milestone Date, in a manner which will prevent it from achieving the completion of a Milestone Event by the relevant Milestone Date, unless the relevant Milestone Date is extended; or

- (ii) after the Milestone Date, in a manner which will delay it in achieving completion of a Milestone Event;
- (b) the delay is demonstrable on an assessment of the critical path on the network of the currently approved revision of the Project Schedule submitted pursuant to Article 11 or (where applicable) such Project Schedule as subsequently varied in accordance with a previous extension of time pursuant to this Section 11.3;
- (c) the Contractor has taken all reasonable steps to preclude the occurrence or minimize the extent and consequences of the delay;
- (d) the cause of the delay is one of the following:
 - (i) Owner-Caused Delay;
 - (ii) a Change to the Works directed under Article 16;
 - (iii) an Event of Force Majeure;
 - (iv) an event entitling Contractor to an extension of time in accordance with Sections 3.16, 16.5, 16.6 or 22.1; or
 - (v) the suspension of the performance of the Works pursuant to a written notice given under Article 22.1, unless that notice was given as a result of a breach by the Contractor of its obligations under this Contract.
- (e) the cause of the delay does not arise out of:
 - (i) an act or omission of the Contractor; or
 - (ii) any other event, fact, matter or circumstance not referred to in Section 11.3.3(d).

11.4 Determination of Extension of Time Claims

11.4.1 The Owner's Representative must, within fourteen (14) days after receiving a claim under Section 11.3.2 that complies with Section 11.3.3, give the Contractor:

- (a) written notice of the reasonable extension of time which is granted and the new Milestone Date; or

- (b) if no extension is given, written notice of that decision and the reasons for that decision.

11.4.2 The Owner's Representative may, in the Owner's Representative's absolute discretion and without any obligation to do so, extend Milestone Dates at any time by giving written notice to the Contractor nominating new Milestone Dates, regardless of whether:

- (a) the Contractor has claimed or is entitled to an extension of time under this Contract; or
- (b) the Owner's Representative has previously either rejected any claim or failed to make a determination under Section 11.4.1.

11.4.3 Without limiting Section 11.4.2, the Owner's Representative may, pursuant to that section, extend the Milestone Dates to account for any Owner Caused Delay.

12. CONTRACT PRICE

12.1 Contract Price

The Contract Price, exclusive of GST and QST, shall consist of the following:

12.1.1 Compensation for FEED/FEL3 Works

The compensation for the FEED/FEL3 Works, as it relates to onshore activities and as described in Section 2.2, based on the Contractor's budgeted hours and man-loading, as more fully described in Exhibit H plus reasonable expenses as approved in advance by the Owner.

12.1.2 Fixed Lump Sum Fees

- (a) the fixed lump sum amount to be agreed between the Parties during the Initial Period for the provision of Project management;
- (b) the fixed lump sum amount to be agreed between the Parties during the Initial Period for the performance of the procurement services to be performed by the Contractor; and
- (c) the fixed lump sum amount to be agreed between the Parties during the Initial Period for the performance of construction services,

(collectively, the fixed lump sum prices described in paragraphs (a), (b) and (c) are referred to as the "**Fixed Lump Sum Fees**").

12.1.3 Provisional Price for Procurement and Construction

The estimate for provisional price for supply of the Equipment and the Materials by the Contractor and Subcontracts for construction will be agreed by the Parties during the Initial Period and will consist of the procurement portion for the supply of the Equipment and the Materials (the “**Provisional Procurement Price**”) and the construction portion for construction through Subcontractors (the “**Provisional Construction Price**”) plus a profit % to be agreed upon during the Initial Period.

12.2 Procurement Reimbursable Costs

Subject to Section 12.4 and Section 12.5, the Contractor shall be entitled to be reimbursed by the Owner for any and all Cost incurred in connection with all Equipment and Materials to be procured by the Contractor for the Works in accordance with this Contract plus a profit % to be agreed during the Initial Period (the “**Procurement Reimbursable Costs**”). Without prejudice to the generality of the above, the Procurement Reimbursable Costs for Equipment and Materials shall be net Cost payable by the Contractor to Subcontractors supplying Equipment and Materials, taking into account all discounts and charges for the Equipment and Materials delivered, including any necessary insurance, custom duties paid, packing and unpacking, loading and unloading, shipping and in-land transportation, forwarding and handling agency charges, demurrage and any other similar item plus a profit % to be agreed upon during the Initial Period. Any demurrage charge incurred due to the intentional default of the Contractor shall not be included in the Procurement Reimbursable Costs.

12.3 Construction Reimbursable Costs

Subject to Section 12.4 and Section 12.5, Contractor shall be entitled to be reimbursed by the Owner for any and all Cost for all construction activities included in the Works pursuant to this Contract plus a profit % to be agreed upon during the Initial Period (the “**Construction Reimbursable Costs**”). Without prejudice to the generality of the above, the Construction Reimbursable Costs shall be net Cost payable by the Contractor to the relevant Subcontractors for construction in accordance with the relevant Subcontract plus a profit % to be agreed upon during the Initial Period. The Construction Reimbursement Costs shall also include the net Cost payable by the Contractor for the Temporary Works.

12.4 Limitation of Procurement Reimbursable Costs and Construction Reimbursable Costs

Notwithstanding any other provision to the contrary, the Contractor shall not be entitled to be reimbursed by the Owner for any Procurement Reimbursable Costs or any Construction Reimbursable Costs which are due to (i) gross negligence or wilful misconduct of the Contractor; (ii) any negligent act or omission of a Subcontractor or a failure of a Subcontractor to fulfill its obligations under the applicable Subcontract, (iii) any negligent act or omission of the Contractor or a failure of the Contractor to fulfill its obligations under this Contract other than errors related to

field engineering, Project management, the procurement services and construction services (unless such errors are due to gross negligence or willful misconduct of the Contractor), or (iv) a change to a Subcontract or a claim settlement with a Subcontractor which has not been approved by the Owner in accordance with Section 10.3.

12.5 Guaranteed Target Contract Price (GTCP)

12.5.1

[Redacted]

12.5.2

[Redacted]

12.5.3

[Redacted]

[Pricing specifics redacted for competitive reasons]

13. TERMS OF PAYMENT

13.1 General

Payment due to the Contractor under Section 12.1 shall be made as follows:

13.1.1 The Owner will make the Advance Payment described in Section 13.2(a) against the submission of the First Advance Payment Letter of Credit to the Owner by the Contractor in accordance with Section 17.1.

13.1.2 The Owner will make the Advance Payment described in Section 13.2(b) against the submission of the Second Advance Payment Letter of Credit to the Owner by the Contractor in accordance with Section 17.1.2.

13.1.3 Except for the compensation for FEED/FEL3 Works which will be paid on the progress basis during the Initial Period, ninety percent (90%) of the Contract Price shall be paid to the Contractor by the Owner in accordance with the Milestone

Schedule subject to the Holdback, unless the Contractor has posted the Holdback Letter of Credit pursuant to Section 13.6, in which case there will be no deduction of the Holdback. The Holdback or the Holdback Letter of Credit, as the case may be, will be released to the Contractor in accordance with Section 15.2, subject to other provisions of this Contract.

- 13.1.4 If any part of the Works performed at any time by the Contractor is GST and QST taxable in Canada according to Applicable Laws and payable by the Contractor, the Owner agrees to pay the Contractor the applicable GST and QST on the invoiced amount on that part of the Works. The Owner will not make a payment to which GST and/or QST applies until the Contractor (or Subcontractor) has provided the Owner with a valid GST and QST invoice.

13.2 Advance Payment

The Owner shall make an advance payment, for mobilization, field engineering and construction, consisting of (a) subject to the delivery by the Contractor of the First Advance Payment Letter of Credit in accordance with Section 17.1, an advance payment in the amount of [REDACTED] payable upon the issuance of LNTP, and (b) subject to the delivery by the Contractor of the Second Advance Payment Letter of Credit in accordance with Section 17.1.2, an advance payment in the amount of [REDACTED]

[REDACTED] (a) payable upon the issuance of the Notice to Proceed (the advance payments described in the foregoing paragraphs (a) and (b) are collectively referred to as the “**Advance Payment**”).
[Amount of advance redacted for competitive reasons]

The Contractor shall ensure that the Advance Payment Letters of Credit are valid and enforceable until the Advance Payment has been repaid in its entirety upon Final Completion.

13.3 Payment of Fixed Lump Sum Fees, Procurement Reimbursable Costs and Construction Reimbursable Costs

The payment of the Fixed Lump Sum Fees, the Procurement Reimbursable Costs and the Construction Reimbursable Costs shall be based on the achievement of Milestone Events approved by the Owner.

The Contractor shall, acting on behalf of the Owner as the importer of record into Canada of the Equipment and Materials, be liable for and shall make payment for import custom tax, duties and all kinds of relevant expenses. The unrecoverable customs duties, import and export duties and demurrage costs and port fees paid by the Contractor shall be submitted to the Owner accompanied by relevant supporting documents acceptable to the Owner, as part of the monthly Payment Request.

13.4 Payment Request

13.4.1 Subject to Section 13.5, the Contractor must give the Owner's Representative a **"Payment Request"** on the fifth (5th) day before the last Business Day of each month and at the time required by Section 13.6 where relevant.

13.4.2 The Contractor must give the Owner's Representative a Payment Request in the format which must as a minimum:

- (a) set out the amount of the Contract Price and the other amounts that the Contractor asserts are payable to the Contractor in accordance with this Contract for the period commencing on the first Day of the that month and expiring on the last Day of that month (the **"Payment Request Period"**);
- (b) detail the relevant Payment Request Period;
- (c) set out amounts paid previously under this Contract;
- (d) after the Initial Period, include a copy of the Progress Report for the relevant Payment Request Period, which Progress Report shall confirm the achievement of the Milestone Event covered by the applicable Payment Request; and
- (e) include any other information directed by the Owner's Representative.

13.4.3 In addition to the requirements of Section 13.4.2, the Contractor must, unless directed otherwise by the Owner's Representative, include in each Payment Request:

- (a) a breakdown of the Contract Price and any other sums claimed under this Contract claimed to reflect the basis upon which the Payment Request is calculated;
- (b) the name of the Project;
- (c) the name of the Site;
- (d) the name of the Owner's Representative; and
- (e) the Partial Lien Waiver in respect of the applicable payment Request Period.

13.4.4 The Owner's Representative, acting reasonably, may request any additional information from the Contractor in respect of its Payment Request.

13.4.5 By delivering a Payment Request, the Contractor represents and warrants to the Owner that:

- (a) the Contractor has performed the Works which are the subject of the Payment Request;
- (b) the Contractor is not aware of any Defects, mistakes or omissions in the Works that would require the Contractor to re-perform the Works that are included in the Payment Request;
- (c) any remuneration and other amounts due and payable (whether under Applicable Law or otherwise) by the Contractor to any of the Contractor's Personnel in respect of the Works have been paid, except holdbacks and amounts properly retained in accordance with Applicable Law or amounts that are the subject of a bona fide dispute; and
- (d) subject to any Claims that may have arisen within the fourteen- (14-)day period prior to the Payment Request, the Contractor is not aware of any Claim against the Owner which is not identified in the Payment Request or in an earlier Payment Request or notice of which has not been previously given to the Owner.

13.4.6 Should any Payment Request not contain the information required under Sections 13.4.2, 13.4.3 and 13.4.4, the Owner's Representative may return the incomplete Payment Request to the Contractor and notify the Contractor that Section 13.4.6 applies.

13.4.7 Where the Owner's Representative returns an incomplete Payment Request to the Contractor, the Contractor must submit a Payment Request that complies with Sections 13.4.2 and 13.4.3 within the time notified by the Owner's Representative or, where no time is notified, within five (5) days.

13.4.8 Within ten (10) Business Days of receipt of a complete Payment Request the Owner's Representative will give the Contractor, on behalf of the Owner, acceptance of the Payment Request or any correction or modification that should properly be made to the Payment Request.

13.4.9 The Owner shall pay the Contractor by bank transfer within thirty (30) days from the date of receipt of a valid invoice from the Contractor therefor, which shall be accompanied by the accepted Payment Request and relevant supporting documents.

13.5 Conditions Precedent to Entitlement to Payment

If, at the time that the Contractor submits a Payment Request under Section 13.4 the Contractor has not:

- 13.5.1 subscribed to the insurance required by Article 22 and (if requested) provided evidence of this to the Owner's Representative;
- 13.5.2 paid all the Contractor's Personnel as warranted under Section 13.4.5; or
- 13.5.3 complied with all Supplemental Instructions given by the Owner's Representative under this Contract,

then, the Contractor will not be entitled to payment of and the Owner will not be liable to pay, any amount included in the Payment Request (as the case may be), provided that in the case described in Section 13.5.3, the amount of the Payment Request withheld by the Owner shall correspond to the cost of remedy assessed by the Owner, acting reasonably, in respect of the Supplemental Instruction not complied with by the Contractor.

13.6 Holdback Letter of Credit

At any time within ten (10) days of the issuance of a Payment Request pursuant to Section 13.4.1, the Contractor may, at Contractor's expense, provide the Owner with the Holdback Letter of Credit in lieu of the Holdback that would otherwise be retained by the Owner in respect of that Payment Request. The Contractor shall provide the Holdback Letter of Credit to the Owner, or increase the face value of the Holdback Letter of Credit (if it has already been provided to the Owner), within such ten (10) days. The Contractor may provide the Owner a Holdback Letter of Credit that covers multiple anticipated future Payment Requests provided that the Owner agrees with the forecast of such anticipated future Payment Request amounts. The Owner shall be entitled to set-off a shortfall in the required Holdback amount against a Payment Request until the face value of the Holdback Letter of Credit is increased to the required amount.

13.7 Final Payment

- 13.7.1 Within thirty (30) days after the Project achieves Final Completion, the Contractor must deliver to the Owner's Representative in accordance with this Section 13.7 a final payment request titled "**Final Payment Request**".
- 13.7.2 the Contractor must include in the Final Payment Request:
 - (a) a complete statement of accounts, including any Changes to the Scope of Works;

- (b) all money that the Contractor considers to be due from the Owner arising out of or in connection with the Works, this Contract or any alleged breach of Contract less all amounts already paid;
- (c) confirmation that all of the Contractor's Documents, approvals of all Authorities and deliverables as required by this Contract have been lodged with the Owner's Representative;
- (d) the Final Lien Waiver;
- (e) letters of attestation from the CSST and the CCQ, confirming that the Contractor is in compliance with the CSST and the CCQ and the related Applicable Laws; and
- (f) all support documentation for the calculation of the Final Contract Price for the purposes of Section 12.5 and the sharing of cost overruns or the additional compensation, as the case may be, in accordance with Section 12.5.1 or Section 12.5.2.

13.7.3 The Contractor must provide with the Final Payment Request details of how the amount requested in the Final Payment Request is calculated including:

- (a) separate identification of each request and the amount of each request which is part of the amount requested;
- (b) which section, if any, of this Contract the Contractor relies upon to support an entitlement to each request;
- (c) if based on breach of this Contract, what obligation, if any, the Owner has breached and which the Contractor relies upon to support an entitlement to each Claim; and
- (d) a description of the other acts, defaults and omissions that the Contractor relies upon to support any entitlement to a Claim.

13.7.4 Subject to Section 12.5.3, within ten (10) Days of receipt of the Final Payment Request, the Owner's Representative will issue a payment statement and the amount, if any, determined as due to the Contractor after deducting all amounts already paid shall be paid by the Owner within thirty (30) days of the issue of the Final Payment Request.

13.8 Electronic Funds Transfer

The Owner will make payment to the Contractor by electronic funds transfer into the Contractor's bank account. All payments due to the Contractor under this Contract must be made to the bank account of the Contractor nominated in writing to the Owner by written notice from two representatives of the Contractor duly authorised by resolution as certified by the Corporate Secretary of the Contractor, which resolution must specifically refer to this Section 13.8.

13.9 Banking Charges

All bank charges, fees and expenses charge by the receiving bank of the Contractor, if any, in connection with the payments shall be borne by the Contractor. And all banking charges, fees and expenses in the sending bank of the Owner in connection with the payments shall be born and paid for by the Owner. The banking charges by the sending bank in connection with the Contractor's payment to the Subcontractors shall be paid by the Contractor.

13.10 Currency of Payment

All payments to the Contractor by the Owner shall be made in US Dollars, and the Contractor shall provide evidences for foreign exchange rate when converting the foreign exchange rate into US Dollars, if any.

14. TESTS ON COMPLETION AND COMMISSIONING**14.1 General**

- 14.1.1 The Owner may have representatives attend all inspections, tests, Pre-Commissioning and Commissioning.
- 14.1.2 The Contractor shall give to the Owner not less than forty-five (45) days' notice of the date which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out on such date or on such other day or days as the Owner shall instruct.
- 14.1.3 In addition to the specific records of measurements that may be required by this Contract to be submitted to the Owner, the Contractor must submit such additional records of measurements and other documentation that may be requested by the Owner.
- 14.1.4 The Contractor shall, in accordance with this Contract, no later than ninety (90) days prior to testing submit to the Owner Pre-Commissioning and Commissioning tests procedures, based on the Commissioning Plan and Inspection Testing Plan (ITP) established in the Initial Period.

14.2 Commissioning Testing Prior to Final Completion

The Contractor must, in accordance with this Contract and the Project Schedule, submit test procedures for testing prior to Final Completion to demonstrate the completion of construction and the readiness for service of all sub- systems, systems, sub-components, components and other parts of the Plant, and further that the applicable sub-systems, systems, sub-components, components and other parts of the Plant can be started up safely. Testing must be carried out in accordance with this Contract and the plans prepared by the Contractor and approved by the Owner's Representative for such tests. The Contractor must provide all supervisory, management and specialized personnel as required to meet its obligations for Commissioning as specified in the Scope of the Works.

14.3 Project Turnover to the Owner

From and after the date the requirements under this Contract for Commissioning have been met, the Owner must take direct control over operation and maintenance of the Project, in accordance with the most updated version of the Project Schedule and provided that the Contractor gives the Owner thirty (30) days' notice of the date that the Contractor believes the Commissioning will be achieved. If the Contractor fails to give such notice the Contractor shall be responsible for the safety of the Plant until a date thirty (30) days from the date of completion of Commissioning.

14.4 Use of the Works by the Owner

In considering the results of the Tests on Completion, appropriate allowances shall be made for the effect of any use of the Works by the Owner on the performance or other characteristics of the Works. As soon as the Works, or a portion thereof, have passed each of the Tests on Completion, the Contractor shall submit a certified report of the results of these Tests on Completion to the Owner.

In the event that an area/system of the Works is ready for use and the Owner wishes to use it, the Owner is entitled to use such area/system of the Works upon the acceptance of the certificate in respect of the Commissioning Completion of such area/system of the Works.

14.5 Failure to Pass Tests

If the Works, or a portion thereof, fail to pass the Tests, Section 9.5 shall apply, and the Owner or the Contractor may require the failed Tests on Completion and the Tests on Completion on any related work to be repeated under the same terms and conditions.

If the Works fail to pass the Tests on Completion under Section 14.5, the Owner shall be entitled to:

14.5.1 order further repetition of Tests under Section 14.2; and

14.5.2 in the event that the Works fail to pass the Tests on Completion and thereby delay Final Completion, the Owner shall be entitled to terminate this Contract under Section 22.3.

15. COMPLETION

15.1 Mechanical Completion

When the Contractor considers the Works to have achieved Mechanical Completion, the Contractor shall request the Owner to issue the certificate of Mechanical Completion substantially in the form of Exhibit X. Within fifteen (15) days after receipt of such notice, the Owner and the Contractor shall make an inspection of the Works to determine the status of the Works and: (a) if the Owner does not consider that the Works have achieved Mechanical Completion, the Owner will notify the Contractor in writing giving the reasons therefor; or (b) if the Owner considers that the Works have achieved Mechanical Completion, the Owner will issue the certificate of Mechanical Completion. If the Contractor receives a notice pursuant to subparagraph (a) above, then the Contractor shall promptly take such corrective measures which are necessary in order to achieve Mechanical Completion. The procedures in this Section 15.1 shall apply until a certificate of Mechanical Completion is issued by the Owner, provided that on any reapplication of such procedures the fifteen (15) Business-Day period shall be reduced to five (5) Business Days.

15.2 Punch List and Release of Holdback or Holdback Letter of Credit

Prior to, but not earlier than ten (10) days prior to, the achievement of Mechanical Completion, the Contractor shall provide the Owner with a Punch List that the Contractor considers to be existing at such date in respect of that Works. Prior to achievement of Mechanical Completion, the Parties shall agree on the Punch List and the reasonable Cost to complete each item on such Punch List.

The Contractor shall provide the Owner with a date for completion of each of the items on the Punch List. The Contractor shall diligently pursue the completion of the items on the Punch List and all such items shall be completed within a reasonable time but in any event no later than thirty (30) days after the date of Mechanical Completion.

The Owner may establish a deficiency holdback for the estimated cost of correcting or completing Defective equipment or incomplete work listed on the Punch List (the “**Deficiency Holdback**”). The Owner may establish the amount of the Deficiency Holdback as twice the estimated cost to rectify Defective equipment and finish incomplete work using the services of another contractor or the Owner's own forces. If the Defective equipment or incomplete work is not corrected or completed by the Contractor within the time period described above or at another reasonable time as determined by the Owner, then the Owner will (a) deduct the costs of such correction or completion from further payments due to the Contractor or the Holdback, or (b) draw down on the Holdback Letter of Credit, which costs will be applied against the loss and damage suffered by the Owner to correct the Defective equipment or complete the incomplete work. The Owner will

release the Holdback or the Holdback Letter of Credit, as the case may be, to the Contractor, promptly after correction and/or completion of the Punch List, provided, for greater certainty, that if the Parties agree that there is no Punch List to be completed or corrected, the Holdback or the Holdback Letter of Credit will be released to the Contractor upon Mechanical Completion.

15.3 Access Following Completion

After Mechanical Completion, the Owner shall give the Contractor reasonable access to the Works to complete the Punch List and to perform its obligations under Section 15.2 and this Contract generally. The Contractor shall proceed to carry out the Works required to complete the Punch List in an expedient manner and at times mutually acceptable to the Parties. The Contractor's performance of its obligations under Section 15.2 and its other obligations under this Contract shall be carried out in a manner so as to minimize interference with the Owner's use of the Works.

15.4 Commissioning Completion

When the Contractor considers the Works to have achieved Commissioning Completion, the Contractor shall request the Owner to issue the certificate of Commissioning Completion substantially in the form of Exhibit Y. Within fifteen (15) days after receipt of such notice, the Owner and the Contractor shall make an inspection of the Works to determine the status of such Works and: (a) if the Owner does not consider that such Works have achieved Commissioning Completion, the Owner will notify the Contractor in writing giving the reasons therefor; or (b) if the Owner considers that the Works have achieved Commissioning Completion, the Owner will issue the certificate of Commissioning Completion. If the Contractor receives a notice pursuant to subparagraph (a) above, then the Contractor shall promptly take such corrective measures which are necessary in order to achieve Commissioning Completion. The procedures in this Section 15.4 shall apply until a certificate of Commissioning Completion is issued by the Owner, provided that on any reapplication of such procedures the fifteen (15) Business-Day period shall be reduced to five (5) Business Days.

15.5 Final Completion

When the Contractor considers the Works have achieved Final Completion, the Contractor shall request the Owner to issue the certificate of Final Completion substantially in the form of Exhibit Z. Within twenty-one (21) days after receipt of such notice, the Owner and the Contractor shall make an inspection of the Works to determine whether or not the Works have achieved Final Completion and: (a) if the Owner does not consider the Works have achieved Final Completion, the Owner will notify the Contractor in writing giving the reasons therefor; or (b) if the Owner considers the Works have achieved Final Completion, the Owner will issue the certificate of Final Completion. If the Contractor receives a notice pursuant to subparagraph (a) above then the Contractor shall promptly take such corrective measures which are necessary in order to achieve Final Completion. The procedures in this Section 15.4 shall apply until a certificate of Final

Completion is issued by the Owner, provided that on any reapplication of such procedures the twenty-one (21) day period shall be reduced to five (5) Business Days.

On the Final Completion Date, the Contractor shall remit all Contractor's Documents and Confidential Information to the Owner, save and except that the Contractor shall be permitted to retain one (1) copy thereof for archival purposes.

16. CHANGES

16.1 Right to Change

Changes may be initiated by the Owner at any time prior to Mechanical Completion, either by an instruction or by a request for the Contractor to submit a proposal. A Change shall not comprise the omission of any work which is to be carried out by the Contractor.

The Contractor shall execute and be bound by each Change, unless the Contractor promptly gives notice to the Owner stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Equipment or Materials required for the Change, (ii) it will reduce the safety or suitability of the Works. Upon receiving this notice, the Owner shall cancel, confirm or vary the instruction.

16.2 Change Procedure

If the Owner requests a proposal, prior to instructing a Change, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- 16.2.1 a description of the proposed work to be performed and a schedule for its execution, including critical path(s) analysis of proposed change);
- 16.2.2 the Contractor's proposal for any necessary modifications to the Project Schedule according to Section 11.1 and to the Milestone Dates; and,
- 16.2.3 the Contractor's proposal for adjustment to the Contract Price (including sufficient estimating backup to expedite approvals).

The Owner shall within fifteen (15) days after receiving such proposal, respond with approval, disapproval or comments. Each instruction to execute a Change, with any requirements for the recording of Costs, shall be issued by the Owner to the Contractor, who shall acknowledge receipt.

If the Parties agree to the Change, the Parties must execute a Change Order confirming the Change. If the Parties do not reach agreement on all matters needed to document the Change by a Change Order, the Owner may direct the Change by issuing a Change Directive to the Contractor. If the

Owner issues a Change Directive, the Parties will, as soon as reasonably practicable, attempt to reach agreement on the Change and convert the Change Directive to a Change Order.

16.3 Disputes Regarding Change Directives

If the Contractor and the Owner fail to agree on everything required to convert the Change Directive to a Change Order, the Contractor must nevertheless promptly proceed with implementation and performance of the Change Directive. If the Contractor is of the reasonable opinion that implementing the Change Directive may:

- 16.3.1 impair its ability to meet the Project Schedule or Milestone Schedule or both;
- 16.3.2 cause it to be in breach of any Applicable Law, requirements of any Authority or requirements of any Permits;
- 16.3.3 cause either Party to be in breach of any provision of this Contract, the Contractor must within five (5) Business days after receipt of the Change Directive give notice to the Owner of same with reasons. The Owner, within five (5) Business Days after receipt of such notice, shall confirm or vary the Change Directive as it sees fit and such confirmation or variation shall become binding on the Contractor. Any disagreement by the Contractor to the confirmation or variation will then constitute a Dispute to be resolved under Article 29.

16.4 The Contractor's Obligations

If the Contractor receives a Change Order or Change Directive it must perform its obligations under this Contract in accordance with the varied Scope of Works.

16.5 Subsurface Conditions

The Contractor expressly assumes and accepts the risk of any delays and cost increases related to or resulting from any naturally occurring, concealed, unusual or difficult subsurface conditions encountered in the performance of the Works on the Site, including conditions relating to soils, water and/or rock (the "**Subsurface Conditions**"), disclosed in the preliminary geotechnical report dated October 30, 2014 provided by the Owner, any geotechnical report to be provided by the Contractor or Subsurface Conditions which are not unusual or which do not differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The Guaranteed Target Contract Price (GTCP) and the Project Schedule are each based on the Contractor's acceptance of such Subsurface Conditions, and there shall be no adjustments to the Guaranteed Target Contract Price (GTCP), the Project Schedule, or other terms and conditions of this Contract as a result of any of the Subsurface Conditions hereby accepted by the Contractor. If the Contractor suffers delay and/or incurs additional Cost as a result of the Subsurface Conditions not accepted by the Contractor pursuant to this Section 16.5, the Contractor shall be entitled to request a Change Order for:

16.5.1 an extension of time for any such delay, if any Milestone is or will be delayed, under Section 11.3; and

16.5.2 payment of any such Cost, which shall be added to the Contract Price.

16.6 Adjustments for Changes in Applicable Laws

If the Contractor suffers delay and/or incurs additional Cost as a result of a change in the Applicable Laws (including the introduction of new Applicable Laws and the repeal or modification of existing Applicable Laws), made after the Effective Date, which affect the Contractor in the performance of its obligations under this Contract, except for any such change (a) that has been announced or enacted prior to the Effective Date and comes into effect thereafter; (b) affecting corporate taxes payable by the Contractor; or (c) arising due to any failure of the Contractor to perform or fulfill any of its obligations under this Contract or any wilful or negligent act of the Contractor or the Contractor's Personnel, the Contractor shall be entitled to request a Change Order for:

16.6.1 an extension of time for any such delay, if any Milestone is or will be delayed, under Section 11.3; and

16.6.2 payment of any such Cost, which shall be added to the Contract Price.

16.7 Claims Generally

If the Contractor considers to be entitled to any extension of the Project Schedule and/or any additional payment, under this Contract, the Contractor shall give notice to the Owner, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than fifteen (15) days after the Contractor became aware, or should have become aware, of the relevant event or circumstance.

If the Contractor fails to give notice of a claim within such period of fifteen (15) days, the Owner shall be discharged from all liability in connection with such claim. Otherwise, the following provisions of this Article shall apply.

The Contractor shall also submit any other notices which are required by this Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Owner. Without admitting liability, the Owner may, after receiving any notice under this Article, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Owner to inspect all these records, and shall (if instructed) submit copies to the Owner.

Within fifteen (15) days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Owner, the Contractor shall send to the Owner a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

16.7.1 this fully detailed claim shall be considered as interim;

16.7.2 the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such farther particulars as the Owner may reasonably require; and

16.7.3 the Contractor shall send a final claim within twenty-eight (28) days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Owner.

Within thirty (30) days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Owner and approved by the Contractor, the Owner shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give its response on the principles of the claim within such time.

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

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

17. BANK GUARANTEES The Contractor shall provide the following bank guarantees to the Owner:

17.1 Advance Payment Letters of Credit

17.1.1 The First Advance Payment Letter of Credit shall (a) be issued by Citibank Canada or such other first class international bank based in Canada acceptable to the Owner to be submitted to the Owner within five (5) Business Days after the issuance of the LNTP and in all events prior to any payment to the Contractor pursuant to the LNTP; (b) be in the amount equal to [REDACTED]

[REDACTED]; and (c) be valid until Final Completion. **[Amount of advance redacted for competitive reasons]**

- 17.1.2 The Second Advance Payment Letter of Credit shall (a) be issued by Citibank Canada or such other first class international bank based in Canada acceptable to the Owner to be submitted to the Owner within five (5) Business Days after the issuance of the Notice to Proceed and in all events prior to any payment to the Contractor other than pursuant to the LNTP; (b) be in the amount equal to [REDACTED]; and (c) be valid until Final Completion. **[Amount of advance redacted for competitive reasons]**

17.2 Execution Letter of Credit

The Execution Letter of Credit shall (a) be issued by Citibank Canada or such other first class international bank based in Canada acceptable to the Owner to be submitted to the Owner within five (5) Business Days following the issuance of the Notice to Proceed and in all events prior to any payment to the Contractor; (b) be in the amount equal to [REDACTED]; and (c) be valid until the certificate of Commissioning Completion has been issued and the Warranty Letter of Credit has been delivered by the Contractor. **[Amount of Letter of Credit redacted for competitive reasons]**

17.3 Warranty Letter of Credit

The Warranty Letter of Credit shall (a) be issued by Citibank Canada or such other first class international bank based in Canada acceptable to the Owner to be submitted to the Owner within five (5) Business Days before Commissioning Completion; (b) be in the amount equal to [REDACTED]; and (c) be valid until the expiration of the Warranty Period. **[Amount of Letter of Credit redacted for competitive reasons]**

17.4 Holdback Letter of Credit

The Holdback Letter of Credit shall (a) be issued by Citibank Canada or such other first class international bank based in Canada acceptable to the Owner, to be submitted to the Owner within the delays described in Section 13.6; (b) be in the amount described in Section 13.6; and (c) be valid until the later of (i) Mechanical Completion in the absence of a Punch List, or (ii) the correction and/or completion of the Punch List in accordance with Section 15.2.

17.5 Replacement of Bank Guarantees

In the event that an existing Bank Guarantee expires before the term specified in Section 17.1, 17.2, 17.3 or 17.4, as the case may be, the Contractor shall provide the Owner with a replacement Bank Guarantee. The failure of the Contractor to provide the Owner with such replacement Bank Guarantee at the latest forty-five (45) Business Days before the expiry of the existing Bank Guarantee will give the Owner the right to immediately claim payment under the applicable Bank Guarantee. In such a case, the Owner shall hold the amount claimed as a cash security until such time as the Contractor supplies a replacement Bank Guarantee. Upon delivery of the replacement Bank Guarantee and provided that there is no default of the Contractor, the Owner will promptly return the amount claimed under the applicable existing Bank Guarantee to the Contractor.

17.6 Bank Guarantees Generally

All costs and expenses in connection with establishing, maintaining, extending, amending and cancelling any of the letters of credit as specified in this Article 17 (hereinafter, collectively, referred to as the “**Bank Guarantees**”) shall be borne and paid for by the Contractor. Each of the Bank Guarantees referred to in this Article 17 shall in no way be construed as a limitation of the Contractor’s liability and responsibility under this Contract and shall in no way prevent the Owner from claiming any indemnification for damages suffered which exceeds the amount of any such Bank Guarantees.

Each of the Bank Guarantees shall secure the full and faithful performance of the Contractor’s obligations set forth in this Contract, including the complete execution of the Works and shall serve to compensate the Owner for and against any damages caused by the Contractor, pay Subcontractors and any other non-compliance arising herefrom. Likewise, the Bank Guarantees shall serve to compensate the Owner for any sum of money that the Contractor may owe to the Owner for any other reason whatsoever in connection with this Contract.

18. LIABILITY

18.1 Indemnity by the Contractor

The Contractor shall indemnify, defend and hold harmless the Owner and its officers, directors, employees and agents thereof, from and against all costs, losses, damages and third party Claims arising out of or resulting from the performance of the Works, including any violation of any Applicable Laws, (except for errors of the Contractor related to field engineering, Project management, the procurement services and construction services, unless due to gross negligence or wilful misconduct of the Contractor) to the extent attributable to (a) any wilful misconduct or negligent act or omission of the Contractor or any Contractor’s Personnel; or (b) any failure of the Contractor to perform or fulfil its obligations under this Contract.

18.2 Limitation of Liability

Subject to the immediately following paragraph, the aggregate liability of the Contractor (including its affiliates) or the Owner (including its affiliates) for any claims of any kind, losses, damages or expenses arising out of or in connection with the Works, this Contract or from the performance or breach thereof shall not exceed [REDACTED]

[REDACTED], provided that notwithstanding any of the limits described in the foregoing paragraphs (a) and (b), the Contractor will promptly redo all field engineering, Project management, procurement and construction services at its cost. **[Limits on Liability redacted for competitive reasons]**

The foregoing limitation on the liability shall not apply in respect of any claims, losses, damages or expenses arising out of or in connection with:

- 18.2.1 gross negligence or willful misconduct of the Contractor or the Owner;
- 18.2.2 third party claims described in Section 18.1;
- 18.2.3 title to the Works and the Equipment at the time of their transfer of title in accordance with Section 19.1;
- 18.2.4 any warranty obligation of the Contractor pursuant to Article 21;
- 18.2.5 any Lien directly or indirectly created or suffered to be created by the Contractor or any Subcontractor, architect, engineer, supplier of materials or workman against the Works, the Project, the Site or any part thereof or interest therein;
- 18.2.6 any Intellectual Property Claim;
- 18.2.7 the occurrence of facts or circumstances for which the Contractor is insured in accordance with Article 23, but only to the extent insurance proceeds are actually received by the Contractor in connection therewith and only to the extent of the amount actually received by the Contractor; or
- 18.2.8 the breach of any confidentiality obligations under this Contract.

18.3 Indirect Damages

In no event and under no circumstances, will the Owner or the Contractor be liable to the other party for any loss of profit, loss of use, loss by reason of plant shutdown, loss of revenue or business opportunity, or any incidental, indirect, special or consequential damages of any nature, whether or not such loss or damage is based on contract, warranty, tort (including negligence or

strict liability), indemnity or otherwise, and each Party hereby releases the other party and the respective directors, officers, employees and agents of each from all such liability.

19. TRANSFER OF TITLE AND PASSING OF RISK OF LOSS

19.1 Transfer of Title

Each item of Equipment and Materials shall become the property of the Owner free from Liens at the earlier of:

19.1.1 when such Equipment or Materials are installed at the Site; or

19.1.2 when the Contractor has received payment for the applicable portion of the Equipment and Materials.

19.2 Title to Resources of Value

As between the Owner and the Contractor (and the Subcontractors) and subject to Applicable Laws, title to water, soil, rock, gravel, sand, minerals, timber and any other resources developed or obtained in the excavation or the performance by the Contractor of the Works and the right to use said items or dispose of the same is hereby expressly vested in and reserved by the Owner. If the Contractor wishes to use any such items for its own purposes, the Contractor shall provide the Owner with a written request for such materials. The Owner may, in its sole discretion, allow the Contractor to use such materials for the Contractor's own purposes.

The Contractor shall promptly notify the Owner if the Contractor or any Subcontractor, discovers any valuable item, material or minerals during excavation works and the Contractor is not authorized hereunder to use or dispose of the same. If the Contractor is instructed by the Owner to suspend excavation works following any such discovery, such suspension shall be deemed to be a Change under Article 16.

19.3 Risk of Loss

The Contractor shall be responsible for the care, custody and risk of loss or damage to the Equipment and Materials until Final Completion and shall make good forthwith at its own Cost any loss or damage that may occur to the Plant, Equipment and Materials from any cause during such period. The Contractor shall also be responsible in the case of any outstanding work being carried out by the Contractor after such period and making good any loss or damage to such work from any cause and for making good any loss or damage to Plant, Equipment and Materials caused by the Contractor or its Subcontractors in the course of any work carried out.

20. LIENS

20.1 Creation of Liens

Subject to the Owner's payment obligations hereunder, the Contractor shall not directly or indirectly create or suffer to be created by it or any Subcontractor, architect, engineer, Contractor of materials or workman any Lien against the Works, the Project, the Site or any part thereof or interest therein. If such Lien is published or created, the Contractor shall promptly, and at the latest within fifteen (15) days after knowledge, pay and discharge such Lien or otherwise ensure that it is removed.

20.2 Indemnity for Liens

The Contractor shall indemnify, defend and protect the Owner from and against any and all Liens published or created against the Works, the Project or the Site as a result of the performance of this Contract by the Contractor and from and against any and all losses arising out of or relating to such Liens.

20.3 Discharge of Liens

Upon the failure of the Contractor to promptly pay and discharge any Lien or otherwise ensure that it is removed within the fifteen- (15-) day period prescribed above, the Owner shall be entitled to pay or discharge same and, upon the payment or discharge thereof, shall be entitled to immediately recover from the Contractor the amount thereof together with all expenses (including legal fees) incurred by it in connection with such payment or discharge or to set off all such amounts against any such sums owed by the Owner to the Contractor. However, should the Contractor object to such payment, the Owner shall not be entitled to pay and discharge such Lien, provided the Contractor delivers or arrange to have delivered in favour of the Owner such irrevocable letter of credit, bond or other similar form of security, in form and substance and for an amount, satisfactory to the Owner.

20.4 No Waiver of Contractor's Rights

Nothing in this Article 20 shall be construed as a limitation on or waiver by the Contractor of any of its rights to encumber the Project or the Works as security for any past due amount owed to it by the Owner hereunder, the payment of which is undisputed by the Owner.

21. WARRANTY

21.1 General Obligation

The Contractor warrants and guarantees to the Owner that the Works will be completed in accordance with this Contract, the Applicable Laws and Good Industry Practice, will be suitable for the intended purpose in accordance with this Contract and will be free from Defects for [REDACTED]

 as may be extended in accordance with Section 21.4 (the “**Warranty Period**”). **[Length of Warranty Period redacted for competitive reasons]**

Such warranty and guarantee does not extend to (a) any Defect directly and primarily due to improper operation or maintenance of the Works by or on behalf of the Owner; (b) normal wear and tear under normal usage after Commissioning Completion; (c) repair done by any other person than the Contractor, provided that the Contractor complies with its obligations under this Article 21.

The warranty provided by the Contractor under this Article 21 will extend to minor repairs made by third parties, provided that the Contractor consented to such minor repair, such consent not to be reasonably withheld or delayed, and provided that such minor repairs were properly made.

During the 30-day period prior to the scheduled end of the Warranty Period, the Contractor and the Owner shall jointly conduct an inspection of the Works to determine the list of deficiencies to be repaired prior to the expiry of the Warranty Period.

21.2 Warranty of Subcontractors

Where the Contractor obtains warranties from its Subcontractors which are more favourable than the warranties contained in this Contract, the Contractor shall enforce such warranties for the benefit of the Owner to the fullest extent possible under the terms of such warranties, and, on the Owner’s request, shall assign such warranties to the Owner, where such assignment is permitted, on Final Completion. The Contractor shall use its best efforts to obtain warranties from Subcontractors which are assignable to the Owner or obtain warranties in favour of the Owner in addition to the Contractor.

21.3 Remedying Defective Works

If the Owner determines at any time before expiration of the Warranty Period that any part of the Works is Defective, then upon written notice from the Owner setting out in details the Defective Works, the Contractor shall within five (5) Business Days, without cost to the Owner or the Lenders and in accordance with the Owner’s written instructions: (a) re-perform such Defective Works at its expense in the instance where such Defective Works is engineering or services, or (b) repair or remove and replace such Defective Works, or, (c) provided that the Contractor shall have first been given a reasonable opportunity to re-perform or repair the Defective Works in accordance with (a) or (b) above, if it has been rejected by the Owner in the event that the Defective Works cannot be repaired so that to comply with this Contract, remove it from the Site and replace it with Works that are not Defective; and satisfactorily repair or remove and replace any damage to other Works; or (d) if such deficiency cannot be cured within such period of five (5) Business Days, provide the Owner within such five (5) Business Days with a diligent cure plan containing necessary expedited actions for long lead time critical parts and diligently start to

enforce such cure plan. If the Contractor does not commence rectification within five (5) Business Days of such notice from the Owner to the Contractor, then the Owner may remedy any deficiency instead of requiring repair, or removal and replacement. In an emergency, where delay would cause serious risk of loss or damage to persons or property, the Owner may take such action without notice to or waiting for action by the Contractor. If the Contractor fails to comply with the foregoing provision, then the Owner may obtain such warranty repairs from another contractor, at the Contractor's sole cost and expense after providing the Contractor with notice of its intent to do so.

All costs of repairing, removing and replacing Defective Works, obtaining services elsewhere and exercising the Owner's right and remedies under this Section 21.3 will be at the cost of the Contractor. All necessary labor or equipment engaged or rented for the removal and replacement shall be at the cost of the Contractor. If these additional costs are incurred prior to final payment, a Change Order will be issued incorporating the necessary revisions to this Contract and reflecting a reduction in the Contract Price. If these additional costs are incurred after final payment, then the amount owing will be paid by the Contractor to the Owner upon demand. If, instead of requiring repair, or removal and replacement of Defective Works, the Owner prefers to accept it, the Owner may do so at its sole and absolute discretion. If the Owner accepts the Defective Works, the Contractor shall pay, on the written demand of the Owner, an amount which represents the difference between value of such Defective Works and the value thereof if it had not been Defective. In the event that the Contractor does not agree with such value established by the Owner, at its sole and absolute discretion, the Contractor shall repair or replace such Defective Works in accordance with this Section 21.3.

21.4 Extension of Warranty Period

The Warranty Period with respect to any corrected or replaced Defective Works will be extended for [REDACTED]. However, the Warranty Period shall not be extended by more than [REDACTED]. [Length of Warranty extension periods redacted for competitive reasons]

22. SUSPENSION OF WORK AND TERMINATION

22.1 Suspension by the Owner

At any time and for any reason, the Owner may suspend the Works or any portion thereof for a period of not more than ninety (90) days by notice in writing to the Contractor, which will specify the date on which the Works will be resumed. The Contractor shall use reasonable efforts to mitigate the impact of the Suspension and use its best efforts to resume the Works on the date so specified.

The Works suspended in accordance with Section 22.1 shall be recommenced by Contractor on the date which is thirty (30) Days' after the receipt by Contractor of written notice from Owner requesting the recommencement of the Works (or such other period of notice as may be agreed between the Owner and the Contractor).

If the Contractor suffers delay and/or incurs additional Cost as a result of suspending Works in accordance with this Section 22.1, the Contractor shall be entitled to request a Change Order for:

22.1.1 an extension of time for any such delay, if any Milestone is or will be delayed, under Section 11.3; and

22.1.2 payment of any such Cost, which shall be added to the Contract Price.

22.2 Termination by the Owner without Cause

The Owner may, without cause and for any reason, elect to terminate this Contract upon a thirty (30) Business Day prior written notice to the Contractor.

In the event of any such termination by the Owner under this Section 22.2, the Contractor shall be paid as follows:

22.2.1 For the unpaid portion of any Works performed up to the effective date of termination; and

22.2.2 For reasonable additional costs which are necessarily incurred and directly related to the termination, including reasonable costs applicable to the terminated Subcontracts, the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the Cost of demobilization, provided that support documentation satisfactory to the Owner, acting reasonably, is submitted by the Contractor.

The Owner shall not be liable for any other costs, charges or compensation on account of such termination.

In the event of such termination by the Owner under this Section 22.2:

- (a) the Owner will release or cause to be released, as of the effective date of such termination, the Bank Guarantees granted by the Contractor;
- (b) the Contractor will have no further obligations in respect of the completion of the Works, provided that the Contractor will remain liable in respect of the Works completed prior to such termination;

- (c) the Contractor will deliver to the Owner all of the Contractor's Documents and Operation and Maintenance Manual in respect of the completed Works and the Works in progress, as well as all Works Product; and
- (d) the Contractor shall, upon the written request of the Owner, execute such documents and take such other action as the Owner may reasonably require to (i) effectively assign to the Owner the interest of the Contractor in any of the Subcontracts (as well as the interest of the Contractor in any performance security held by the Contractor in respect of any such Subcontracts) as may be designated in such request or (ii) to effectively transfer to the Owner title to the Works (including title to Equipment, Contractor's Documents, Operation and Maintenance Manual and Works Product) as may be designated in such request.

22.3 Termination by the Owner for Default

The Owner may also terminate this Contract upon the occurrence of any of the following events:

- 22.3.1 by written notice to the Contractor, in the case of an Event of Insolvency of the Contractor; or
- 22.3.2 [REDACTED], if the Contractor makes an unpermitted assignment and has failed to cure such breach within that [REDACTED]; or
- 22.3.3 [REDACTED], if the Contractor fails to provide or maintain any Bank Guarantee in accordance with Article 17 and has failed to cure such breach within that [REDACTED]; or
- 22.3.4 If the Contractor fails to perform the Works in accordance with this Contract or is otherwise in breach or default of any material provision of this Contract, and such failure, breach or default continues for a period of [REDACTED] after written notice thereof setting out particulars of such failure, breach or default, or if such failure, breach or default is of such nature that it cannot be remedied within such [REDACTED], (a) subject to Section (b) below, the Contractor does not provide a cure plan acceptable to the Owner within such [REDACTED], which cure plan may not exceed [REDACTED] from the receipt of the default notice from the Owner or (b) in respect of long lead time critical parts, the Contractor does not provide the Owner within such [REDACTED] with a diligent cure plan containing necessary expedited actions for and provided the Contractor diligently starts to enforce such cure plan. **[Delays redacted for competitive reasons]**

In the event of any such termination by the Owner under this Section 22.3, the following provisions will apply:

- (a) the Contractor shall not be entitled to receive any further payment until all the Works is performed in accordance with this Contract;
- (b) the Owner shall be entitled to take possession of the Works;
- (c) the Owner shall be entitled to enforce its rights under any letter of credit described in Article 17;
- (d) the Contractor shall, upon the written request of the Owner, execute such documents and take such other action as the Owner may reasonably require to (i) effectively assign to the Owner the interest of the Contractor in any of the Subcontracts (as well as the interest of the Contractor in any performance security held by the Contractor in respect of any such Subcontracts) as may be designated in such request or (ii) to effectively transfer to the Owner title to the Works (including title to Equipment, Contractor's Documents and Operation and Maintenance Manual and Works Product) as may be designated in such request; and
- (a) if the direct costs to the Owner of termination (including compensation for additional professional services and all out-of-pocket costs incurred in having the Works completed, and compensation for any delay in Final Completion) exceed any unpaid balance of the Contract Price (reduced by a Change Order to reflect any uncompleted Works), the Contractor shall pay the difference to the Owner. When exercising any rights under this Section, the Owner, acting reasonably shall not be required to obtain the lowest price for comparable work or quality.

22.4 Termination by the Contractor for Default

Subject to the terms of a consent and acknowledgement agreement with the Lenders, the Contractor may terminate this Contract upon the occurrence of the following events:

- 22.4.1 upon providing a [REDACTED] written notice, in the event of Suspension by the Owner for a period of more than [REDACTED]; or **[Delays redacted for competitive reasons]**
- 22.4.2 by written notice to the Owner, in the case of an Event of Insolvency of the Owner; or
- 22.4.3 If the Owner is in breach or default of any material provision of this Contract, and such failure, breach or default continues for a period of [REDACTED] [REDACTED] after written notice thereof setting out particulars of such failure, breach or default, or if such failure, breach or default is of such nature

that it cannot be remedied within such [REDACTED], the Owner does not provide a cure plan acceptable to the Contractor within such [REDACTED], which cure plan may not exceed [REDACTED] from the receipt of the default notice from the Contractor. **[Delays redacted for competitive reasons]**

In the event of any such termination by the Contractor under this Section 22.4 or any other cause expressly provided for in this Contract, the following provisions will apply:

- (a) the Owner will, within thirty (30) days after the effective date of such termination, pay the Contractor the unpaid portion of any Works performed up to the effective date of such termination;
- (b) the Owner will, within thirty (30) days after the effective date of such termination, reimburse the Contractor for reasonable additional costs which are necessarily incurred and directly related to the termination, including reasonable costs, applicable to the terminated Subcontracts, provided that support documentation satisfactory to the Owner, acting reasonably, is submitted by the Contractor;
- (c) the Owner will, within thirty (30) days after the effective date of such termination, release or cause to be released the Bank Guarantees granted by the Contractor;
- (d) the Contractor will have no further obligations in respect of the completion of the Works, provided that the Contractor will remain liable in respect of the Works completed prior to such termination;
- (e) provided the Owner has paid the Contractor the amounts described in (a) to (b) above, the Contractor will deliver to the Owner all of the Contractor's Documents and Operation and Maintenance Manual in respect of the completed Works and the Works in progress, as well as all Works Product; and
- (f) provided the Owner has paid the Contractor the amounts described in (a) and (b) above, the Contractor shall, upon the written request of the Owner, execute such documents and take such other action as the Owner may reasonably require to effectively transfer to the Owner title to the Works (including title to Equipment, Contractor's Documents, Operation and Maintenance Manual and Works Product) as may be designated in such request.

The Owner shall not be liable for any other costs, charges or compensation on account of such termination.

23. INSURANCES

23.1 General Requirements for Insurances

In this Section, “**insuring Party**” means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Articles.

Wherever the Contractor is the insuring Party:

- 23.1.1 the Contractor shall obtain and maintain all insurances with an insurer and on terms approved by the Owner and shall, as a condition to mobilization at the Site and payment pursuant to Section 13.5.1, produce insurance certificates specifying the types and amounts of coverage in effect and the expiration dates of each policy;
- 23.1.2 the Contractor shall require its insurer(s) to name the Owner and the Contractor as additional insured's (provided that, in the case of Workmen's Compensation Insurance and Employer's Liability Insurance, an “**indemnity to principals**” Section may be included in place of the additional insured, and the insurer(s) shall waive its right of subrogation with respect to these additional insured;
- 23.1.3 coverage provided by the Contractor's insurance policies shall be primary and any insurance maintained by the Owner shall be in excess thereof;
- 23.1.4 if requested by the Owner, the Contractor shall have its insurance carrier(s) furnish to the Owner, insurance certificates specifying the types and amounts of coverage in effect and the expiration dates of each policy; and
- 23.1.5 if the Contractor subcontracts any part of the Works, the Contractor shall not require its Subcontractors to carry insurance which would duplicate insurance carried by the Contractor as indicated above. The Contractor shall require its Subcontractors to maintain insurances specified in the relevant Subcontracts. If requested by the Owner, the Contractor shall have its Subcontractors furnish the same evidence of insurance required of the Contractor as above.

The above insurances shall be arranged on an admitted basis with reputable insurers of strong financial standing.

At any time during the applicable coverage period, all the insurance policies shall be issued and maintained in effect by insurers having the necessary permits to operate a business in the province of Québec and maintaining a minimum rating of “A-” as established by the rating agency A.M. Best Company (or another credit rating agency acceptable to the Owner).

Wherever the Owner is the insuring Party it shall effect such insurance in accordance with the terms set out in Section 23.2 prior to commencement of the Works on the Site and with reputable

insurers. If requested in writing by the Contractor, the Owner shall submit to the Contractor, within fifteen (15) days of such request, evidence that the insurances under the Owner's responsibility have been obtained in accordance with the terms set out in Section 23.2, evidenced by insurance certificates or confirmation of cover issued by the broker specifying the types and amounts of coverage in effect and the expiration dates of each policy.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Section or Section 23.2, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Owner shall act for the Owner's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Payments received from insurers shall be used for the rectification of the loss or damage except to the extent that the Owner instructs in writing that the Contractor is not required to rectify the insured loss or damage. In the event of a total loss, the Owner shall have the right to terminate this Contract and such termination shall take effect as though it were a termination pursuant to Section 22.2.

In the event of a claim being made under any of the insurances that are required to be maintained by either Party hereunder, any excess or deductible in respect of such claim shall be borne by the Owner to the extent the loss or damage giving rise to such claim is caused by the negligence, wilful act or breach of this Contract by the Owner, and shall be borne by the Contractor to the extent caused by any other cause.

In the event of a loss arising that is (or may be) covered by insurance that is maintained by the Owner hereunder, the Contractor shall offer all such reasonable assistance as the Owner may require in connection with the pursuit of a claim under the relevant insurance policy.

Each Party shall comply with the conditions stipulated in each of the insurance policies described in Sections 23.2 and 23.3, or as provided to such Parties and/or in any claims manual which may be issued pursuant to such policies to the Parties. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Section. Neither Party shall terminate or make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration to the terms of any insurance, the Party first notified by the insurer shall promptly give notice to the other Party.

Nothing in this Section limits the obligations, liabilities or responsibilities of the Contractor or the Owner, under the other terms of this Contract or otherwise. As such, any amounts received from any insurance taken out by the Contractor or the Owner pursuant to this Section shall not limit the

obligations or liabilities of the Parties. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Owner in accordance with their obligations, liabilities or responsibilities.

23.2 Owner Insurances

The Owner shall obtain and maintain from the date of entering the Site to perform the Works or such later date as is agreed by the Parties, until the date of Final Completion the following insurances:

23.2.1 Public Liability Insurance against legal liability or death of or injury to third party persons or loss of or damage to third party property arising from or attributed to on site exposure of all Contractors (including their sub-contractors) or delivery of the services with the Contractors (including their sub-contractors) for an amount not less than [REDACTED] per occurrence. **[Amount redacted for competitive reasons]**

23.2.2 CONTRACTORS All Risk Insurance providing comprehensive cover for materials and equipment during construction of the works and for a limit equal to the full value of the works.

The Contractor will pay a deductible of [REDACTED] per occurrence. **[Amount redacted for competitive reasons]**

23.3 Contractor Insurances

The Contractor shall carry and maintain in force at all times until the Final Completion Date the following insurances:

23.3.1 Contractor's Equipment

The Contractor's Equipment insurance for not less than the full replacement value, including delivery to the Site. For each item of the Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as the Contractor's Equipment. The insurance shall cover all risks of loss, destruction or damage to the Contractor's Equipment.

23.3.2 Automobile Liability Insurance

Automobile Liability insurance covering owned, non-owned, and hired motor vehicles including passenger and unauthorized passenger liability, in accordance with local regulation, applicable Laws and minimum statutory limit.

23.3.3 Worker's Compensation Insurance

Worker's Compensation Insurance that covers work related injuries or death to be covered as required by Applicable Laws for which the Contractor and/or Subcontractor(s) are responsible and minimum statutory limit.

23.3.4 Project Specific Contractors Pollution Liability Insurance

The Contractor shall subscribe to, furnish and maintain in force a Project specific contractors' pollution liability insurance policy for damage to the environment issued jointly in the name of the Owner and the Lenders. All contractors and sub-contractors as well as all the consultants consulting firms, manufacturers and other persons for their activities on the Project, are to be named as additional insureds.

The coverage limit shall not be less than [REDACTED] per occurrence and [REDACTED] for the policy term. **[Amounts redacted for competitive reasons]**

The insurance policy shall be in force continuously from the Commencement Date and shall cover all the aspects of the Works until the Final Completion Date.

Subject to the usual exceptions for war, acts of terror, asbestos, lead, criminal acts, willful acts, contractual liabilities and penalties, the project specific contractors' pollution liability insurance policy shall include all the Works, on a comprehensive basis and shall cover, inter alia, all types of contamination. This Project specific contractor's pollution liability insurance policy shall cover bodily injury and property damage, as well as clean-up costs resulting from any loss involving contamination.

Nothing contained herein shall limit or waive the Contractor's legal or contractual responsibilities to the Owner or others.

24. TAXES

The Contractor shall be responsible for paying:

- (a) all customs duties and import duties, levies and the like in respect of all Equipment and Materials, other than in respect of the Owner Issued Items; and
- (b) all demurrage costs and port fees (including all offloading costs and the like) in respect of all Equipment and Materials, other than in respect of the Owner Issued Items, where incurred.

All such customs duties, import and export duties, levies and the like and demurrage costs and port fees as stated under this Article 24 shall be paid to the Contractor by the Owner as Procurement Reimbursable Cost.

25. FORCE MAJEURE

25.1 Exemption from Obligations

It shall not be considered that one of the Parties is in breach of its obligations under this Contract in the event that those obligations cannot be performed due to a Force Majeure Event.

The obligations of a Party invoking a Force Majeure Event shall be suspended insofar as such Party is unable to act only and provided that it acts with diligence to mitigate the impact of such Force Majeure Event. A Force Majeure Event shall not affect the obligation to pay any undisputed amount of money owing upon the occurrence of such Force Majeure Event. Upon the cessation of such impact, such Party shall promptly resume the performance of such obligation in accordance with the terms of the applicable Change Order. Subject to the foregoing, failure to fulfill an obligation due to a Force Majeure Event shall not result in any damages, or in recourse for specific performance or recourse of any nature whatsoever.

In the event that the Contractor is delayed in the performance of the Works by a Force Majeure Event, the Contractor shall, but only in respect of the portion of the Works that have been actually delayed, be entitled to an equitable adjustment in the time for the performance of the Works. Any such adjustments shall be made by way of a Change Order. The Contractor shall not be entitled to payment for costs incurred by such delays.

25.2 Limitations

A Force Majeure Event shall for no reason and under no circumstance affect the rights of the parties to terminate this Contract in accordance with the terms hereof.

If, within a reasonable term after a Force Majeure Event that causes the Contractor to suspend or delay the performance of the Works, the Contractor has not complied with adopting the actions that the Contractor could reasonably and legally initiate to mitigate such Force Majeure Event or its direct or indirect effects, the Owner may, at its sole and absolute discretion, and ten (10) Business Days after receipt of the corresponding notice by the Contractor (without requiring any answer whatsoever to any such notice from the Contractor) and at the Contractor's cost, adopt and initiate the execution of all the reasonable actions that it deems to be necessary to eliminate or mitigate the occurrence of the relevant Force Majeure Event or its direct or indirect effects. From such moment, the Owner may require the Contractor to partially or totally resume the performance of the Works.

In the event that the Works, or a material part thereof, has been delayed for greater than ninety (90) consecutive days due to a Force Majeure Event, either party may terminate this Contract upon ten (10) Business Days prior written notice to the other party of its intention to do so, in which case

such termination shall be deemed a termination to which the compensation provisions of Section 22.2 apply.

26. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

26.1 Owner Information

All designs, drawings, specifications, computations, sketches, test data, survey results, models, plans, photographs, renderings and other materials and documentation (including the media containing same) made available by the Owner to the Contractor in connection with the performance of its obligations under this Contract (the “**Owner Information**”) shall be the exclusive property of the Owner, shall only be used by the Contractor in connection with the Works and shall be deemed to be Confidential Information of Owner.

If this Contract is terminated, the Contractor shall promptly deliver to the Owner a complete set of all Owner Information in the possession of the Contractor or the Contractor’s Personnel and provide an officer’s certificate in respect of deletion of all such information from its records, electronic or other, except for any automatic backup system. If the Contractor fails to comply with its obligations under this Section 26.1, the Owner shall be entitled, in addition to any other remedies to which it may be entitled, to appropriate equitable relief, including the remedy of specific performance as damages may be an inadequate remedy with respect to the receipt of such Owner Information by the Owner.

26.2 Work Product

All designs, drawings, specifications, computations, sketches, test data, survey results, models, plans, photographs, renderings and other materials and documentation (including the media containing same) provided or made available to the Owner by or on behalf of the Contractor in connection with the performance of its obligations under this Contract (the “**Work Product**”) shall be the exclusive property of the Owner, shall only be used by the Contractor in connection with the Works and shall be deemed to be Confidential Information of Owner. With respect to any Work Product and subject to other provisions of this Contract, the Contractor agrees to execute, and cause the Contractor’s Personnel to execute, all necessary documentation to transfer and assign all rights in and title to the Work Product to the sole and exclusive ownership of the Owner and have the Contractor’s Personnel waive any moral rights they may have therein. The Contractor shall ensure that all contracts or engagements with the Contractor’s Personnel are consistent with the provisions of this Section 26.2.

If this Contract is terminated, the Contractor shall promptly deliver to the Owner a complete set of all Work Product in the possession of the Contractor or the Contractor’s Personnel.

The Contractor makes no representation or warranty to the Owner with respect to the suitability of any Work Product for projects other than the Project.

26.3 Intellectual Property Incorporated into the Works

The Contractor shall pay all license fees and royalties and assume all costs incidental to the use in the performance of the Works or the incorporation in the Works of any Intellectual Property which is the subject of patent rights, copyrights or other Intellectual Property rights held by third parties. The Contractor shall indemnify and hold harmless the Owner and its officers, directors, employees, agents and representatives, from and against all claims, costs, losses and damages arising out of or resulting from any violation or infringement of third party Intellectual Property rights resulting from the use thereof by the Contractor or the Contractor's Personnel in the performance of the Works or resulting from the incorporation in the Works and/or Owner use or disposal thereof thereafter ("**Intellectual Property Claim**"). If any such Intellectual Property Claim arises, the Contractor will at its own cost and at its own choice: (a) obtain the right for the Owner to continue to use the Works (b) make such modifications to the Works so that it becomes non-infringing, without incurring any diminution in the performance, function or use of the Works, as intended by this Contract, or (c) replace the Works to the extent necessary with non-infringing substitutes, so long as such substitutes do not result in any diminution in the performance, function or use of the Works, as intended by this Contract. The Contractor's liability and obligations under this Section 26.3 shall not apply if the basis of the alleged infringement is claimed or proved to have arisen in whole or in part from (i) a design, process, product, equipment, material, software or software documentation provided by or through or specified by the Owner to the Contractor for its use in supplying the Works; (ii) a modification of the Works by the Owner or third persons after delivery by the Contractor; or (iii) a combination of the Works by the Owner or third persons with designs or equipment supplied by a person other than the Contractor.

26.4 Confidentiality

Argex Titanium Inc. and Tecnicas Reunidas S.A. have entered into a non-disclosure agreement as of the Effective Date (the "**Non-Disclosure Agreement**"). The Contractor acknowledges to have reviewed the Non-Disclosure Agreement and agrees to be bound by the provisions of the Non-Disclosure Agreement applying to Tecnicas Reunidas S.A. as if the Contractor had executed the Non-Disclosure Agreement and shall cause all its Subcontractors to comply with the provisions of the Non-Disclosure Agreement. The Parties agree that all materials and information disclosed by a Party to the other under this Contract shall constitute "Confidential Information" for the purpose of the Non-Disclosure Agreement and the provisions of the Non-Disclosure Agreement shall apply thereto.

27. FINANCING

27.1 Assistance for Financing of Project

If requested by the Owner, the Contractor shall use all reasonable efforts to assist the Owner in its dealing with the Lenders in respect of the financing for the Project. Without limitation, the Contractor shall upon the request of the Owner execute a consent and acknowledgment agreement

to be entered into among the Owner, the Contractor and the Lenders and such agreement shall include, without limitation, the following terms:

- 27.1.1 The Contractor shall consent to the assignment and security of the Owner's right, title and interest and benefit of this Contract to the Lenders and confirmation that such assignment and security does not result in a default under this Contract;
- 27.1.2 The Contractor shall agree that, without the prior consent of the Lenders, no assignment of this Contract shall be made and no waiver of any of the Owner's rights pursuant to this Contract shall be effective;
- 27.1.3 The Contractor shall give notice to the Lenders of any default by the Owner under this Contract;
- 27.1.4 The Contractor shall grant to the Lenders the opportunity to cure or otherwise resolve such default during the applicable cure period provided for in this Contract plus an additional cure period to be agreed with the Lenders (the "**Lenders' Cure Period**"), without the Lenders assuming any of the obligations of the Owner under this Contract or incur any liability;
- 27.1.5 The Contractor shall not exercise any of its rights under this Contract or in law or otherwise during the Lenders' Cure Period;
- 27.1.6 Upon an event of default under the financing agreements with the Lenders, Lenders shall be entitled to exercise all of the rights and benefits which the Owner may have under this Contract as a party in the place and stead of the Owner (and may assignment or transfer the Owner's right, title and interest in this Contract to one or more third parties, such third parties to be acceptable to the Contractor acting reasonably) and the Contractor shall not interfere with or prevent the enforcement of the security or the exercise by the Lenders of any of their rights under the financing agreements;
- 27.1.7 Liability of the Lenders shall be limited to their rights in the assets comprising the Project which have been granted as security to the Lenders and shall in no event exceed the amount of the Contract Price which at such time remains unpaid to the Contractor under this Contract.

27.2 Amendment of this Contract

The Contractor agrees to cooperate with the Owner in the negotiation and execution of such amendments or additions to this Contract as the Lenders may request, provided that same shall not materially increase the Contractor's risks or costs under this Contract. The Contractor's risk shall not be deemed to increase by any collateral assignment of this Contract to the Lenders or any subordination of the Contractor's rights to the rights of the Lenders. The Contractor further agrees

to execute such certifications and acknowledgments as the Owner may reasonably request for the Lenders to evidence their collateral rights in this Contract and in the Works to be performed/Equipment to be delivered by the Contractor pursuant to this Contract, and to make available to the Owner for the Lenders, or their advisors, such data, reports, certifications, and other documents and information (including financial information) or assistance, as the Owner may request from time to time.

27.3 Written Confirmation of Financing

27.3.1 At or prior to the date of the issuance of the LNTP, the Lenders shall provide and confirm to the Contractor in writing for the Owner that the amount of financing available under the credit agreement plus the equity invested by the Owner is sufficient to pay the Contractor the compensation for FEED/FEL3 Works.

27.3.2 At or prior to the date of the issuance of the Notice to Proceed, the Lenders shall provide and confirm to the Contractor in writing for the Owner that the amount of financing available under the credit agreement plus the equity invested by the Owner is sufficient to pay the Contractor the Guaranteed Target Contract Price.

28. ASSIGNMENT

The Contractor shall not sell, assign or transfer, in whole or in part, its rights and obligations under this Contract, nor any monies due or to become due under this Contract, without the Owner's prior written consent. Any attempted sale, assignment or transfer without the Owner's consent shall be void.

The Owner may, without the Contractor's consent, sell, assign or transfer, in whole or in part, its rights and obligations under this Contract (a) to any affiliate or subsidiary of the Owner, provided that the assignee agrees to be bound by the provisions of this Contract, in which case the Owner will be released from its obligations hereunder; (b) as security to any Lender, and (c) in the event of the sale of all or substantially all of the assets of the Owner, provided that the assignee agrees to be bound by all the provisions of this Contract, in which case the Owner will be released from its obligations hereunder.

The provisions of this Contract shall inure to the benefit of and be binding upon the parties hereto, their respective legal representatives, successors and assigns.

29. DISPUTE RESOLUTION

29.1 Resolution

The Parties shall use reasonable efforts to resolve any dispute, claim, controversy or question arising out of or relating to this Contract or the breach thereof (a "**Dispute**"), including escalation

of discussions to the appropriate level of management, prior to exercising any remedies or before commencing any proceedings against the other Party.

In the event of a Dispute, a Party may give to the other Party a notice ("**Dispute Notice**") specifying the Dispute and requiring its resolution under this Article 29.

All Disputes must be resolved in accordance with this Article 29.

29.2 Resolution by Dispute Representatives

29.2.1 If the Dispute is not resolved within five (5) Business Days after a Dispute Notice is given to the other Party, each Party shall nominate a representative from its senior management to resolve the Dispute (each, a "**Dispute Representative**").

29.2.2 If the Dispute is not resolved within twenty (20) Business Days of the Dispute being referred to the respective Dispute Representatives, then either Party may refer the Dispute to arbitration in accordance with Section 29.3, provided, however, that except for any material Dispute no arbitration shall be commenced until the Works has been completed or the employment of the Contractor under this Contract otherwise terminated under Article 22.

29.3 Arbitration

In the event that a Dispute is not finally resolved within the timeframe provided under Section 29.2, each Party may submit such Dispute to be settled by arbitration by a single arbitrator under the Rules of Arbitration of the International Chamber of Commerce, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction, or application may be made to such court for judicial recognition or homologation of the award or for an order of enforcement, as the case may be. The place of arbitration shall be Toronto, Canada, and the language of the arbitration shall be English. The award of the arbitrator shall be final and binding, and without appeal. Notwithstanding the foregoing, nothing in this Article 29 shall be construed to limit or preclude any party from taking any proceedings before a court of competent jurisdiction for injunctive or other provisional relief.

29.4 Joinder of Other Parties

The Owner, the Contractor and all Subcontractors and other parties concerned with the construction of the Project shall be bound, each to each other, by this Article 29, provided that they have signed an agreement that incorporates the terms of this Article 29 by reference or otherwise agreed to be bound by this Article 29. Each such party agrees that it may be joined as an additional party to an arbitration involving other parties under any such agreements. If more than one arbitration is begun under any such agreement and any party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitrator

selected in the first filed of such proceedings shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that arbitrator.

29.5 Performance of Obligations

While any Dispute is pending, the Owner and the Contractor shall continue to perform without delay their obligations under this Contract. For greater certainty, pending resolution of a Dispute, and except as the Contractor and the Owner may otherwise agree in writing, no delay shall occur (i) in the performance of the Works by the Contractor, and (ii) the payments by the Owner of amounts due to the Contractor for the Works unrelated to such Dispute.

30. REPRESENTATIONS

30.1 The Contractor's Representations

The Contractor represents and warrants to the Owner

30.1.1 it is duly incorporated and validly exists under the law of its place of incorporation.

30.1.2 it has full legal capacity and power:

- (a) to own its property and assets and to carry on its business; and
- (b) to enter into this Contract and to perform its obligations under this Contract;

30.1.3 it has taken all corporate action that is necessary to authorize its entry into this Contract and to perform its obligations under this Contract;

30.1.4 this Contract constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy;

30.1.5 neither its execution of this Contract nor the carrying out of its obligations under this Contract, does or will:

- (a) contravene any Applicable Law to which it or any of its property is subject or any order of any Governmental Authority or other person that is binding on it or any of its property;
- (b) contravene any undertaking or instrument binding on it or any of its property; or
- (c) contravene its constitution;

30.1.6 no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or threatened against it which if adversely decided could, in

the reasonable opinion of the Contractor's management, have a material adverse effect on the Contractor's business, assets or financial condition or its ability to perform its obligations under this Contract; and

30.1.7 no receiver or receiver and manager is currently appointed in relation to any of its property.

The representations contained in this Section 30.1 will be treated as made and be binding upon the Contractor continuously during the term of this Contract.

30.2 Owner's Representations

The Owner represents and warrants to the Contractor:

30.2.1 it is duly incorporated and validly exists under the law of its place of incorporation;

30.2.2 it has full legal capacity and power:

- (a) to own its property and assets and to carry on its business; and
- (b) to enter into this Contract and to perform its obligations under this Contract;

30.2.3 it has taken all corporate action that is necessary to authorize its entry into this Contract and to perform its obligations under this Contract;

30.2.4 this Contract constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy;

30.2.5 neither its execution of this Contract nor the carrying out of its obligations under this Contract, does or will:

- (a) contravene any Applicable Law to which it or any of its property is subject or any order of any Governmental Authority or other person that is binding on it or any of its property;
- (b) contravene any undertaking or instrument binding on it or any of its property; or
- (c) contravene its constitution;

30.2.6 no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or threatened against it which if adversely decided could, in the reasonable opinion of the Owner's management, have a material adverse effect

on the Owner's business, assets or financial condition or its ability to perform its obligations under this Contract; and

30.2.7 no receiver or receiver and manager is currently appointed in relation to any of its property.

The representations contained in this Section 30.2 will be treated as made and be binding upon the Owner continuously during the term of this Contract.

31. MISCELLANEOUS

31.1 Entire Contract

This Contract sets forth the entire contract and agreement between the Parties pertaining to the Works and supersedes all enquiries, proposals, agreements, negotiations and commitments, whether written or oral, prior to the Effective Date, pertaining to the Works or this Contract.

31.2 Notices

Any notice to be given to or served upon either Party shall be deemed to have been properly given or delivered when made in writing and delivered by registered or certified mail, or courier service, or upon sending same by electronic communication, to the Party for whom it is intended, at the following addresses:

If to the Owner:

Argex Canada Inc.
630 Sherbrooke St. West, Suite 410
Montreal, Quebec H3A 1E4, Canada

For the attention of: [REDACTED]
Business Phone Number: [REDACTED]
Email Address: [REDACTED]

If to the Contractor

TR Canada Inc.
310 - 633 6th Avenue SW
Calgary, Alberta T2P 2Y5

For the attention of: [REDACTED]
Business Phone Number: [REDACTED]
Email Address: [REDACTED] [Redacted for confidentiality reasons]

Either Party may from time to time, by written notice to the other Party, change its postal or electronic address or designated representative for receiving and/or forwarding such notices.

Verbal communications will not constitute formal communication or notice under this Contract and neither Party has any obligation to act on any verbal communication or instruction unless and until it is confirmed in writing. Any action taken by a Party based on verbal communications, instructions or assurances will be at that Party's sole risk and will be without liability to or recourse against the other Party.

31.3 Independent Contractor

The Contractor shall be an independent contractor with respect to this Contract, the Project and each part thereof, and the Works, and neither the Contractor nor its Subcontractors nor the employees of either shall be deemed to be agents, representatives, employees or servants of the Owner in the performance of the Works, or any part thereof, or in any manner dealt with herein. The Parties covenant and agree that in the performance of the Works by the Contractor, the Contractor shall not perform any act or make any representation to any person to the effect that the Contractor or any of its agents, representatives or Subcontractors, is the agent of the Owner.

31.4 Mutuality of Drafting

The Parties do hereby stipulate and agree that each of them fully participated and was adequately represented by counsel in the negotiation and preparation of this Contract and the Parties further stipulate and agree that in the event of an ambiguity or other necessity for interpretation to be made of the content of this Contract, this Contract shall not be construed in favor of or against the Owner or the Contractor as a consequence of one Party having had a greater role in the preparation of this Contract, but shall be construed as if the language were mutually drafted by both Parties with full assistance of counsel.

31.5 Amendments

Neither the Contractor nor the Owner may amend the terms of this Contract without the written consent of the other Party. Written instrument evidencing such amendment of terms must be signed by or on behalf of both Parties.

31.6 No Waiver

It is understood and agreed that any delay, waiver or omission by the Owner or the Contractor to exercise any right or power arising from any breach or default by the Contractor or the Owner in any of the terms, provisions or covenants of this Contract shall not be construed to be a waiver by the Owner or the Contractor of any subsequent breach or default of the same or other terms, provisions or covenants on the part of the Contractor or the Owner.

31.7 Interest

Any payment which is payable by either Party under and in accordance with this Contract and which is not paid when due hereunder shall incur interest at the prime rate of the Bank of Canada plus [REDACTED], calculated for the period from the date such late payment was due through the date on which such amount has actually been paid by the relevant Party. **[Interest redacted for competitive reasons]**

31.8 Own Costs

Each Party shall bear its own costs incurred in connection with the negotiation, drafting and execution of this Contract.

31.9 Further Assistance

Each Party must promptly at its own Cost do all things (including executing and if necessary delivering all documents) reasonably necessary or desirable to give full effect to this Contract and the transactions contemplated by it.

31.10 Violation of Law of another Jurisdiction

If this Contract is intended to be performed in more than one jurisdiction, and its performance would be a violation of the Applicable Law of a jurisdiction where it is intended to be performed, this Contract is binding in those jurisdictions in which it is valid and the Parties will use their reasonable efforts to re-negotiate and amend this Contract so that its performance does not involve a violation of the Applicable Law of the jurisdiction where its performance would be a violation.

31.11 Violation of Laws Governing Corrupt Practices

31.11.1 The Contractor must comply with all Applicable Laws governing or relating to corrupt business practices in effect in Canada, in any Canadian province, in the United States of America, in any state of the United States of America or either in effect or enforced by the World Bank.

31.11.2 Without limiting the generality of Section 31.11.1 the Contractor must take no action, and must cause its affiliates and Personnel to take no action, of any nature which would contravene any Applicable Law in Canada in respect of corruption, the United States Foreign Corrupt Practices Act, the Canadian Corruption of Foreign Public Officials Act, or the Criminal Code of Canada (collectively all of the foregoing the “**Anti-Corruption Legislation**”) including offering or paying or giving anything of value, either directly or indirectly, to:

- (a) an officer or employee of any Governmental Authority; or

- (b) any person acting in an official capacity for or on behalf of any Governmental Authority; or
- (c) any political party or to any candidate for political office for the purpose of influencing an act or decision in its or her official capacity, or inducing him or her to do or omit to do any act in violation of its or her lawful duty or to use its or her influence with any government, in order to assist a Party or any of their respective affiliates in obtaining or retaining business, or an advantage in the course of business.

31.11.3 If the Contractor at any time receives any request relating to the Owner or any of its affiliates or the Project that the Contractor reasonably believes may constitute a violation of any Applicable Law (including any of the Anti-Corruption Legislation), the Contractor must promptly notify the Owner and must provide it with all relevant particulars respecting that request.

31.11.4 All payments to the Contractor under this Contract will be solely by cheque or bank transfer and no payment will be in cash, by bearer instrument or made to any person other than the Contractor.

31.11.5 The Contractor represents and warrants that none of the Contractor's partners, owners, principals and Personnel are officials, officers or representatives of any Governmental Authority, and that no part of the compensation to be paid to the Contractor under this Contract will be accepted or used by the Contractor for any purpose which would constitute a violation of any Applicable Law of the various jurisdictions in which it performs Works, Canada, the United States or Europe, including the Anti-Corruption Legislation. The Owner represents and warrants that it does not desire and will not request any service or action by the Contractor that would or might constitute such a violation.

31.11.6 The Contractor agrees to provide full disclosure of the existence and terms of this Contract and any Subcontract at any time and for any reason to whomever the Owner determines has a legitimate need to know such terms for purposes of complying with this Section 31.11 including the governments of Canada, the United States and Europe.

31.11.7 The Contractor acknowledges that no Owner's Personnel does or will have authority to give any express or implied direction, whether written or oral, authorizing the Contractor to make any commitment to any third person on behalf of the Owner in violation of the terms of this Contract.

31.11.8 Violation of this Section 31.11 may be deemed by the Owner to be a material breach of this Contract and any other contract with the Owner and subject all contracts with

the Contractor and its affiliates to immediate termination for default, as well as any other remedies at law or in equity.

31.11.9 The Contractor must indemnify the Owner from any liability that the Owner may sustain or incur as a result of a breach by the Contractor of the requirements of this Section 31.11, and any limitation of liability in this Contract will not apply to the obligations under this indemnity.

31.12 Conflict of Interest

31.12.1 The Contractor must at all times act in the best interest of the Owner.

31.12.2 If the Contractor at any time contracts with or represents a person who has interests in conflict with those of the Owner, the Contractor must disclose those interests and the conflict to the Owner and at the Contractor's Cost put into place such adequate safeguards and "**ethical walls**" as the Owner may reasonably require until the Owner is satisfied that the Contractor is able to ensure the confidentiality of all Confidential Information received by the Contractor in relation to the Project is maintained at all times and that no such information is disclosed to anyone else except with the prior written consent of the Owner.

31.12.3 The Contractor must immediately notify the Owner in writing whenever it encounters a conflict of interest between its duties to the Owner under this Contract and its duties to anyone else under any other agreement, describing in each such notice the circumstances which gave rise to the conflict of interest, the nature of the conflict and the steps which the Contractor has taken and is taking to resolve such conflict to the satisfaction of the Owner. The Contractor must take all measures and steps that the Owner may reasonably require to resolve such conflict to the satisfaction of the Owner.

31.12.4 The Contractor must notify the Owner of any matter of which it becomes aware, which may give rise to an actual or potential conflict of interest during the term of this Contract between:

- (a) the Owner and the Contractor;
- (b) The Contractor and any of the Contractor's Personnel; or
- (c) the Owner and any of the Contractor's Personnel.

31.13 Survivorship

All provisions of this Contract which by their nature are continuing shall survive termination of this Contract, including: this provision and any termination provisions; any warranty, insurance,

indemnity, confidentiality, intellectual property and licensing provisions and any dispute resolution provisions; any provisions which are the subject of any breach or non-compliance prior to such termination or which determine any liability arising therefrom or which limit, disclaim or otherwise deal with such liability; any provision pertaining to the Bank Guarantees; as well as any provision required to interpret or give effect to any such provisions.

31.14 Application of the Contract

This Contract applies to the performance of the Parties' obligations under this Contract whether performed before, on or after the Effective Date.

31.15 Compliance with Law

The Contractor must (i) comply with Applicable Law in performing its obligations under this Contract; and (ii) supply the Owner with all information in connection with the Project that may be necessary to enable the Owner to comply with any Applicable Law. The Contractor is solely responsible for the performance of its obligations under this Section 31.15. This obligation is not affected by any approval given by the Owner, the Owner's Representative or any Governmental Authority.

31.16 Severability

31.16.1 If anything in this Contract is unenforceable, illegal or void then it is severed and the rest of this Contract remains in force.

31.16.2 Where a provision of this Contract is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the Applicable Law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to this Contract.

31.17 Execution – Authorized Officer to Sign

Each person signing this Contract as an authorized officer of a Party hereby represents and warrants that he or she is duly authorized to sign this Contract for that Party and that this Contract will, upon having been so executed, be binding on that Party in accordance with its terms.

31.18 Counterparts

This Contract may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by each of the Parties.

(Signature page follows)



Procurement and Construction Contract

IN WITNESS WHEREOF the Parties, intending to be legally bound, have caused this Contract to be executed by their duly authorized representatives as of the Effective Date.

ARGEX CANADA INC.

By: (s) Richard Poulin
Name: Richard Poulin, Eng.
Title: Executive Vice President

TR CANADA INC.

By: (s) Carlos Molinero
Name: Carlos Molinero
Title: Duly Authorized Representative

[Exhibits omitted for competitive reasons]