

# Design Build Operate Maintain Agreement

Contract 9 in the Commonwealth  
Model Contract Series



The Commonwealth

## **Model Contracts for Infrastructure, Extractives and Energy Industries in Commonwealth Countries**

The Commonwealth Secretariat recognises the need for standardised contracts within the infrastructure, extractives and energy industries across its member countries.

The lack of uniformity in these contracts has led to inefficiencies, imbalances and loopholes that do not serve the best interests of the member countries. To address this issue, the Secretariat is developing model contracts that foster fairness, balance and sustainability in investment relationships, while protecting the interests of governments and citizens.

The core purpose of this standardisation is to consolidate a comprehensive array of infrastructure contracts, facilitating easy access for relevant stakeholders. By providing a singular point of access, it eliminates redundancy and ambiguity, allowing government officials and authorised parties to efficiently source and acquire requisite contracts. This strategic initiative is poised to revolutionise and improve the procurement process within Commonwealth member countries.

This series of model contracts will serve as valuable resources for government lawyers, aiding them in drafting and reviewing foreign investment projects and related contracts. By promoting fairness, balance and sustainability, these model contracts will contribute to the overall development and economic wellbeing of Commonwealth member countries.

Moreover, the establishment of this central repository underlines the commitment of Commonwealth member countries to fostering a conducive environment for sustainable investments.

To deliver this suite of model contracts, the Commonwealth Secretariat has constituted a working group comprising of officials nominated by 19 member countries who are leveraging their expertise, and working with a designated expert, to conclude the project.

**Design Build Operate Maintain Agreement**  
**Contract 9 in the Commonwealth Model Contract Series**



**The Commonwealth**

This work is adapted from resources published by World Bank's Public-Private Partnerships in Infrastructure Resource Center for Contracts, Laws and Regulations (PPPIRC).

**© Commonwealth Secretariat 2025**

This work is licensed under Creative Commons Attribution 4.0 International.

This publication is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation, and does not create a contractual or other legal relationship between the authors, or their affiliations, or the Commonwealth Secretariat, and any other parties.

Views and opinions expressed in this publication should in no way be attributed to the institutions to which they are affiliated or to the Commonwealth Secretariat.

Wherever possible, the Commonwealth Secretariat uses paper sourced from responsible forests or from sources that minimise a destructive impact on the environment.

Published by the Commonwealth Secretariat.

## Design Build Operate Maintain Agreement

This agreement sets out contractual terms on which a private operator will design, build, operate, and maintain a new infrastructure facility for a public owner.

This model was developed to allow for an adaptive, unified agreement, incorporating Alternative/Optional Provisions to allow for adoption in a wide range of Commonwealth Contexts. The model was developed in alignment with guidance and resources provided by the World Bank PPP in Infrastructure Resource Center for Contracts, Laws, and Regulations (PPPLRC). Specifically, the approach which has been adopted encompasses a wide range of infrastructure and facility contexts pertinent to PPP agreements in the three areas stipulated. This contract can, through the addition or removal of Alternative/Optional Provisions, serve as one of the three types of agreement:

- Design, Build, Operate, Maintain;
- Design, Build, Finance, Maintain; or and
- Design, Build, Finance, Operate, Maintain

## CONTENTS

<b>ARTICLE 1 - CONTRACT AND INTERPRETATION.....</b>	<b>5</b>
1.1 Definitions .....	5
1.2 Contract Documents .....	10
1.3 Order of Precedence.....	10
1.4 Definitions .....	11
1.5 Interpretation .....	11
1.6 Notice .....	13
1.7 Governing Law.....	14
1.8 Settlement of Disputes .....	14
1.9 Assignment.....	15
1.10 Contract Records, Accounting and Auditing.....	15
1.11 Operator's Claims .....	17
<b>ARTICLE 2 - CONTRACT TERM, TIMING AND COMPLETION .....</b>	<b>18</b>
2.1 General.....	18
2.2 Design-Build Period - Commencement, Delays and Suspension.....	18
2.3 New Operations Period .....	21
<b>ARTICLE 3 - OBLIGATIONS OF THE OPERATOR .....</b>	<b>21</b>
3.1 General - Services and Standards of Performance .....	21
3.2 Law Governing Services .....	22
3.3 Conflict of Interest.....	22
3.4 Insurances.....	23
3.5 Site Information and Investigation .....	23
3.6 Access to the Site and New INFRASTRUCTURE / FACILITY.....	24
<b>ARTICLE 4 - DESIGN-BUILD SERVICES .....</b>	<b>24</b>
4.1 Design-Build Services .....	24
4.2 Design and Engineering .....	25
4.3 Other Design Responsibilities .....	26
4.4 Building and Construction Services .....	26
4.5 Procurement and Transportation.....	27
4.6 Building Responsibilities.....	27
<b>ARTICLE 5 - [EXISTING INFRASTRUCTURE / FACILITY OPERATIONS .....</b>	<b>33</b>
<b>ARTICLE 6 - TESTS AND INSPECTION .....</b>	<b>33</b>
6.1 Tests and Inspection .....	33
<b>ARTICLE 7 - COMPLETION OF THE NEW INFRASTRUCTURE / FACILITY .....</b>	<b>35</b>
7.1 Monthly Progress Notice.....	35
7.2 Completion .....	35
<b>ARTICLE 8 - COMMISSIONING OF INFRASTRUCTURE / FACILITY AND OPERATIONAL ACCEPTANCE .....</b>	<b>36</b>
8.1 Commissioning.....	36
8.2 Tests on Commissioning .....	36
8.3 Operational Acceptance.....	36
<b>ARTICLE 9 - OPERATIONS SERVICES .....</b>	<b>37</b>
9.1 Overall Description of Services to be Provided by the Operator.....	37
9.2 General Provisions Applicable to Plans and Programs .....	37
9.3 Consistency Among Plans and Programs .....	38
9.4 Repair, Replacement and Rehabilitation.....	38
9.5 Financial, Administrative and Regulatory Management .....	38
9.6 Inventory Management .....	38
9.7 [Tipping Fees and Revenue Generation.....	39
9.8 [Billings and Collection.....	39
<b>ARTICLE 10 - REPORTING.....</b>	<b>39</b>
10.1 During the Design Build Period.....	39

10.2	During the Operation Services Period .....	40
<b>ARTICLE 11 - OBLIGATIONS OF THE OWNER .....</b>		<b>40</b>
11.1	Owner's Assistance to the Operator .....	40
11.2	Access to the Site and New INFRASTRUCTURE / FACILITY .....	41
11.3	Reviews and Approvals of Submissions .....	41
<b>ARTICLE 12 - CONTRACT PRICE AND PAYMENT .....</b>		<b>42</b>
12.1	Contract Price .....	42
12.2	Payment during the Design-Build Period .....	42
12.3	Holdback .....	43
12.4	Payment during the Operation Period .....	43
12.5	Payment Procedures .....	43
12.6	Performance Incentive Compensation .....	44
12.7	Liquidated Damages - Operations .....	44
12.8	Securities .....	44
12.9	Taxes and Duties .....	45
<b>ARTICLE 13 - INTELLECTUAL PROPERTY - DESIGN-BUILD DOCUMENTS .....</b>		<b>45</b>
13.1	Intellectual Property - Design-Build Documents .....	45
13.2	Confidentiality .....	46
<b>ARTICLE 14 - CONTRACT ADMINISTRATION AND SUPERVISION .....</b>		<b>47</b>
14.1	General .....	47
14.2	Design-Build Supervision .....	47
14.3	Operations Supervision .....	49
<b>ARTICLE 15 - REPRESENTATIVES, STAFF AND SUBCONTRACTING .....</b>		<b>51</b>
15.1	Representatives .....	51
15.2	Operator's Superintendence .....	53
15.3	Operator's Personnel .....	53
15.4	Replacement of Operator's Personnel .....	54
15.5	[Existing Staff] .....	54
15.6	Subcontractors .....	54
<b>ARTICLE 16 - LIABILITY AND RISK DISTRIBUTION .....</b>		<b>55</b>
16.1	Defect Liability .....	55
16.2	Limitation of Liability .....	56
16.3	Transfer of Ownership and Existing Equipment and Materials .....	56
16.4	Care of the Site and New INFRASTRUCTURE / FACILITY .....	57
16.5	Indemnification .....	59
16.6	Insurance .....	59
16.7	Unforeseeable Physical Conditions .....	61
16.8	Force Majeure .....	62
16.9	War Risks .....	63
16.10	Change in Laws and Regulations .....	65
16.11	Patent Indemnity .....	65
16.12	Functional Guarantees .....	66
<b>ARTICLE 17 - CHANGE IN CONTRACT ELEMENTS .....</b>		<b>67</b>
17.1	Change to the Design-Build Services .....	67
17.2	Change to the Operations Services .....	69
<b>ARTICLE 18 - WARRANTIES .....</b>		<b>69</b>
18.1	Owner .....	69
18.2	Operator .....	70
<b>ARTICLE 19 - SUSPENSION AND TERMINATION .....</b>		<b>70</b>
19.1	Suspension .....	70
19.2	Termination .....	72
<b>SIGNATURES .....</b>		<b>78</b>
<b>SCHEDULE 1: SERVICE AREA .....</b>		<b>79</b>
<b>SCHEDULE 2: SITE .....</b>		<b>80</b>
<b>SCHEDULE 3: DESIGN-BUILD SPECIFICATIONS .....</b>		<b>81</b>

SCHEDULE 4: OPERATIONS SPECIFICATIONS .....	86
SCHEDULE 5: LIQUIDATED DAMAGES .....	92
SCHEDULE 6: CONTRACT PRICE ADJUSTMENT FORMULA .....	94
SCHEDULE 7: TESTS TO BE COMPLETED BY THE OPERATOR .....	96
SCHEDULE 8: INSURANCES .....	98
SCHEDULE 9: ADJUDICATOR .....	99
APPENDIX 1: OPERATOR'S BID.....	100



THIS CONCESSION AGREEMENT is made and entered into this [##] day of [##], [## insert year]

[Name of Authority] whose Principal Office is at [location][hereinafter referred to as the “Owner” which expression shall where the context so admits include its successors-in-title and assigns ] of the first part ; AND

[Name of Operator] a company incorporated under the Applicable Law whose Principal Office is at [## insert location] [hereinafter referred to as the “Operator” which expression shall where the context so admits include its successors-in-title and assigns] of the second part.

WHEREAS:

The Owner desires to engage the Operator to [design, build, finance operate and maintain an [INFRASTRUCTURE / FACILITY] and ensure the effectiveness and viability of the [INFRASTRUCTURE / FACILITY] (the **Project**); and

The Operator responded to the Prequalification Documents dated [## insert date] and Bidding Documents dated [## insert date] organised by the Government of [##] and was selected as the recommended Operator to fulfil the Design-Build, Finance and Operate and Maintain Services set out in the Technical Standards Schedule.

NOW THEREFORE, in consideration of the mutual covenants and Agreements hereinafter set forth, the Owner and the Operator agree as follows:

## ARTICLE 1 - CONTRACT AND INTERPRETATION

### 1.1 Definitions

Unless the context otherwise requires, the following terms wherever used in this Contract have the following meanings:

“**Adjudicator**” means [## name, address, telephone, facsimile and email];

“**Act of Insolvency**” means in relation to any person, an order being made for the winding up, liquidation, business rescue or dissolution of that person (in any of these cases, where applicable, whether provisional or final and whether voluntary or compulsory) or any analogous or similar procedure in any jurisdiction other than the Country’s.

“**Affected Party**” means a Party impacted by a Force Majeure pursuant to Clause [\*]

“**Affiliate**” mean a Person which is a body corporate, any: (i) subsidiary that it Controls; or (ii) a parent company that it is Controlled by: or (iii) subsidiary of any such parent company (provided such subsidiary is controlled by such parent company):

“**Applicable Law**” means the laws and any other instruments having the force of law in the Country, as they may be issued and in force from time to time, including any decree of the President or government of the Country;

“**Applicable Permits**” means any and all permissions, clearances, licenses, acknowledgment, Authorisations, consents, no-objections, approvals, certificates, registrations and exemptions under or pursuant to the Applicable Laws or from any

Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other Project Document.

**“Appointing Authority”** is [## name, address, telephone, facsimile and email];

**“Authorities”** means the Owner and the government of the Country;

**“Background Information Document”** means the Background Information Document provided to the Operator by the Owner during the bidding process that preceded this Contract;

**“Bidding Documents”** means the documents issued by the Owner in respect of the bidding process for the selection of an operator to design, build and operate *the New INFRASTRUCTURE / FACILITY* and to perform the Services;

**“Business Day”** means any Day of the week other than a Saturday or Sunday, or public holiday in the Country

**“Capital Investment Program”** means the capital investment program of the Owner, if any, referred to in the Operations Specifications;

**“Change”** is defined in Section 17.1.1(a);

**“Change Order”** is defined in Section 17.1.2(d);

**“Completion”** means that the New [INFRASTRUCTURE / FACILITY] and all Design-Build Services have been completed operationally and structurally and put in a tight and clean condition in accordance with the Technical Specifications, and Commissioned, and the Operator is entitled to have a Completion Certificate issued in respect of the New [INFRASTRUCTURE / FACILITY], or part thereof;

**“Completion Certificate”** means a certificate issued by the Design-Build Engineer in accordance with Section 7.2;

**“Contingency Fund”** means the fund established pursuant to the Operations Specifications;

**“Contract”** means this contract between the Owner and the Operator as of date hereof which consists of the Contract. Documents as may be amended, supplemented or modified in accordance with the provisions hereof;

**“Contract Documents”** means the Contract, Schedules, and all appendices to the Contract as set out in Section 1.2;

**“Contract Price”** consists of the Design-Build Price and the Monthly Operations Payments as further defined in Section 12 of the Contract and set out in Appendix 1, Operator’s Bid;

**“Contract Records”** is defined in Section 1.10.1(a);

**“Contract Term”** means the term of the Contract, including any renewals approved by the Owner, commencing on the Effective Date and continuing to, and including, the End Date;

**“Control”** means the power, directly or indirectly, to direct or cause the direction of the management and policies of a person, whether through ownership of such person’s voting securities, by contractor otherwise, and the terms “affiliated”, “controlling” and “controlled” have correlative meanings.

**“Corrupt Act”** means the giving or offering to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

- a. For doing or forbearing to do any action in relation to the Contract; or
- b. For showing or forbearing to show favour or disfavour to any person in relation to the Contract,

including where any of the Operator’s Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph.

**“Costs”** means all expenditures reasonably incurred, or to be incurred, by the Operator including overhead but excluding profit;

**“Country”** means [##];

**“CSCU”** is defined in Section 14.3.2(a);

**“CSCU Director”** is defined in Section 14.3.2(b);

**“Customers”** means all persons to which the Operator provides [*INFRASTRUCTURE / FACILITY*] services, including those customers in existence as of the New Operations Starting Date and persons who become customers after the New Operations Starting Date;

**“Data Room”** means the data room which may be established by the Owner in the bidding process as set out in the Bidding Documents;

**“Day” or “day”** means a period of twenty-four (24) Hours beginning at 00:00 Hours on a day and ending at 24:00 Hours on that day.

**“Defect”** means any defect, failure, imperfection or fault in the Design Build Services including those attributable (in whole or in part) to defects, failure, imperfections or faults in the design, materials or workmanship of the Operator, or any act, omission or default of the Operator, whether before or during any relevant Defects Notification Period.

**“Defect Liability Period”** means the period of validity of the warranties given by the Operator during which the Operator is responsible for defects with respect to the *INFRASTRUCTURE / FACILITY*, or the relevant part thereof, as set out in Section 16.1(b);

**“Design-Build Documents”** means the plans, specifications, designs, models, electronic models and other documents and materials relating to the design and construction of the Site and New *INFRASTRUCTURE / FACILITY* as may be set out or contemplated in the Design Build Schedule or agreed to by the Parties from time to time during the Contract Term. The Design Build Documents shall be prepared by the Operator;

**“Design-Build Engineer”** means the consultant retained by the Owner to supervise the Operator, in accordance with the Contract Documents, in carrying out the Design-Build Services;

**“Design-Build Price”** means the lump sum amount for the Design-Build Services set out in the Operator’s Bid;

**“Design-Build Period”** means the period commencing on the Design-Build Starting Date and ending on the day immediately prior to the New Operations Starting Date

**“Design-Build Services”** means the design-build services to be performed by the Operator as contemplated by the Contract and the Design Build Specifications;

**“Design Build Specifications”** means the specifications for the design and build of the New *[INFRASTRUCTURE / FACILITY]* set out in Schedule 3;

**“Design-Build Starting Date”** is defined in Section 2.1.3(a);

**“Effective Date”** means the date on which this Contract comes into force and effect pursuant to Section 2.1.1;

**“End Date”** is defined in Section 2.1.2;

**“Environmental Management Plan”** means the environmental management plan to be prepared in accordance with the Contract and the Operations Specifications; [**“Existing Equipment and Materials”** is defined in Section 16.3.2(a);]

*[“Existing INFRASTRUCTURE / FACILITY” means the INFRASTRUCTURE / FACILITY on the Site as it exists on the Design-Build Starting Date;]*

*[“Existing Operations Services” is defined in Article 5;]*

**“Extension Date”** is defined in Section 2.3.3;

**“Force Majeure”** is defined in Section 16.8(a);

**“including”** means including without limitation and **“includes”** means includes without limitation, unless expressly stated otherwise;

**“Intellectual Property Rights”** means any intellectual or industrial property rights, including patents, designs, utility models, copyright, database rights, trade marks, rights in know-how, trade secrets and confidential information and any other rights of similar or equivalent effect anywhere in the world, whether registered or not, and including pending applications to register such rights

**“Liquidated Damages - Delay”** is defined in Section 2.3.6(b);

**“Manager”** is defined in Section 15.2(c);

**“Monthly Operations Payment”** is defined in Section 12.4;

**“New INFRASTRUCTURE / FACILITY”** means the *INFRASTRUCTURE / FACILITY* designed and built by the Operator pursuant to this Contract;

**“New Operations Period”** is the period commencing on the New Operations Starting Date and ending on the End Date;

**“New Operations Starting Date”** is defined in Section 2.1.3(b);

**“Operational Acceptance”** means the acceptance by the Owner of the *INFRASTRUCTURE / FACILITY*, or part thereof, in accordance with Section 8.3;

**“Operations Services”** means the Operations Services to be performed by the Operator as contemplated by the Contract and the Operations Specifications;

**“Operations Specifications”** means the specifications for operation and maintenance of the *INFRASTRUCTURE / FACILITY* set out in Schedule 4;

**“Operator”** means the *INFRASTRUCTURE / FACILITY* contractor and operator retained by the Owner to carry out the Services and is the Party named as the Operator in the Contract;

**“Operator’s Bid”** means the bid submitted by the Operator and accepted by the Owner, a copy of which is appended at Appendix 1;

**“Operator’s Equipment (Design-Build)”** means all machinery, apparatus, vehicles and other equipment required for the execution and completion of the Design-Build Services and the remedying of any defects, but does not include material, machinery, apparatus and other equipment forming part of the Plant and Equipment of the *INFRASTRUCTURE / FACILITY*;

**“Operator’s Equipment (Operations)”** means all things of any kind whatsoever, including the equipment, materials, supplies, vehicles and consumables required to operate, maintain and repair the Site and *INFRASTRUCTURE / FACILITY*;

**“Operator’s Personnel”** is defined in Section 15.3(a);

**“Operator’s Representative”** is defined in Section 15.1.2(a);

**“Owner”** means the Party named as Owner in this Contract;

**“Owner’s Representative”** is defined in Section 15.1.1(a);

**“Party”** means the Owner or the Operator, as the case may be, and **“Parties”** means both of them;

*[“Performance Incentive Compensation” is defined in Performance Incentive Compensation*

*Appendix;]*

**“Performance Security”** is defined in Section 12.8;

**“Plant and Equipment”** means the permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and intended to permanently form or forming part of the *INFRASTRUCTURE / FACILITY*;

**“Services”** means the Design-Build Services and the Operations Services to be performed by the Operator as set out in the Contract and the Schedules and Appendices to the Contract;

**“Site”** means the physical area as set out in Schedule 2 identified for the location of the *[INFRASTRUCTURE / FACILITY]*;

**“Site Information”** is defined in Section 3.5(a);

**“Subcontract”** means any contract, whether written or verbal, entered into by the Operator and a Subcontractor for the performance of any part of the Services;

**“Subcontractor”** means any person or entity to which the Operator subcontracts or subconsults any part of the Services in accordance with the provisions of Section 15.6, including any person or entity engaged for the supply of any Plant and Equipment, Operator’s Equipment (Design-Build) or Operator’s Equipment (Operations) or for the provision of any Services;

**“Submission Deadline”** means the date for the submission of bids, as stated or awarded by the Bidding Documents;

**“Subsequent Operator”** means the operator that is to assume the provision of the Services upon termination or completion of the Contract and may include one of the Authorities;

**“Taxes”** is defined in Section 12.9;

**“Technical Specifications”** means the Design Build Specifications and the Operations Specifications set out in Schedules 3 and 4;

**“Term”** means the entire Contract term which includes Design Build Services and Operation and Maintenance

**“Time for Completion”** means [months from the Effective Date for the completion of Design Build Services ];

**“Third Party”** means any person or entity other than the Parties;

**“Time for Completion”** means [months from the Effective Date];

**“Time Schedule”** is defined in Section 2.2.3(a);

**“Transition Assistance”** is defined in Section 2.3.2;

**“TSA Section”** means Technical Standards Schedule Section;

**“Unforeseeable”** means not reasonably foreseeable on the Submission Deadline by an experienced operator that conducted or should have conducted the inspections and examinations or who knew or should have known the information described in Section 3.5; and **“War Risks”** is defined in Section 16.9(a).

## **1.2 Contract Documents**

This Contract to Design, Build, Operate, and Maintain a *INFRASTRUCTURE / FACILITY* between the Owner and the Operator (the “Contract”) consists of the following documents (collectively, the “Contract Documents”), and each of the following shall be read and construed as an integral part of the Contract:

- a. The Conditions;
- b. Schedules to the Contract;
- c. Appendices to the Contract;
- d. the Owner’s Requirements; and
- e. the Operator’s accepted Offer

## **1.3 Order of Precedence**

- a. The Contract Documents forming this Contract are to be taken as mutually explanatory of each other. In the event of any ambiguity or conflict between the Contract Documents listed in Section 1.2 of this Contract, the order of

precedence shall be the order in which the Contract Documents are listed in Section 1.2 of this Contract.

- b. If the Operator notices any ambiguity or conflict in or between the Contract Documents forming part of this Contract, the Operator shall immediately notify the Owner giving details of such ambiguity or conflict, and shall comply with the Owner's instructions in relation thereto.

The Parties agree that this Contract together with any documents referred to in this Contract constitutes the entire agreement between the Parties and any prior agreements (whether oral or written) or term sheets between the Parties relating to the subject matter of this Contract are hereby terminated and of no further liability on the part of any party thereto.

## **1.4 Definitions**

Capitalised words and phrases used herein shall have the same meanings as are ascribed to them in the Contract of Contract and Schedules and Appendices to the Contract.

## **1.5 Interpretation**

### **1.5.1 Language**

- a. All Contract Documents, all correspondence and communications to be given, and all other documentation to be prepared and supplied under the Contract shall be written in [English] and the Contract shall be construed and interpreted in accordance with that language.
- b. If any of the Contract Documents, correspondence or communications are prepared in any language other than the governing language under Section 1.5.1(a), the translation of such documents, correspondence or communications into the governing language shall prevail in matters of interpretation.

### **1.5.2 Gender -**

- a. Words indicating one gender include all genders

### **1.5.3 Singular or Plural**

- a. Words indicating the singular shall also include the plural and words indicating the plural shall also include the singular except where the context otherwise requires.

### **1.5.4 Table of Contents and Headings**

- a. The Table of Contents and the headings in the Contract are included for ease of reference and shall neither constitute a part of the Contract nor affect its interpretation.

### **1.5.5 Persons**

- a. Words importing persons or entities shall include firms, corporations and government entities.

### **1.5.6 Entire Agreement**

- a. This Contract constitutes the entire agreement between the Owner and the Operator with respect to the subject matter of the Contract and supersedes all communications, negotiations and agreements, whether written or oral, made by the Parties with respect thereto made prior to the date of the Contract.
- b. Any reference to this Contract or to any other document or agreement shall include any permitted variation, amendment or supplement to this Contract or to such document or agreement.

#### 1.5.7 Amendment

- a. No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract and is signed by a duly authorised representative of each Party to the Contract.

#### 1.5.8 Number of Days

- a. Except as expressly stated to the contrary elsewhere herein, in computing the number of days for the purposes of the Contract all days shall be counted, including Fridays, Saturdays, Sundays and legal holidays in the Country, provided, however, that if the final day of any period shall fall on a Friday, Saturday, Sunday or legal holiday in the Country, then the final day shall be deemed to be the next day which is not a Friday, Saturday, Sunday or legal holiday in the Country.

#### 1.5.9 Independent Contractor

- a. The Operator shall be an independent contractor in its performance of the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Owner and the Operator or its Shareholders.
- b. Subject to the provisions of the Contract, the Operator shall be solely responsible for the manner in which the Contract is performed. All employees, agents, representatives or Subcontractors engaged by the Operator in connection with the performance of the Contract shall be under the complete control of the Operator and shall not be deemed to be employees of the Owner, and nothing contained in the Contract, or in any Subcontract awarded by the Operator, shall be construed to create any contractual relationship or legal obligation between the Operator's employees, agents, representatives or Subcontractors and the Owner.

#### 1.5.10 Shareholding in Operator

- a. The composition, shareholding, control or constitution of the Operator shall be in accordance with the Operator's Bid and shall not be altered without the prior consent of the Owner.
- b. The shareholders of the Operator shall maintain the type and amount of equity in the Operator as set out below [until the [second] anniversary of the commencement of the New Operations during the Term of the Contract.

Period]: [## describe type of equity required].

#### 1.5.11 Non-waiver

- a. Subject to Section 1.5.10(b), no relaxation, waiver, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect



or restrict the rights of that Party under the Contract, nor shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

- b. To be a valid waiver, any waiver of a Party's rights, powers or remedies under the Contract shall,
  - (i) be in writing;
  - (ii) be dated and signed by the Owner's or Operator's Representative, whichever is granting such waiver; and
  - (iii) specify the right, power or remedy being waived and the extent to which it is being waived.

#### 1.5.12 Severability

- a. If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

#### 1.5.13 Survival of Obligations

Upon the termination or expiration of the Contract pursuant to the Contract, all rights and obligations of the Parties hereunder shall cease, except:

- a. Such rights and obligations as may have accrued or to which the Parties may be entitled on the date of termination, and any rights which a Party may have under Applicable Law;
  - b. The rights and obligations of the Parties under section 1.7 (Applicable Law) and section 1.8 (Settlement of Disputes);
  - c. The Operator's obligations with respect to Contract Records, accounting and auditing set out in Section 1.10.
  - d. The Operator's obligations with respect to Transition Assistance set out in Section 2.3.2;
  - e. The Parties' rights and obligations with respect to copyright set out in Section 13.1;
  - f. The Operator's obligations of confidentiality as set out in Section 13.2;
  - g. The Parties' rights and obligations with respect to defect liability set out in Section 16.1; and
  - h. The Parties' rights and obligations with respect to indemnification set out in Section 16.5.
- [## other specific sections].

## 1.6 Notice

- a. All notices to be given under the Contract shall be in writing and shall be sent by personal delivery, courier, facsimile or email to the address for notice of the relevant Party as set out below:

The Owner's address for notice is:

*[## Name, address, telephone and facsimile numbers]*

The Operator's address for notice is:

*[## Name, address, telephone and facsimile numbers]*

- b. The following provisions apply:
  - i. Any notice sent by facsimile or email shall be confirmed by the sender no later than two days after dispatch by a notice sent by courier;
  - ii. Any notice sent by courier shall be deemed to have been delivered 10 days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, with proper payment for the courier, and conveyed to the courier service for transmission; and
  - iii. Any notice delivered personally or sent by facsimile or email shall be deemed to have been delivered on the date of dispatch.
- c. A Party may change its address for notice pursuant to this Contract by giving the other Party notice of change in accordance with this Section 1.6.
- d. The Operator's address for the purpose of giving notice pursuant to this Section 1.6 shall be in the Country.
- e. Notices shall be deemed to include any approvals, consents, instructions, orders, certificates and similar communications to be given under the Contract.

## **1.7 Governing Law**

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

## **1.8 Settlement of Disputes**

- a. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- b. If any dispute arises between the Owner and the Operator in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to the Adjudicator within 15 days of the notification of disagreement of one Party to the other.
- c. The Adjudicator shall give a decision in writing within 30 days of receipt of a notification of a dispute.
- d. The Adjudicator shall be paid by the hour at the rate set out in Schedule 9, together with reimbursable expenses as specified in Schedule 9, costs being divided equally between the Owner and the Operator, whatever decision is reached by the Adjudicator. Either Party may refer a decision of the Adjudicator to an Arbitrator

within 28 days of the Adjudicator's written decision. If neither Party refers the dispute to arbitration within that period, the Adjudicator's decision will be final and binding.

- e. The arbitration shall be conducted in accordance with the arbitration procedure published by [## the institution] and in [## location]<sup>1</sup>
- f. Should the Adjudicator resign or die, or should the Owner and the Operator agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Owner and the Contractor. In case of disagreement between the Owner and the Contractor, within 30 days, the Adjudicator shall be designated by [## Appointing Authority]<sup>2</sup> at the request of either Party, within 14 days of receipt of such request.

#### 1.8.1 Obligations During Arbitration

Notwithstanding any reference to the Adjudicator or arbitration herein,

- a. the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- b. the Owner shall pay the Operator any monies due to the Operator.

### 1.9 Assignment

- a. The Operator shall not assign to any Third Party the Contract, or any part thereof, or any right, benefit, obligation, or interest therein without the prior consent of the Owner, which consent may not be unreasonably withheld.
- b. The Operator may assign, absolutely or by way of charge, any monies due and payable to it or that may become due and payable to it under the Contract.
- c. To be a valid assignment which has been approved by the Owner pursuant to Section 1.9(a), the assignment must be in writing, be dated and signed by the Owner's Representative, and state the specific details of the assignment.

### 1.10 Contract Records, Accounting and Auditing

#### 1.10.1 Contract Records

---

<sup>1</sup> Note to the Owner: If the Contractor is a national of [##], this provision should be modified and refer to local rules for settlement of disputes. For smaller contracts, the arbitration procedures are usually those of an institution from the Owner's country. For larger contracts, and contracts that may be awarded to international contractors, an arbitration procedure of an international institution such as UNCITRAL (United Nations Commission on International Trade Law) or ICSID (International Center for Settlement of Investment Disputes) or the ICC (International Chamber of Commerce) may be appropriate.

<sup>2</sup> Note to the Owner: Appointing Authority should be an independent professional institution or an official of such an institution.

- a. Except as provided in Section 13.1, all data, information, documentation, account, plans, programs, reports, surveys and guidelines of any kind whatsoever (the “Contract Records”) prepared by the Operator in performing the Services shall become and remain the property of the Owner and the Operator shall deliver all Contract Records and a detailed inventory of those Contract Records to the Owner no later than the date of termination or expiration of the Contract, except in respect of such Contract Records that are required to be delivered at an earlier date.
- b. The Contract Records shall include,
  - i. information of any kind whatsoever related to the finances, revenues or expenditures of the Owner’s operations;
  - ii. all files, documents, plans, drawings, specifications, notes, minutes of meetings and minutes of conversations;
  - iii. all the plans, programs, reports, surveys and guidelines prepared by the Operator in carrying out the Operations Services;
  - iv. the accounts of the INFRASTRUCTURE / FACILITY operations at the New INFRASTRUCTURE / FACILITY;
  - v. all manuals, reports, condition surveys, safety records, audit records, inventories, laboratory test results, procurement records, customer information, financial information, financial statements, invoices, accounting records, subcontracts and personnel records; and
  - vi. the Design-Build Documents, whether stored in hard copy or electronically.
- c. The Operator shall provide the Owner with unrestricted access to the Contract Records during the term of the Contract, including the right to make and retain copies.
- d. Except as provided in Section 13.1, the Operator may retain a copy of the Contract Records but shall not use them for purposes unrelated to this Contract without the prior approval of the Owner. This Section 1.10.1(d) does not in any way relieve the Operator of its obligation of confidentiality pursuant to Section 13.2.
- e. Except as provided in Section 13.1, the Operator acknowledges that the Owner, as owner of the Contract Records, may deal with the Contract Records in any way it determines, including making the Contract Records publicly available and available to prospective bidders who may be involved in the process to select a Subsequent Operator.

#### 1.10.2 Accounting

- a. The Operator shall keep accurate and systematic accounts in respect of the Services and the Contract in accordance with [## internationally accepted accounting principles].

#### 1.10.3 Operator’s Audited Accounts

- a. The Operator shall submit to the Owner, no later than 90 days after the end of the Operator’s fiscal year, the annual audited accounts of its own finances for each of the Operator’s fiscal years that occur during the Contract Term.

### 1.11 Operator's Claims

- a. If the Operator considers itself to be entitled to any extension of the Time for Completion or any additional payment, under any section of this Contract, the Operator shall give notice to:
  - i. the Design-Build Engineer during the Design-Build Period;
  - ii. CSCU Director during the New Operations Period, the describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and no later than 30 days, after the Operator became aware, or should have become aware, of the event or circumstance.
- b. If the Operator fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Operator shall not be entitled to additional payment, and the Owner shall be discharged from all liability in connection with the claim.
- c. The Operator shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, that are relevant to such event or circumstance.
- d. The Operator shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Design-Build Engineer/ CSCU Director. Without admitting the Owner's liability, the Design-Build Engineer/ CSCU Director may, after receiving any notice under this Section 1.11, monitor the record-keeping or instruct the Operator to keep further contemporary records. The Operator shall permit the Design-Build Engineer/ CSCU Director as the case may be, to inspect all these contemporary records, and shall, if instructed, submit copies to the Design-Build Engineer/ CSCU Director.
- e. No later than 42 days after the Operator 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 Operator and approved by the Design-Build Engineer/ CSCU Director, the Operator shall send to the Design-Build Engineer/ CSCU Director a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect,
  - i. this fully detailed claim shall be considered as interim;
  - ii. the Operator shall send further interim claims at monthly intervals, giving the accumulated delay or amount claimed, and such further particulars as the Design-Build Engineer/ CSCU Director may reasonable require; and
  - iii. the Operator shall send a final claim no later than 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Operator and approved by the DesignBuild Engineer/ CSCU Director.
- f. No later than 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Design-Build Engineer/ CSCU Director and approved by the Operator, the Design-Build Engineer/

CSCU Director shall respond with approval, or with disapproval and detailed comments. The Design-Build Engineer/ CSCU Director may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

- g. Each invoice sent by the Operator shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Operator shall only be entitled to payment for such part of the claim as it has been able to substantiate.

## **ARTICLE 2 - CONTRACT TERM, TIMING AND COMPLETION**

### **2.1 General**

#### **2.1.1 Effectiveness of Contract**

- a. The Contract shall come into force and effect on the date the Contract is signed by the Parties (the “Effective Date”).

#### **2.1.2 Expiration of Contract**

This Contract shall terminate on,

- a. the expiration of the Term
- b. or the date of Contract termination pursuant to Section 19.2, (the “End Date”), whichever is applicable.

#### **2.1.3 Commencement of Services**

- a. The Design-Build Starting Date shall be no later than 30 days after the Effective Date and the Owner shall give the Operator at least seven days prior notice of the Design-Build Starting Date.
- b. The “New Operations Starting Date” shall be the date of the Operational Acceptance Certificate.

### **2.2 Design-Build Period - Commencement, Delays and Suspension**

#### **2.2.1 Commencement of the Design-Build Services**

- a. The Operator shall commence the Design-Build Services no later than the Design-Build Starting Date.

#### **2.2.2 Time for Completion**

Subject to section 2.2.4, the Operator shall complete the whole of the Design-Build Services in accordance with the Time for Completion for the Design-Build Services including,

- a. successfully completing the Tests on Commissioning; and

- b. completing all of the Design-Build Services such that the completed *INFRASTRUCTURE / FACILITY* can be used as a fully operational *INFRASTRUCTURE / FACILITY* in accordance with the Contract.

#### 2.2.3 Design-Build Time Schedule

- a. The Operator shall submit a detailed time programme (the “Time Schedule”) to the Design-Build Engineer no later than 30 days after the Design-Build Starting Date. The Operator shall also submit a revised Time Schedule whenever the previous Time Schedule is inconsistent with actual progress or with the Operator’s obligations. Each Time Schedule shall include a description of:
  - i. the order in which the Operator intends to carry out the Design-Build
  - ii. Services, including the anticipated timing of each stage of design, DesignBuild Documents, procurement, manufacture, inspection, delivery to the Site, construction, erection, testing and commissioning;
  - iii. the periods for review and any other submissions, approvals and consents specified in the Contract;
  - iv. the sequence and timing of inspections and tests specified in the Contract;
  - v. the scheduled Time for Completion, the planned Time for Completion and the planned New Operations Starting Date;
  - vi. all major events and activities in the production of Design-Build Documents; and
  - vii. all major phases and milestones of the Design-Build Services.
- b. The Design-Build Engineer shall review each Time Schedule and provide comments to the Operator as to whether the Time Schedule complies with the Contract. If the Design-Build Engineer fails to provide such comments prior to the expiration of 21 days after receiving a Time Schedule, the Operator shall proceed in accordance with the Time Schedule, subject to its other obligations under the Contract. The Operator shall be entitled to rely upon the Time Schedule when planning its activities.
- c. The Operator shall promptly give notice to the Design-Build Engineer of specific probable future events or circumstances which may adversely affect the Design-Build Services or delay the execution of the Design-Build Services. The Design-Build Engineer may require the Operator to submit an estimate of the anticipated effect of the future event or circumstances, or a proposal under Section 17.1.3.
- d. If, at any time, the Design-Build Engineer gives notice to the Operator that a Time Schedule fails, to the extent stated, to comply with the Contract or to be consistent with actual progress and the Operator’s stated intentions, the Operator shall submit a revised Time Schedule to the DesignBuild Engineer in accordance with this Section 2.2.3.

#### 2.2.4 Extension of the Time for Completion

- a. The Time for Completion shall be extended if the Operator is delayed or impeded in the performance of the Design-Build Services by reason of any of the following:

- i. a Change, unless the Parties have already agreed to an adjustment to the Time for Completion as part of the applicable Change;
  - ii. an occurrence of Force Majeure as provided in Section 16.8, Unforeseeable
  - iii. physical conditions as provided for in Section 16.7, or loss or damage as a result of the occurrences set out in Section 16.4(b);
  - iv. any suspension order given by the Owner pursuant to Section 18.1.1;
  - v. any change in the Applicable Law in accordance with Section 16.10;
  - vi. any default or breach of the Contract by the Owner or any activity, act or omission of any other contractors employed by the Owner; or
  - vii. any other matter specifically mentioned in the Contract, by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the actual delay or impediment sustained by the Operator.
- b. The Operator shall submit, to the Design-Build Engineer, any notice of a claim for an extension of the Time for Completion in accordance with Section 1.11.
  - c. The Operator shall, at all times, use reasonable efforts to minimise any delay in the performance of its obligations under the Contract.

#### 2.2.5 Rate of Progress

- a. If, at any time, the Operator's progress in respect of the Design-Build Services,
  - i. is too slow to complete the Design-Build Services in accordance with the Time for Completion; or
  - ii. has fallen, or will fall, behind the current Time Schedule
 other than as a result of a cause listed in Section 2.2.4, then the Design-Build Engineer may instruct the Operator to submit a revised Time Schedule and supporting report describing the revised methods which the Operator proposes to adopt in order to expedite progress and complete the Design-Build Services.
- b. Unless the Design-Build Engineer notifies otherwise, the Operator shall adopt the revised methods referred to in Section 2.2.5(a), which may require increases in:
  - i. the working hours or in the numbers of Operator's Personnel, or both; or
  - ii. Plant and Equipment, at the risk and cost of the Operator.

If these revised methods cause the Owner to incur additional costs, the Operator shall pay these costs to the Owner, in addition to delay damages, if any, under Section 2.2.6.

#### 2.2.6 Delay of Completion - Liquidated Damages - Delay

- a. The Operator guarantees that it shall attain Completion of the *INFRASTRUCTURE / FACILITY* in accordance with the Time for Completion and Section 2.2.2 or in accordance with an extension of the Time for Completion granted to the Operator in accordance with Section 2.2.4.
- b. If the Operator fails to attain Completion of the *INFRASTRUCTURE / FACILITY* within the Time for Completion, or any extension thereof in accordance with



Section 2.2.4, the Operator shall pay to the Owner liquidated damages in the amount specified in [Schedule 5] (“Liquidated Damages - Delay”). The aggregate amount of Liquidated Damages - Delay shall not exceed the amount stated in Schedule 5.

- c. The payment or payments by the Operator of Liquidated Damages - Delay shall not in any way relieve the Operator of its obligations to complete the *INFRASTRUCTURE / FACILITY* or any other obligations and liabilities of the Operator under the Contract.

#### **2.2.7 [Design-Build Period - Existing Operations Services]**

*[relevant where there are existing facilities to be operated by Operator during Design Build Period]*

*The Operator shall carry out the Existing Operations Services for the Existing INFRASTRUCTURE / FACILITY as set out in Schedule 3 during the Design-Build Period commencing on the Design-Build Starting Date. Sections 2.2.1 to 2.2.6 do not apply to the Existing Operations Services.]*

### **2.3 New Operations Period**

#### **2.3.1 Commencement of the Operations - Services**

- a. The Operator shall commence the Operations Services no later than the New Operations Starting Date.

#### **2.3.2 Services After the End Date**

- a. The Operator, upon written request by the Owner no later than 60 days prior to the End Date, shall provide assistance to the Owner, at no cost to the Owner, during a transitional period of up to 60 days after the End Date (the “Transition Assistance”). The purpose of the Transition Assistance is to ensure a smooth transition between the Operator and a Subsequent Operator of the New *INFRASTRUCTURE / FACILITY*. The Transition Assistance shall be related to only transition services and shall not be the full range of Services.

#### **2.3.3 Extension of the Contract**

- a. If both Parties agree, this Contract may be extended for a period of up to [##<sup>3</sup>] years after the End Date. The Owner shall notify the Operator no later than 6 months prior to the End Date if it wishes to enter into negotiations in order to extend the duration of the Contract. The date on which the Contract is to expire as a result of an extension shall be the Extension Date.

## **ARTICLE 3 - OBLIGATIONS OF THE OPERATOR**

### **3.1 General - Services and Standards of Performance**

The Operator shall,

---

<sup>3</sup> Note to Owner – subject to procurement and other rules as to how long contracts may be extended

- a. perform the Existing Operations Services, if any, as set out in section 2.2.7;
- b. perform the Design-Build Services set out in article 4 and the Design Build Specifications;
- c. perform the Operations Services set out in article 9 and the Operations Specifications, all with due care and diligence in accordance with the Contract and Applicable Law.

### **3.2 Law Governing Services**

The Operator shall comply with the Applicable Law and shall ensure that the Operator's Personnel and Subcontractors comply with the Applicable Law. The Operator shall indemnify and hold harmless the Owner from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising in its performance of its obligations in the Contract whether directly or through its Personnel or Subcontractors or resulting from violation of the Applicable Law by the Operator, the Operator's Personnel the Subcontractors and the Subcontractors' personnel.

### **3.3 Conflict of Interest**

- a. The compensation of the Operator pursuant to Article 12 shall constitute the Operator's sole compensation in connection with this Contract and, except as provided in Article 12, the Operator shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Operator shall ensure that the Operator's Personnel, Subcontractors, and the Subcontractors' employees and agents, similarly shall not receive any such additional remuneration.
- b. The Operator, Subcontractors and any entity affiliated with the Operator or the Subcontractors, shall be disqualified, during the Contract Term from providing goods, works or services, other than the Services, with respect to,
  - i. the goods, works and services purchased from the Contingency Fund; and
  - ii. the Capital Investment Program.
- c. The Operator, Operator's Personnel, Subcontractors and the employees and affiliates of the Subcontractors shall not engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.
- d. The Operator and its Shareholders shall not participate in any discussions or work and shall not provide any services or advice to the Owner related to,
  - i. except with respect to their responsibilities as set out in the Operations Services Schedule, institutional restructuring or reorganisation of the Owner or a utility or department of the Owner;
  - ii. the development or review of bidding documents to retain any Subsequent Operator; or

- iii. the preparations for the procurement process to retain any Subsequent Operator.
- e. Failure of the Operator or the Shareholders to comply with this Section 3.3, in addition to constituting a breach of this Contract, shall result in the disqualification of the Operator and the Shareholders from bidding in the procurement process to retain any Subsequent Operator.

### **3.4 Insurances**

The Operator shall take out and maintain the insurances set out in Schedule 8.

### **3.5 Site Information and Investigation**

- a. The Operator acknowledges that the Owner made available to the Operator, during the bidding process, either directly or by placing the data in the Data Room and Background Information Document, all available data on hydrological and sub-surface conditions of the Site, and studies on environmental impact that had been obtained by or on behalf of the Owner from investigations in anticipation of the Design-Build and Operations Services (the “Site Information”). The Operator shall be responsible for interpreting all data about the Site that is provided to it by the Owner.
- b. The Operator shall be deemed to have inspected and examined the Site, its surroundings, the Site Information and other available information, and to have satisfied itself before entering into the Contract, as to,
  - i. the form and nature of the Site, including the sub-surface conditions;
  - ii. the applicable hydrological, hydrogeological and climatic conditions;
  - iii. the extent and nature of the work, Plant and Equipment, Operator's Equipment (Design-Build) and Operator's Equipment (Operations) necessary for the execution and completion of the Services, and the remedying of any defects; and iv. the Operator's requirements for access to the Site, accommodation, personnel, power, transport, water and other services.
- c. The Operator shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances that may influence or affect the performance of its obligations under the Contract.
- d. To the extent the Operator did not make any of the interpretations, investigations or examinations, or did not satisfy itself, or did not obtain such information as called for in this Section 3.5, the Operator represents and warrants that it is willing to assume and does hereby assume responsibility for any and all loss and damage from any cause whatsoever which the Operator's interpretations, investigations, examinations and obtaining of information may have avoided and agrees to indemnify the Owner from all risk thereof and from conditions arising or developing in the course of performing the Services which may make the performance of the Services more onerous and more expensive to fulfil or perform than was contemplated on the Effective Date. Notwithstanding anything in the Contract to the contrary, the Operator acknowledges and declares that in entering into the

Contract it did not and does not rely upon any information, representation or report provided by or on behalf of the Owner or its agents, representatives or employees.

### **3.6 Access to the Site and New *INFRASTRUCTURE / FACILITY***

- a. The Operator shall, during both the Design-Build Period and the New Operations Period, provide free and open access to the Site, the *INFRASTRUCTURE / FACILITY* at the Owner's request. The Owner shall make reasonable efforts to provide reasonable notice to the Operator prior to the Owner's access but such notice is not mandatory. The Owner's representative on the Site, the Existing *INFRASTRUCTURE / FACILITY* or at the New *INFRASTRUCTURE / FACILITY* shall observe all safety and health regulations and reasonable instructions of the Operator.
- b. The Operator shall give all reasonable access to any other contractors employed by the Owner on or near the Site to carry out their work.
- c. If at the request of the Owner, the Operator makes available to other contractors any roads or ways the maintenance for which the Operator is responsible, permits the use by such other contractors of the Operator's Equipment (Design-Build) and Operator's Equipment (Operations), or provides any other service of whatsoever nature for such other contractors, the Owner shall fully compensate the Operator for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Operator reasonable remuneration for the use of such equipment or the provision of such services.
- d. The Operator shall also arrange to perform its work so as to minimise, to the extent possible, interference with the work of other contractors. The Design-Build Engineer or CSCU Director, as applicable, shall determine the resolution of any difference or conflict that may arise between the Operator and other contractors and the workers of the Owner in regard to their work.
- e. The Operator shall notify the Design-Build Engineer or CSCU Director, as applicable, promptly of any defects in the other Owner's recommended contractors' work that come to its notice, and that could affect the performance of the Services by the Operator. The Design-Build Engineer or CSCU Director, as applicable, shall determine the corrective measures, if any, required to rectify the situation after inspection of the Site, the Existing *INFRASTRUCTURE / FACILITY* and the New *INFRASTRUCTURE / FACILITY*. Decisions made by the Design-Build Engineer or CSCU Director, as applicable, shall be binding on the Operator.

## **ARTICLE 4 - DESIGN-BUILD SERVICES**

### **4.1 Design-Build Services**

The Operator shall carry out and be responsible for the design, engineering and construction of the Site and New *INFRASTRUCTURE / FACILITY*, as set out in this Article 4 (the "Design-Build Services") in accordance with this Contract, the Technical Specifications, Applicable Law and good engineering practices.

## 4.2 Design and Engineering

### 4.2.1 Design and Engineering

The Operator shall execute the basic and detailed design of the Site and the New *INFRASTRUCTURE / FACILITY* and the engineering work in respect of that design in compliance with the provisions of the Contract and the Technical Specifications. The design services shall include:

- a. the preparation of a design that meets the criteria set out in the Design-Build Documents and that provides for a New *INFRASTRUCTURE / FACILITY* that meets the Technical Specifications;
- b. the preparation of design development documents, based on the schematic design documents accepted by the Owner, consisting of drawings and other documents appropriate to the size of the Site and New *INFRASTRUCTURE / FACILITY* to describe the size and character of the entire Site and the New *INFRASTRUCTURE / FACILITY* including architectural, mechanical, civil works, and electrical systems, materials, operational processes, landscaping, and such other elements as may be appropriate;
- c. the preparation of Design-Build Documents setting out in detail the requirements for construction based on the design development documents accepted by the Owner;
- d. obtaining all approvals, permits, including building permits, and licences for the Design-Build Services, except for those approvals, permits or licences that the Owner is explicitly required to obtain itself under the Applicable Law in which case the Operator shall prepare all documentation and provide assistance to the Owner in obtaining such approval, permits or licences;
- e. the preparation of Changes as set out in Section 17.1;
- f. the coordination required to integrate all parts of the Design-Build Services;
- g. such other Design-Build Services that may be required from time to time that are agreed to by the Operator and the Owner in writing; and
- h. general reviews of the progress of the design process, to the extent necessary, in order to determine to the Operator's satisfaction that the design services are performed in compliance with the requirements of the Contract and Applicable Laws.

### 4.2.2 Design-Build Documents

- a. The Operator shall prepare all of the Design-Build Documents in accordance with the Design Build Specifications. The Operator shall be responsible for any discrepancies, errors or omissions in the Design Build Documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Design-Build Engineer or not.
- b. The Operator shall provide each of the Design-Build Engineer and the Owner with two sets of all of the Design-Build Documents in reproducible form and shall modify them to keep them up-to-date as requested by the Design-Build Engineer acting in a professionally reasonable manner. The Design-Build Documents shall be subject to the review and approval of the Design-Build Engineer. The Operator shall keep one

copy of the Design-Build Documents as up-dated, submittals, reports and records of meetings at the Site, in good order and shall make them available to the Owner and the Design-Build Engineer upon request and at any reasonable time.

- c. When the Operator notifies the Owner in accordance with Section 7.2, the Operator shall provide to the Design-Build Engineer one copy of the as built Design-Build Documents in reproducible form showing the exact as built locations, sizes and details of the Site and New *INFRASTRUCTURE / FACILITY* and the Design-Build Services as executed. The Operator shall update the as-built Design-Build Documents as necessary for the correction of defects or deficiencies contemplated by Section 7.2.

### 4.3 Other Design Responsibilities

The Operator shall prepare plans and designs for:

- a. all temporary works as required by the Operator's design and by the Contract;
- b. systems to manage the Site and the New *INFRASTRUCTURE / FACILITY*, as described in the Technical Specifications;
- c. landscaping for the Site and New *INFRASTRUCTURE / FACILITY*;
- d. in consultation with the Owner, the ultimate landform and use of the Site and the New *INFRASTRUCTURE / FACILITY*;
- e. any other specific facilities and processes contemplated under, or stipulated by, the Contract or in the Technical Specifications, including, but not limited to, materials and resource recovery;
- f. the acquisition of all data and information necessary to prepare the Operator's design, including, but not limited to, any intrusive site investigations, off-site surveys and environmental baseline monitoring required or contemplated under the Contract

and prepare detailed plans and methodologies for the testing and inspection of the Plant and Equipment and any part of the New *INFRASTRUCTURE / FACILITY* as specified in the Contract and in Attachment 1 to the Technical Specifications Schedule.

### 4.4 Building and Construction Services

- a. The Operator shall carry out all building and construction of all items designed pursuant to this Article 4.
- b. The Operator shall provide all of the demolition, excavation, building, co-ordination, repair, warranty, review, inspection, testing, quality assurance and control, monitoring, scheduling, cleanup and other construction work and services required for the modification of the Site and the building of the New *INFRASTRUCTURE / FACILITY* as contemplated by Design-Build Documents.
- c. The Operator shall have total control of the building and construction services and shall effectively direct and supervise the building and construction services so as to ensure conformity with the Design-Build Documents.

- d. The Operator shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the Design-Build Services under the Contract.

## **4.5 Procurement and Transportation**

- a. The Operator shall at its own risk and expense transport all the Plant and Equipment, the Operator's Equipment (Design-Build) and the Operator's Equipment (Operations) to the Site.
- b. The Operator shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Plant and Equipment, the Operator's Equipment (Design-Build) and the Operator's Equipment (Operations) to the Site. The Owner shall use its best efforts in a timely and expeditious manner to assist the Operator in obtaining such approvals, if requested by the Operator.
- c. The Operator shall, at its own expense, handle all imported Plant and Equipment, Operator's Equipment (Design-Build) and Operator's Equipment (Operations) at the point(s) of import and shall handle any formalities for customs clearance. If the Applicable Law requires any application or act to be made by or in the name of the Owner, the Owner shall take all necessary steps to comply with such Applicable Law. In the event of delays in customs clearance that are not the fault of the Operator, the Operator shall be entitled to an extension in the Time for Completion, pursuant to Section 2.2.4.

## **4.6 Building Responsibilities**

### **4.6.1 Temporary Supports, Structures and Utility Services**

- a. The Operator shall have the sole responsibility for the design, erection, operation, maintenance, and removal of temporary supports, structures and utility services and the design and execution of construction methods required in their use.

### **4.6.2 Document Review**

- a. The Operator shall review the Design-Build Documents and shall report promptly to the Design-Build Engineer and the Owner any error, inconsistency or omission the Operator may discover. If the Operator does discover any error, inconsistency or omission in the Design-Build Documents, the Operator shall not proceed with the work affected until the Operator has corrected any such errors or inconsistency or supplied any missing information and these corrections have been approved in writing by the DesignBuild Engineer or the Owner.
- b. If the Operator does not discover any existing error, inconsistency or omission in the Design Build Documents and proceeds with the work, the Operator hereby indemnifies the Owner from any liability which resulting from such existing error.

### **4.6.3 Plant and Equipment**

- a. The Operator shall provide and pay for labour, Plant and Equipment, tools, construction machinery and equipment, materials and supplies, water, heat, light, power, transportation, and all other facilities and services necessary for the



performance of the Design-Build Services in accordance with the Design-Build Documents and the Design Build Specifications.

#### 4.6.4 Use of the Site and New *INFRASTRUCTURE / FACILITY*

- b. The Operator shall confine construction machinery and equipment, storage of Plant and Equipment, Operator's Equipment (Design-Build) and Operator's Equipment (Operations), and operations of Operator's Personnel to limits indicated by laws, ordinances, permits or the Design-Build Documents and shall not unreasonably encumber the Site with Plant and Equipment, Operator's
- c. Equipment (Design-Build) or Operator's Equipment (Operations). The Operator shall not load or permit to be loaded any part of the Site or the New Facility with a weight or force that will endanger the safety of the Site or the New *INFRASTRUCTURE / FACILITY*.
- d. The Operator shall not store Plant and Equipment, Operator's Equipment (Design-Build) or Operator's Equipment (Operations) at the Site which are not necessary for the construction of the New *INFRASTRUCTURE / FACILITY*.

#### 4.6.5 Setting Out

- a. The Operator shall be responsible for the true and proper setting-out of the Site and the New *INFRASTRUCTURE / FACILITY* in relation to benchmarks, reference marks and lines specified in the Design-Build Documents.
- b. If, at any time during the construction of the New *INFRASTRUCTURE / FACILITY*, any error shall appear in the position, level or alignment of the Site and the New *INFRASTRUCTURE / FACILITY*, the Operator shall forthwith notify the Design-Build Engineer of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Design-Build Engineer.

#### 4.6.6 Quality Assurance

- a. The Operator shall institute a quality assurance system to ensure compliance with the requirements of the Design-Build Documents. Compliance with the quality assurance system shall not relieve the Operator of its duties, obligations or responsibilities.
- b. The Operator shall submit for approval details of all quality assurance procedures and documents relating to Operator's compliance with the quality assurance system to the Design-Build Engineer before each stage of the Design-Build Services is commenced as set out in the Time Schedule. When any document is issued to the Design-Build Engineer, it shall be accompanied by the signed quality statements for such document, if any. The Design-Build Engineer may audit any aspect of the quality assurance system and the Operator shall take any corrective action as the Design-Build Engineer may deem appropriate. The auditing of the document by the Design Build Engineer does not absolve the Operator of responsibility or liability arising from such documents.

#### 4.6.7 Operator's Access Routes and Rights of Way During the Design-Build Period

- a. The Operator shall satisfy itself as to the suitability and availability of the access routes it chooses to use during the Design-Build Period for access to and from the Site. The Operator shall, as between the Parties, be responsible for the



maintenance of access routes during the Design-Build Period. The Owner will 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 any particular access route, and will not entertain any claim for any non-suitability or non-availability for continuous use, during the Design-Build Period, of any such route.

- b. The Operator shall bear all costs and charges for special or temporary rights-of-way required by it for access to the Site. The Operator shall also provide, at its own cost, any additional facilities outside the Site or New *INFRASTRUCTURE / FACILITY* required by it for the purposes of the Design-Build Services.

#### 4.6.8 Site Regulations and Safety

- a. The Operator shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Operator shall prepare and submit to the Owner, with a copy to the Design-Build Engineer, proposed Site regulations for the Owner's approval, which approval shall not be unreasonably withheld. Such Site regulations shall include rules in respect of security, safety of the Site, the Existing *INFRASTRUCTURE / FACILITY* and the New *INFRASTRUCTURE / FACILITY*, gate control, sanitation, medical care, emergency preparedness, emergency response, on-site safety training of employees and fire prevention.
- b. The Operator shall comply with all applicable safety regulations in providing the Design-Build Services and in occupying any part of the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY*. Unless otherwise stated in the Design-Build Documents, the Operator shall, during the Design-Build Period,
  - i. provide secure fencing, lighting, guarding and watching of the Design-Build Services;
  - ii. provide temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of its employees, Site visitors, owners and occupiers of adjacent land, the public and others;
  - iii. prepare a manual of safety policies and procedures applicable to each stage of the Design-Build Services and to the Site or New *INFRASTRUCTURE / FACILITY* as a whole and distribute such manual to all of its Subcontractors, agents, representatives and employees working at the Site or New *INFRASTRUCTURE / FACILITY*; and
  - iv. carry out safety briefings of applicable site regulations to all employees, Subcontractors, agents, representatives and visitors to the Site, Existing *INFRASTRUCTURE / FACILITY* and the New *INFRASTRUCTURE / FACILITY* prior to permitting first access of the applicable person to the Site or the New *INFRASTRUCTURE / FACILITY*, and at regular intervals thereafter.
- c. During the Design-Build Period, and throughout the Term of the Contract, the Operator shall develop and implement a comprehensive occupational health and safety program for the protection of the Operator's Personnel and all other persons who may attend at the Site or the New *INFRASTRUCTURE / FACILITY*. The program shall include a description of how the Operator will,

- i. carry out all occupational health and safety responsibilities in respect of the Site or New *INFRASTRUCTURE / FACILITY* as required under the Applicable Law;
- ii. develop and manage all required occupational health and safety reporting procedures; and
- iii. manage all occupational health and safety claims.

#### 4.6.9 Operator's Equipment (Design-Build) and Site Clearance

- a. All Operator's Equipment (Design-Build) brought by the Operator onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Operator shall not remove the same from the Site without the Design-Build Engineer's consent that such Operator's Equipment (Design-Build) is no longer required for the execution of the Contract.
- b. The Operator shall maintain the Site, Existing *INFRASTRUCTURE / FACILITY* and New *INFRASTRUCTURE / FACILITY* in a tidy condition and free from the accumulation of waste products and debris. The Operator shall remove waste products and debris resulting from the Site and shall leave the *INFRASTRUCTURE / FACILITY* clean and suitable for occupancy and performance of the Operations Services before attainment of Substantial Completion. The Operator shall remove products, tools, construction machinery, and equipment, including the Operator's Equipment (Design-Build), not required for the performance of the remaining Design-Build Services.
- c. Prior to notifying the Owner pursuant to Section 7.2, the Operator shall remove products, tools, construction machinery and equipment, and waste products and debris, including the Operator's Equipment (Design-Build).
- d. Upon the issue of any Completion Certificate, the Operator shall clear away and remove, from the Site, Existing *INFRASTRUCTURE / FACILITY* and the New *INFRASTRUCTURE / FACILITY*, all Operator's Equipment (Design-Build), surplus material, wreckage, rubbish and temporary work or structures. The Operator shall ensure that the Site, Existing *INFRASTRUCTURE / FACILITY* and the New *INFRASTRUCTURE / FACILITY* are in a clean and safe condition to the satisfaction of the Owner's Design-Build Engineer.
- e. If the Operator fails to remove, no later than 30 days after the issue of the Completion Certificate, any remaining Operator's Equipment (Design-Build), surplus material, wreckage, rubbish and temporary work or structures, the Owner may sell or otherwise dispose of such items. The Owner shall be entitled to retain, from the proceeds of such sale, a sum sufficient to meet the costs incurred in connection with the sale or disposal, and in restoring the Site, Existing *INFRASTRUCTURE / FACILITY* and New *INFRASTRUCTURE / FACILITY*. Any balance of the proceeds shall be paid to the Operator. If the proceeds of the sale are insufficient to meet the Owner's costs, the outstanding balance shall be recoverable from the Operator by the Owner.
- f. The Owner will, if requested, use reasonable efforts to assist the Operator in obtaining any local, state or national government permission required by the Operator for the export of the Operator's Equipment (Design-Build) imported by

the Operator solely for use in the execution of the Contract that is no longer required for the execution of the Contract.

#### 4.6.10 Protection of the Environment

- a. The Operator 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, dust and other results of its Services, including,
  - i. adopting working practices that prevent or minimise the transfer of any pollutant off-site;
  - ii. maintaining the access roads in good repair;
  - iii. using appropriate dust suppressant methods;
  - iv. restricting trucking and loud machinery and equipment use to daylight hours;
  - v. using mufflers, silencers and other appropriate methods to minimise the noise of the construction;
  - vi. using “silt fencing”, hay bales, silt traps or other methods to minimise soil erosion and prevent the contamination of surface water and the transportation of soil and sediment off-site onto adjacent properties;
  - vii. maintaining a clean Site, Existing INFRASTRUCTURE / FACILITY and New INFRASTRUCTURE / FACILITY.
- b. The Operator shall, at all times during building and construction, ensure that the Environmental Management Plan is followed.
- c. The Operator shall monitor groundwater quality upstream and downstream of the *INFRASTRUCTURE / FACILITY*, throughout the process of construction.
- d. The Operator shall monitor water quality upstream and downstream of the Site and the New *INFRASTRUCTURE / FACILITY*, prior to and throughout the process of construction.

#### 4.6.11 Security of the Site, Existing Facility and New Facility

Unless otherwise stated in the Design-Build Documents:

- a. the Operator shall be responsible for keeping unauthorised persons off the Site, Existing INFRASTRUCTURE / FACILITY and New INFRASTRUCTURE / FACILITY
- b. the Operator shall maintain detailed record of all persons that enter the Site, Existing INFRASTRUCTURE / FACILITY and the New INFRASTRUCTURE / FACILITY; and
- c. the Operator shall ensure that authorised persons shall be limited to the Operator’s Personnel, the Design-Build Engineer, employees of Subcontractors and persons authorised by the Owner or the Design-Build Engineer.

#### 4.6.12 Physical Cultural Property

- a. The Operator shall take reasonable precautions to prevent its employees, agents, representatives, Subcontractors, or other persons from removing or damaging any

fossils, coins, articles of antiquity, and structures and other remains or things of geological or archaeological interest at the Site. The Operator shall, immediately upon discovery of such article or thing, advise the Design-Build Engineer, who may issue instructions for dealing with it. All fossils, coins, articles of value or antiquity, and structures and other remains or things of geological or archaeological interest discovered on the Site shall be the property of the Owner.

- b. If the Operator suffers delay or incurs any damages or costs in following any instructions of the Design-Build Engineer pursuant to Section 4.6.12(a), and if such delay or damages or costs were Unforeseeable, the Operator shall give notice to the Design-Build Engineer, with a copy to the Owner. After receipt of such notice, the Design-Build Engineer shall determine in accordance with Section 16.7 if the Operator is entitled to any extension of time or any compensation for such damages or costs and shall notify the Operator accordingly.

#### 4.6.13 Emergency Work

- a. If, by reason of an emergency arising in connection with and during the execution of the Design-Build Services, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY*, the Operator shall immediately carry out such work.
- b. If the Operator is unable or unwilling to do such work immediately, the Owner may do or cause such work to be done as the Owner may determine is necessary in order to prevent damage to the Site, Existing *INFRASTRUCTURE / FACILITY* or the New *INFRASTRUCTURE / FACILITY*. In such event the Owner shall, as soon as practicable after the occurrence of any such emergency, notify the Operator in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Owner is work that the Operator was liable to do at its own expense under the Contract, the reasonable costs incurred by the Owner in connection therewith shall be paid by the Operator to the Owner.

#### 4.6.14 Work at Night and on Holidays

- a. Unless otherwise provided in the Contract, no work shall be carried out outside of the hours of operation of the Existing *INFRASTRUCTURE / FACILITY* and on public holidays of the Country without prior written consent of the Owner, except where work is necessary or required to ensure safety of the Site, Existing *INFRASTRUCTURE / FACILITY* or the New *INFRASTRUCTURE / FACILITY* or for the protection of life, or to prevent loss or damage to property, when the Operator shall immediately advise the Design-Build Engineer, provided that provisions of this Section 4.6.14 shall not apply to any work which is customarily carried out by rotary or double-shifts.
- b. Notwithstanding Section 4.6.14(a), if and when the Operator considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Owner's consent thereto, the Owner shall not unreasonably withhold such consent.

## ARTICLE 5 - [EXISTING INFRASTRUCTURE / FACILITY OPERATIONS

*From the Design-Build Starting Date until the New Operations Starting Date, the Operator shall carry out all operations of the Existing INFRASTRUCTURE / FACILITY (the “Existing Operations Services”) in accordance with procedures being followed on the date preceding the Effective Date, including,*

- a. all [Relevant Activities] at the Existing INFRASTRUCTURE / FACILITY;
- b. all monitoring required by the Applicable Law;
- c. taking measures to control potential environmental nuisance, including odours, litter, pests, insects, rodents and birds;
- d. carrying out all customer relations and services functions including the recording of [Relevant Activities]; and
- e. all matters related to the operations and maintenance of all Existing Operations Equipment.]

## ARTICLE 6 - TESTS AND INSPECTION

### 6.1 Tests and Inspection

- a. The Operator shall at its own expense carry out at the place of manufacture or on the Site all such tests and inspections of the Plant and Equipment and any part of the New INFRASTRUCTURE / FACILITY as are specified in the Contract and in Schedule 7. The Operator shall, in addition to those tests and inspections set out in the Contract, develop a plan for all testing and inspection of the New INFRASTRUCTURE / FACILITY that is required in order to complete the New INFRASTRUCTURE / FACILITY in accordance with the Technical Specifications.
- b. The Owner and the Design-Build Engineer or their designated representatives shall be entitled to attend any test or inspection, provided that the Owner shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- c. Whenever the Operator is ready to carry out any test or inspection, the Operator shall give a reasonable advance notice of such test or inspection and of the place and time thereof to the Design-Build Engineer. The Operator shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Owner and the Design-Build Engineer (or their designated representatives) to attend the test or inspection.
- d. The Operator shall provide the Design-Build Engineer with a certified report of the results of any test or inspection.
- e. If the Owner or Design-Build Engineer, or their designated representatives, fails to attend the test or inspection, or if it is agreed between the Parties that such persons shall not do so, then the Operator may proceed with the test or inspection

in the absence of such persons, and shall provide the Design-Build Engineer with a certified report of the results thereof.

- f. The Design-Build Engineer may require the Operator to carry out any test or inspection not required by the Contract, provided that the Operator's reasonable costs and expenses incurred in the carrying out of such test or inspection shall be added to the Contract Price. Further, if such test or inspection impedes the progress of work on the New *INFRASTRUCTURE / FACILITY* or the Operator's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.
- g. If any Plant and Equipment or any part of the *INFRASTRUCTURE / FACILITY* fails to pass any test or inspection, the Operator shall either rectify or replace such Plant and Equipment or part of the New *INFRASTRUCTURE / FACILITY* and shall repeat the test or inspection upon giving a notice under Section [##].
- h. If any dispute or difference of opinion arises between the Parties in connection with or arising out of the test or inspection of the Plant and Equipment or part of the new *INFRASTRUCTURE / FACILITY* that cannot be settled between the parties within a reasonable period of time, it may be referred to an Adjudicator for determination in accordance with Section 1.8.
- i. The Operator shall give the Owner and the Design-Build Engineer, at the Owner's expense, access at any reasonable time to any part of the New *INFRASTRUCTURE / FACILITY* or any place where the Plant and Equipment are being manufactured or installed in the New *INFRASTRUCTURE / FACILITY*, in order to inspect the progress of the work and the manner of manufacture or installation, provided that the Design-Build Engineer shall give the Operator a reasonable prior notice.
- j. The Operator agrees that neither the execution of a test or inspection of Plant and Equipment or any part of the Site and the New *INFRASTRUCTURE / FACILITY*, nor the attendance by the Owner or the Design-Build Engineer, nor the issue of any test certificate pursuant, shall release the Operator from any other responsibilities under the Contract.
- k. No part of the New *INFRASTRUCTURE / FACILITY* or foundations shall be covered up on the Site without the Operator carrying out any test or inspection required under the Contract. The Operator shall give reasonable notice to the Design-Build Engineer whenever any such part of the New *INFRASTRUCTURE / FACILITY* or foundations is ready or about to be ready for test or inspection; such test or inspection and notice thereof shall be subject to the requirements of the Contract.
- l. The Operator shall uncover any part of the New *INFRASTRUCTURE / FACILITY* or foundations, or shall make openings in or through the same as the Design-Build Engineer may from time to time require at the Site, and shall reinstate and make good such part or parts.
- m. If any parts of the New *INFRASTRUCTURE / FACILITY* or foundations have been covered up at the Site after compliance with the requirement of Section 6.1(l) and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Owner, and the Time for Completion shall be reasonably adjusted to the extent that the Operator has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

## ARTICLE 7 - COMPLETION OF THE NEW *INFRASTRUCTURE / FACILITY*

### 7.1 Monthly Progress Notice

- a. The Operator shall submit to the Design-Build Engineer after the end of each month six copies, each signed by the Operator's Representative, a notice (the "Monthly Progress Notice") in such form as the Design-Build Engineer may from time to time prescribe, showing the percentage of completion that the Operator considers it has effected in the preceding month, in respect of the DesignBuild Services.
- b. The Design-Build Engineer shall, no later than 30 days after receipt of the Monthly Progress Notice, deliver to the Owner a statement (the "Design-Build Engineer's Statement") indicating, separately, the percentage of completion of the Design-Build Services that the Design-Build Engineer considers the Operator has effected in the applicable month.
- c. If the Design-Build Engineer notifies the Operator of any defects or deficiencies, or both, in any of the Design-Build Services, the Operator shall then correct the defects or deficiencies, and shall repeat the procedure described in Section 7.1(a).

### 7.2 Completion

- a. As soon as the Design-Build Services have, in the opinion of the Operator, been completed in accordance with the Technical Specifications, and the *INFRASTRUCTURE / FACILITY* has satisfactorily passed all Tests on Completion as set out in Schedule 7, the Operator shall so notify the Owner in writing (the "Notice of Completion") and provide the as-built Design-Build Documents referred to in section
- b. The Design-Build Engineer shall, no later than 30 days after receipt of the Operator's notice under Section 7.2(a), either issue a Completion Certificate stating that the New *INFRASTRUCTURE / FACILITY* has reached Completion as of the date of the Operator's notice under Section 7.2(a), or notify the Operator in writing of any defects or deficiencies or both.
- c. If the Design-Build Engineer is not satisfied that the Design-Build Services are complete, the Design-Build Engineer shall notify the Operator in writing of any defects or deficiencies no later than 7 days after receipt of the Notice of Completion.
- d. If the Design-Build Engineer notifies the Operator of any defects or deficiencies or both, the Operator shall then correct such defects or deficiencies, and shall repeat the procedure described in Section 7.2(a).
- e. If the Design-Build Engineer is satisfied that the Design-Build Services have reached Completion, the Design-Build Engineer shall, no later than 7 days after receipt of the Operator's repeated Notice of Completion, issue a Completion Certificate stating that the Design-Build Services have reached Completion as of the date of the Operator's repeated Notice of Completion.

- f. If the Design-Build Engineer fails to issue the Completion Certificate and fails to inform the Operator of any defects or deficiencies 14 days after receipt of the Notice of Completion or 7 days after receipt of the Operator's repeated Notice of Completion, then the Design-Build Services shall be deemed to have reached Completion as of the date of the Notice of Completion or repeated Notice of Completion as the case may be.
- g. As soon as possible after Completion, the Operator shall complete all outstanding minor items so that the Site and New *INFRASTRUCTURE / FACILITY* are fully in accordance with the requirements of the Contract, failing which the Owner will undertake such completion and deduct the costs thereof from any monies owing to the Operator.

## ARTICLE 8 - COMMISSIONING OF *INFRASTRUCTURE / FACILITY* AND OPERATIONAL ACCEPTANCE

### 8.1 Commissioning

- a. Commissioning of the New *INFRASTRUCTURE / FACILITY* shall be commenced by the Operator immediately after issue of the Completion Certificate by the Design-Build Engineer, pursuant to Section 7.2(b), or immediately after issue of the deemed Completion, under Section 7.2(f).

### 8.2 Tests on Commissioning

- b. The Tests on Commissioning as set out in Schedule 7, and repeats thereof, shall be conducted by the Operator during Commissioning of the New *INFRASTRUCTURE / FACILITY* to ascertain whether the New *INFRASTRUCTURE / FACILITY* or the relevant part can attain the technical standards set out in the Technical Specifications. The Operator's and Design-Build Engineer's advisory personnel shall attend the Tests on Commissioning, and shall advise and assist the Owner. The Owner shall promptly provide the Operator with such information as the Operator may reasonably require in relation to the conduct and results of the Tests on Commissioning, and any repeats thereof.
- c. If for reasons not attributable to the Operator, the Tests on Commissioning of the New *INFRASTRUCTURE / FACILITY* cannot be successfully completed within 21 days after the period from the date of Completion or any other period agreed upon by the Owner and the Operator, the Operator shall be deemed to have fulfilled its obligations with respect to the Tests on Commissioning.

### 8.3 Operational Acceptance

- a. Operational Acceptance shall occur in respect of the New *INFRASTRUCTURE / FACILITY* when the Tests on Commissioning have been successfully completed.
- b. At any time after the successful completion of the Tests on Commissioning, the Operator may give a notice to the Design-Build Engineer requesting the issue of an



Operational Acceptance Certificate in respect of the New *INFRASTRUCTURE / FACILITY*.

- c. The Design-Build Engineer shall, after consultation with the Owner, and no later than 7 days after receipt of the Operator's notice, issue an Operational Acceptance Certificate.
- d. If within 7 days after receipt of the Operator's notice, the Design-Build Engineer fails to issue the Operational Acceptance Certificate or fails to inform the Operator in writing of the justifiable reasons why the Design-Build Engineer has not issued the Operational Acceptance Certificate, the New *INFRASTRUCTURE / FACILITY* shall be deemed to have been accepted as of the date of the Operator's said notice.

## ARTICLE 9 - OPERATIONS SERVICES

### 9.1 Overall Description of Services to be Provided by the Operator

The Operator shall,

- a. operate and manage the New *INFRASTRUCTURE / FACILITY*, to undertake: [Relevant Activities]
- b. take measures to control potential environmental nuisance, including but not limited to, odours, litter, pests, insects, rodents and birds;
- c. maintain the New *INFRASTRUCTURE / FACILITY* and develop a comprehensive maintenance management program for the New *INFRASTRUCTURE / FACILITY*;
- d. develop and manage programs to train and advance the skills of the Operator's Personnel;
- e. carry out all customer relations and services functions including [operations of the] New *INFRASTRUCTURE / FACILITY*, and assisting the Owner in billings and collections functions of the Owner as required under the Contract;
- f. plan and manage the implementation of the Repair and Rehabilitation Plans;
- g. provide periodic reports on the operation and management of the *INFRASTRUCTURE / FACILITY*; and
- h. except as otherwise provided, carry out all management, financial and administrative responsibilities relating to the [Relevant Activities].

### 9.2 General Provisions Applicable to Plans and Programs

- a. The Operator shall develop plans, programs, operating procedures and operating manuals as described in and in accordance with the Technical Specifications.
- b. The Operator shall submit each of the plans and programs to the CSCU in [English] for its review and approval.
- c. In its preparation of the plan and programs, the Operator shall consult with the CSCU as the documents are being developed.

- d. The Operator shall begin the implementation of the recommendations of the plans and programs in accordance with the implementation schedule or timing set out in the plans and programs upon receiving approval of the plans and programs from the CSCU.
- e. The Operator shall review and update each of the plans and programs annually and shall include summaries of the reviews, updates and revisions in the Annual Reports.
- f. The Operator shall provide a status report on the implementation of all recommendations set out in the documents as part of the Quarterly Reports and Annual Reports.
- g. The plans and programs shall be implemented by the Operator at the Operator's expense.

### **9.3 Consistency Among Plans and Programs**

The Operator shall ensure that all plans and programs required to be developed pursuant to this Operations Services Appendix and all recommendations contained therein are consistent and in compliance with Applicable Law, and good engineering practice.

### **9.4 Repair, Replacement and Rehabilitation**

The Operator shall carry out or caused to be carried out all repair, replacement and rehabilitation of the New *INFRASTRUCTURE / FACILITY* and Site and as required for the ongoing operations of the New *INFRASTRUCTURE / FACILITY* and in accordance with the Operations Specifications.

### **9.5 Financial, Administrative and Regulatory Management**

The Operator shall manage all day-to-day financial, administrative and regulatory matters with respect to the operation of the New *INFRASTRUCTURE / FACILITY*, including,

- a. keeping proper accounts according to international standards;
- b. day to day information systems management;
- c. day to day procurement management;
- d. preparation of reports required by any regulators or government authorities and discussions with regulators and government authorities; and
- e. management of all permits and licences.

### **9.6 Inventory Management**

The Operator shall manage and monitor the inventory of vehicles, equipment, materials and supplies in accordance with good engineering practices.

## 9.7 [Tipping Fees and Revenue Generation]

At the request of the Owner, the Operator shall provide advice and assistance to the Owner in respect of all matters relating to the establishment of tipping fees for Customers and the generation of revenues from the New *INFRASTRUCTURE / FACILITY*.]

## 9.8 [Billings and Collection]

The Operator shall have full responsibility for billings and collection for the Owner in respect of the *INFRASTRUCTURE / FACILITY* in accordance with the Operations Specifications. ]

# ARTICLE 10 - REPORTING

## 10.1 During the Design Build Period

- a. The Operator shall prepare monthly progress reports of the Design-Build Services during the Design-Build Period and submit six copies of the reports to the Design-Build Engineer. The first report shall cover the period up to the end of the calendar month after that in which the Design-Build Starting Date occurred and reports shall be submitted monthly thereafter, each no later than 14 days after the last day of the month to which it applies.
- b. The Design-Build Services monthly reports shall include the following information:
  - i. photographs and detailed descriptions of progress, including each stage of design, procurement, manufacture, delivery to the Site or New *INFRASTRUCTURE / FACILITY*, construction, erection, testing and commissioning;
  - ii. charts showing the status of Design-Build Documents, purchase orders, manufacture and construction;
  - iii. for the manufacture of each main item, equipment, machinery, floor or component of the New *INFRASTRUCTURE / FACILITY*, the name of manufacturer, manufacture location, percentage progress, and the actual or expected dates of commencement of manufacture, Operator's inspections, tests and delivery relating thereto;
  - iv. detailed records of the Operator's Personnel and Operator's Equipment (Design-Build) on the Site or at the New *INFRASTRUCTURE / FACILITY* and the actual usage of the Operator's Equipment (Design-Build) during the reporting period and the tasks performed by the Operator's Personnel;
  - v. copies of quality assurance documents, test results and certificates of the Plant and Equipment;
  - vi. all monitoring results;
  - vii. safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;

- viii. percentage completion achieved compared with the planned percentage completion for each activity; and
- ix. where any activity is behind in the scheduled completion, comments and likely consequences and a description of the corrective action being taken.

## **10.2 During the Operation Services Period**

### **10.2.1 Quarterly Reports**

- a. In addition to any other reports required, the Operator shall prepare and deliver to the Owner once every three months a report (the “Quarterly Report”) in [English] that includes, but is not limited to, the following,
  - i. a progress report;
  - ii. a report on the performance of the Operator as measured based on the Technical Specifications;
  - iii. an environmental quality monitoring report including information about emissions, groundwater and surface water quality, security, litter, dust and noise emissions, and other matters relating to environmental issues;
  - iv. a report on the physical inspection and safety deficiencies of the New *INFRASTRUCTURE / FACILITY*;
  - v. a financial report in respect of operations and maintenance costs;
  - vi. a revenue, billings and collection report including data with respect to unpaid accounts;
  - vii. information about [activities] at the New *INFRASTRUCTURE / FACILITY*; and
  - viii. summary of complaints received and response times.
- b. The Quarterly Report shall be delivered no later than 15 days after the last day of the quarter for which the report applies.

### **10.2.2 Annual Report**

The Operator shall, no later than 30 days after the last business day of each Contract Year, submit to the Owner an annual report (the “Annual Report”) in [English] summarising the activities of the Operator in the previous Contract Year in the areas described in the Operations Specifications and any other information that may be required by the Owner.

## **ARTICLE 11 - OBLIGATIONS OF THE OWNER**

### **11.1 Owner’s Assistance to the Operator**

The Owner shall use reasonable efforts to,

- a. provide the Operator, Subcontractors and Operator's Personnel with work permits and such other documents as shall be necessary to enable the Operator, Subcontractors or Operator's Personnel to perform the Services;
- b. arrange for Operator's Personnel and, if appropriate, their eligible dependants to obtain promptly all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Country;
- c. facilitate the prompt clearance through customs of any property required for the Services and of the personal effects of the Operator's Personnel and their eligible dependants; and
- d. issue to officials, agents and representatives of the Owner all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

## **11.2 Access to the Site and New *INFRASTRUCTURE / FACILITY***

The Owner shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto and for providing possession and access to all other areas reasonably required for the proper execution of the Contract including all requisite rights of way. The Owner shall provide the Operator, free of charge, full possession of the Site, the Existing *INFRASTRUCTURE / FACILITY* and the New *INFRASTRUCTURE / FACILITY* during the term of the Contract.

## **11.3 Reviews and Approvals of Submissions**

- a. Except as otherwise provided in the Contract, if the Operator submits a plan, report or other documentation to the Owner in writing, and the Owner, or the Design-Build Engineer or CSCU Director, is required to approve that submission, the Design-Build Engineer or CSCU Director, as applicable, shall review and either approve or provide written comment on the Operator's submission no later than 14 days after the day of submission by the Operator to the Design-Build Engineer or CSCU Director.
- b. If the Design-Build Engineer or CSCU Director, as applicable, fails to approve or refuses to approve the Operator's submission in accordance with Section 4.3(1), the Operator shall notify the Owner in writing that it has not received a response to its submission.
- c. If the Design-Build Engineer or CSCU Director, as applicable, fails to respond to the Operator's written notification pursuant to Section 4.3(2) within 14 days after the receipt by the Design-Build Engineer or CSCU Director, as applicable, of the Operator's written notification, the Operator's submission shall be deemed to be approved.

## ARTICLE 12 - CONTRACT PRICE AND PAYMENT

### 12.1 Contract Price

- a. The Owner hereby agrees to pay to the Operator the Contract Price, in consideration of the performance by the Operator of its obligations hereunder, as specified in the Bidder's Price Schedules set out in the Bidder or such other sums as may be determined in accordance with the terms and conditions of the Contract.
- b. The Contract Price shall consist of,
  - i. a lump sum in respect of the Design-Build Services; and
  - ii. a monthly unit rate in respect of the Operations Services, not subject to any alteration, except in the event of a Change to the Design-Build Services in accordance with Section 17.1 or a change to the Operations Services in accordance with Section 17.2 or as otherwise provided in the Contract Price Adjustment Formula set out in Schedule 6.
- c. Subject to Section 16.7, the Operator shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract, including all costs and expenses for the design and building of the New *INFRASTRUCTURE / FACILITY* and the operation of the New *INFRASTRUCTURE / FACILITY* [ *and the Existing INFRASTRUCTURE / FACILITY*].

### 12.2 Payment during the Design-Build Period

- a. In respect of the amount for Design-Build Services set out in Appendix 1, the Owner shall make the following payments subject to this Section 12.3:
  - i. 10 per cent of the Design-Build Price as an advance payment against receipt of an irrevocable advance payment security for the equivalent amount made out in favour of the Owner;
  - ii. 80 per cent of the Design-Build Price paid in monthly amounts equal to the percentage of the Design-Build Services that the Design-Build Engineer indicates in the Design-Build Engineer's Statement were completed or supplied, as applicable, in the preceding month, no later than 30 days after receipt of the applicable Design-Build Engineer's Statement by the Owner;
  - iii. 5 per cent of the Design-Build Price upon issue of the Completion Certificate, no later than 45 days after the Completion Certificate is issued; and
  - iv. 5 per cent of the total Design-Build Price no later than 45 days after the expiry of the Defect Liability Period.
- a. The amounts to be paid to the Operator during the Design-Build Period in accordance with Section 12.3(a) shall include all costs and expenses of the Operator in building the New *INFRASTRUCTURE / FACILITY* and providing the Design-Build Services, including all costs and expenses relating to the Plant and Equipment.

### 12.3 Holdback

The Owner shall deduct from each payment to the Operator pursuant to Section 12.3(a)(i), (ii) and (iii) a holdback in the amount of 10 per cent of each payment to the Operator. The Owner shall pay the amounts held back pursuant to this Section 12.3 in accordance with the following procedure:

- a. 50 per cent of the amount held back shall be paid to the Operator no later than 45 days after the issuance of the Completion Certificate; and
- b. 50 per cent of the amount held back shall be paid to the Operator no later than 45 days after the expiry of the Defect Liability Period.

### 12.4 Payment during the Operation Period

In respect of the amount for Operations Services, after the Operations Starting Date, the Owner shall pay the Operator equal monthly payments, equal to the monthly amount set out Appendix 1 (Operator's Bid) (the "Monthly Operations Payment").

### 12.5 Payment Procedures

The procedures to be followed in applying for certification and making payments shall be as follows:

- a. During the Design-Build Period, payment shall be dealt with in accordance with this Section 12.5, and
- b. During the Operations Period, the Operator shall deliver an invoice no later than 15 days after the end of the 30 day period to which the invoice applies. If the End Date falls on a date that makes the Operator's last period of operation less than 30 days, the Operator shall submit an invoice that prorates the Monthly Operations Payment based on the number of days that the Operations Services were provided in the final period of operations.
- c. The Contract Price shall be paid as specified in the corresponding Terms and Procedures of Payment Appendix to the Contract Agreement. The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix.
- d. No payment made by the Owner herein shall be deemed to constitute acceptance by the Owner of the New *INFRASTRUCTURE / FACILITY* or any part thereof.
- e. In the event that the Owner fails to make any payment by its respective due date or within the period set forth in the Contract, the Owner shall pay to the Operator interest on the amount of such delayed payment at [##]% pa for each day of delay until payment has been made in full, whether before or after judgment or arbitration award.
- f. The currency or currencies in which payments are made to the Operator under this Contract shall be [## currency], subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Operator's Bid.

## 12.6 Performance Incentive Compensation

If the Owner intends to pay the Operator performance incentive compensation, the Owner will pay such compensation at the end of the New Operations Period *[and in accordance with the Performance Incentive Compensation Appendix]*.

## 12.7 Liquidated Damages - Operations

The Operator shall pay the Owner liquidated damages for failure to meet Technical Specifications as set out in the Liquidated Damages - Operations in Schedule 5.

## 12.8 Securities

### 12.8.1 Performance Security

- a. The Operator and, if applicable, its Parent and Shareholders shall each provide a security for the Operator's proper performance of the Contract to the Owner no later than the date specified in the Bidding Documents (the "Performance Security").
- b. The Performance Security shall be, in the amount of [##] percent of the total of,
  - i. the Design-Build Price; and
  - ii. the Monthly Operations Payment times the estimated number of months in the New Operations Period.
- c. The Performance Security shall be:
  - i. denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Owner; and
  - ii. shall be in the form specified in the Bidding Documents or in another form approved by the Owner.
- d. The Performance Security is a bank guarantee and shall be issued by either,
  - i. a bank or insurance company located in the Country; or
  - ii. a foreign bank or insurance company through a correspondent bank or insurance company located in the Country.
- e. The Performance Security shall be valid until 180 days after the End Date, or any extension to the End Date.
- f. The Owner shall return the Performance Security no later than 14 days after its expiration.
- g. The cost of complying with this Section 12.8.1 shall be borne by the Operator.

### 12.8.2 Advance Payment Security

- a. The Operator shall provide a security in an amount equal to the advance payment calculated in accordance with the Terms and Procedures of Payment Appendix and in the same currency or currencies.



- b. The advance payment security shall be in the form provided in the Bidding Documents or in another form approved by the Owner. The amount of the advance payment security may be progressively reduced as provided for in the Terms and Procedures of Payment Appendix. The advance payment security shall be returned to the Operator immediately after its expiration.

## **12.9 Taxes and Duties**

- a. Except as otherwise specifically provided in the Contract, the Operator shall bear and pay all taxes, duties, levies and charges (the “Taxes”) assessed on the Operator, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Services in and outside of the Country.
- b. If any tax exemptions, reductions, allowances or privileges may be available to the Operator in the Country, the Owner shall use reasonable efforts to enable the Operator to benefit from any such tax savings to the maximum allowable extent.
- c. For the purpose of the Contract, it is agreed that the Contract Price specified in the Contract is based on the Taxes prevailing 30 days prior to the Submission Deadline in the Country. It is also agreed that the Contract Price does not take into account any tax exemptions, reductions, allowances or privileges that may be available to the Operator in the Country. If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, a tax exemption, reduction, allowance of privilege applies or is granted or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Operator, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with Section 16.10.

# **ARTICLE 13 - INTELLECTUAL PROPERTY - DESIGN-BUILD DOCUMENTS**

## **13.1 Intellectual Property - Design-Build Documents**

- a. As between the Parties, the Operator shall retain the copyright and other Intellectual Property Rights in the Design-Build Documents made by or on behalf of the Operator.
- b. The Operator shall be deemed, by signing the Contract, to give the Owner a non-terminable, transferable, non-exclusive, royalty-free licence to copy, use and communicate the Design-Build Documents, including making and using modifications of them. This licence shall,
  - i. apply throughout the actual or intended working life, whichever is longer, of the relevant parts of the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY*;

- ii. entitle any person in proper possession of the relevant part of the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY* to copy, use and communicate the Design-Build Documents for the purposes of completing, managing, operating, maintaining, altering, adjusting, repairing and demolishing the Existing *INFRASTRUCTURE / FACILITY* or the New *INFRASTRUCTURE / FACILITY*;
  - iii. in the case of Design-Build Documents which are in the form of computer programs and other software, permit their use on any computer on the Site, Existing *INFRASTRUCTURE / FACILITY* or at the New *INFRASTRUCTURE / FACILITY* and other places as envisaged by the Contract, including replacements of any computers supplied by the Operator; and
  - iv. entitle the Owner to make the Design-Build Documents available for inspection by a prospective bidder who may be involved in the process to select a Subsequent Operator.
- c. The Owner shall not, without the Operator's consent, use, copy or communicate the Design-Build Documents to a Third Party by, or on behalf of, the Owner for purposes other than those permitted under Section 13.1(b).

## 13.2 Confidentiality

- a. The Operator shall keep confidential and shall not, without the written consent of the Owner, divulge to any Third Party any documents, data or other information arising directly or indirectly from the performance of Services under the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding this Section 13.2(a), the Operator may furnish to its Subcontractors such documents, data and other information to the extent required for the Subcontractors to perform their work under the Contract, in which event the Operator shall obtain from such Subcontractors an undertaking of confidentiality similar to that imposed on the Operator under this Section 13.2(a).
- b. The Operator shall not use such documents, data and other information received from the Owner for any purpose other than the Services as are required for the performance of the Contract. The Operator shall not publish, permit to be published, or disclose any particulars of the Services, Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY* in any trade or technical paper or advertising materials without the prior written consent of the Owner.
- c. The obligations of the Operator under Sections 13.2(a) and 13.2(b), shall not apply to that information which,
  - i. now or hereafter enters the public domain through no fault of the Operator;
  - ii. can be proven to have been possessed by the Operator at the time of disclosure and which was not previously obtained, directly or indirectly, from the Owner; or
  - iii. otherwise lawfully becomes available to the Operator from a Third Party that has no obligation of confidentiality.

# ARTICLE 14 - CONTRACT ADMINISTRATION AND SUPERVISION

## 14.1 General

The Parties acknowledge that two separate approaches to contract administration and supervision will be in place during the Contract Term as follows:

- a. from the Effective Date until the New Operations Starting Date, the Design-Build Supervision approach will be put in place by the Owner; and
- b. from the New Operations Starting Date until the End Date, the Operations Supervision approach will be put in place by the Owner.

## 14.2 Design-Build Supervision

### 14.2.1 Supervision During the Design-Build Period

Section 14.2 shall apply only during the Design-Build Period.

### 14.2.2 Design-Build Engineer's Duties and Authority (Design-Build Period)

- a. The Owner shall appoint the Design-Build Engineer who shall be responsible for day to day contract management and supervision during the Design-Build Period. The Design-Build Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.
- b. The Design-Build Engineer shall have no authority to amend the Contract.
- c. Except as specifically provided otherwise in the Contract, the Design-Build Engineer may exercise the authority attributable to the Design-Build Engineer as specified in or necessarily to be implied from the Contract. The Owner undertakes not to impose further constraints on the Design-Build Engineer's authority, except as agreed with the Operator.
- d. The Design-Build Engineer is obligated to obtain the approval of the Owner before exercising the following authorities: *[## Insert list of circumstances when the Owner's approval is required, for example:]*
  - i. [approving assignment of the Contract, or any part thereof, under Section 1.9;]
  - ii. [determining an extension of the Time for Completion under Section 2.2.4;]
  - iii. [certifying additional costs determined under Sections 1.111(g) or 16.7; and]
  - iv. [issuing a Change Order under Section 17.1.2, except:
    - A. in an emergency situation, as reasonably determined by the Design-Build Engineer; or
    - B. if such Change Order would increase the Contract Price by less than 1%.]

- e. If the Design-Build Engineer exercises a specified authority for which the Owner's approval is required then, for the purposes of the Contract, the Owner shall be deemed to have given approval.
- f. Except as otherwise stated in the Contract,
  - i. if the Design-Build Engineer carries out duties or exercises authority, specified in or implied by the Contract, the Design-Build Engineer shall be deemed to act for the Owner;
  - ii. the Design-Build Engineer has no authority to relieve any Party of any duties, obligations or responsibilities under the Contract; and
  - iii. any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the Design-Build Engineer, including absence of disapproval, shall not relieve the Operator from any responsibility it has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances.

#### 14.2.3 Delegation by the Design-Build Engineer

- a. The Design-Build Engineer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, or independent inspectors appointed to inspect or test items of Plant or Equipment. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. Unless otherwise agreed by both Parties, the Design-Build Engineer shall not delegate the authority to determine any matter in accordance with Section 14.2.6.
- b. Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Section 1.5.1.
- c. Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Operator to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Design-Build Engineer. However,
  - i. any failure to disapprove any work or Plant and Equipment shall not constitute approval, and shall therefore not prejudice the right of the Design-Build Engineer to reject the work or the Plant and Equipment; and
  - ii. if the Operator questions any determination or instruction of an assistant, the Operator may refer the matter to the Design-Build Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

#### 14.2.4 Instructions of the Design-Build Engineer

- a. The Design-Build Engineer may issue to the Operator, at any time during the Design-Build Period, instructions which may be necessary for the execution of the Design-Build Services and the remedying of any defects, all in accordance with the Contract. The Operator shall only take instructions from the Design-Build Engineer,

or from an assistant to whom the appropriate authority has been delegated under Section 14.2.3. If an instruction constitutes a Change, Section 17.1 shall apply.

- b. The Operator shall comply with the instructions given by the Design-Build Engineer or delegated assistant, on any matter related to the Contract. These instructions shall be given in writing.

#### **14.2.5 Replacement of the Design-Build Engineer**

If the Owner intends to replace the Design-Build Engineer, the Owner shall, not less than 42 days before the intended date of replacement, give notice to the Operator of the name, address and relevant experience of the intended replacement Design-Build Engineer. The Owner shall not replace the Design-Build Engineer with a person against whom the Operator raises reasonable objection by notice to the Owner, with supporting particulars.

#### **14.2.6 Determinations by the Design-Build Engineer**

- a. Whenever the Contract provides that the Design-Build Engineer shall proceed in accordance with this Section 14.2.6 to agree or determine any matter, the Design-Build Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Design-Build Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.
- b. The Design-Build Engineer shall give notice to the Parties of each agreement or determination, with supporting particulars.

### **14.3 Operations Supervision**

#### **14.3.1 Supervision During the New Operations Period**

This Section 14.3 shall apply only during the New Operations Period and the period of time immediately after the End Date solely for the purpose of resolving transition issues and any outstanding issues arising during the New Operations Period.

#### **14.3.2 Operations - CSCU's Duties and Authority**

- a. The Owner shall appoint a Contract Supervision and Coordination Unit (the "CSCU") which shall carry out the duties assigned to it in the Contract. The CSCU's staff shall include suitably qualified professionals who are competent to carry out these duties.
- b. The Owner shall appoint a CSCU Director (the "CSCU Director") who shall be primarily responsible for the activities of the CSCU.
- c. The CSCU shall have no authority to amend the Contract.
- d. The CSCU may exercise the authority attributable to the CSCU as specified in or necessarily to be implied from the Contract. The Owner undertakes not to impose further constraints on the CSCU's authority, except as agreed with the Operator.
- e. The CSCU is required to obtain the approval of the Owner before exercising the following authorities: *[[[ Insert list of circumstances when the Owner's approval is required, for example:]]]*

- i. [approving assignment of the Contract, or any part thereof, under Section 1.9;]
- ii. [determining an extension of the Time for Completion under Section 2.2.4;]
- iii. [certifying additional costs determined under Sections 111(g) or 16.7; and]
- iv. [issuing a Change Order under Section 17.1.2, except:
  - A. in an emergency situation, as reasonably determined by the Design-Build Engineer; or
  - B. if such Change Order would increase the Contract Price by less than 1%.]
- f. If the CSCU exercises a specified authority for which the Owner's approval is required, then for the purposes of the Contract the Owner shall be deemed to have given approval.
- g. Except as otherwise stated in these Contract,
  - i. whenever carrying out duties or exercising authority, specified in or implied by the Contract, the CSCU shall be deemed to act for the Owner;
  - ii. the CSCU has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract; and
  - iii. any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the CSCU, including absence of disapproval shall not relieve the Operator from any responsibility it has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances.

#### 14.3.3 Operations - Delegation by the CSCU

- a. The CSCU Director may from time to time assign duties and delegate authority to CSCU assistants, and may also revoke such assignment or delegation. Unless otherwise specified by the CSCU in writing, all instructions, approvals, certificates, consents, notices, requests or similar acts of the CSCU shall be issued by the CSCU Director. The CSCU Director shall not delegate the authority to determine any matter in accordance with Section 14.3.6.
- b. Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in [English].
- c. Each assistant, to whom duties have been assigned or authority has been delegated shall only be authorised to issue instructions to the Operator to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the CSCU. However,
  - i. any failure to disapprove any work shall not constitute approval, and shall therefore not prejudice the right of the CSCU Director to reject the work; and

- ii. if the Operator questions any determination or instruction of an assistant, the Operator may refer the matter to the CSCU Director, who shall promptly confirm, reverse or vary the determination or instruction.

#### 14.3.4 Instructions of the CSCU

- a. The CSCU, through the CSCU Director, may issue to the Operator, at any time, instructions which may be necessary for the execution of the Operations Services and the remedying of any defects, all in accordance with the Contract. The Operator shall only take instructions from the CSCU, or from an assistant to whom the appropriate authority has been delegated under Section 14.3.3.
- b. The Operator shall comply with the instructions given by the CSCU Director, or delegated assistant, on any matter related to the Contract. These instructions shall be given in writing.

#### 14.3.5 Change in the CSCU

- a. The Owner may, in its sole discretion, change the members of the CSCU. If the Owner intends to change the CSCU Director, it shall give the Operator 30 days prior notice of the change.

#### 14.3.6 Determinations by the CSCU

- a. Whenever these Contract provide that the CSCU shall proceed in accordance with this Section 14.3.6 to agree or determine any matter, the CSCU Director shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the CSCU Director shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.
- b. The CSCU shall give notice to both Parties of each agreement or determination, with supporting particulars.

## ARTICLE 15 - REPRESENTATIVES, STAFF AND SUBCONTRACTING

### 15.1 **Representatives**

#### 15.1.1 Owner's Representative

- a. The Owner's representative (the "Owner's Representative") shall be as follows:
  - i. during the Design-Build Period, the Owner's Representative shall be the Design-Build Engineer; and
  - ii. during the New Operations Period, the Owner's Representative shall be the CSCU Director.
- b. The Owner shall name its representative,
  - i. no later than 14 days after the Effective Date for the Design-Build Engineer; and
  - ii. no later than 14 days after the Completion of the New *INFRASTRUCTURE / FACILITY* for the CSCU Director.

- c. The Owner may change its representative from time to time and shall give notice of the change without delay. The Owner shall not change its representative at a time and in such a manner as to impede the progress of either the Design-Build Services or the Operations Services.
- d. The Owner's Representative shall represent and act for the Owner at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract by the Owner shall be given by the Design-Build Engineer or the CSCU Director, as applicable, except as herein otherwise provided.
- e. All notices, instructions, information and other communications given by the Operator to the Owner under the Contract shall be given to the Design-Build Engineer or CSCU Director, as applicable, except as herein otherwise provided.

#### 15.1.2 Operator's Representative

- a. The Operator shall name its representative (the "Operator's Representative") no later than 14 days after the Effective Date and shall request the Owner to approve the proposed Operator's Representative. If the Owner makes no objection to the proposed Operator's Representative, the Operator's Representative shall be deemed to have been approved.
- b. If the Owner objects to the proposed Operator's Representative before the expiration of 14 days after the proposal, the Operator shall propose a replacement no later than 14 days after receiving the Owner's objection and reasons for the objection and Section 15.1.2(a) shall apply to the proposed replacement.
- c. The Operator's Representative shall represent and act for the Operator at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract by the Operator shall be given by the Operator's Representative, except as herein otherwise provided.
- d. All notices, instructions, information, and other communications given by the Owner to the Operator under the Contract shall be given to the Operator's Representative as established pursuant to this Section 15.1.2.
- e. The Operator shall not revoke the appointment of the Operator's Representative without the Owner's prior written consent, which shall not be unreasonably withheld. If the Owner consents thereto, the Operator shall appoint some other person as the Operator's Representative, pursuant to the procedure set out in this Section 15.1.2.
- f. The Operator's Representative may, subject to the approval of the Owner, which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Operator's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Owner and the Design-Build Engineer or CSCU Director, as applicable.



- g. Any act or exercise by any person of powers, functions and authorities so delegated in accordance with Section 15.1.2(f) shall be deemed to be an act or exercise by the Operator's Representative.

## 15.2 Operator's Superintendence

- a. Throughout the term of the Contract, the Operator shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Services.
- b. Superintendence shall be given by a sufficient number of persons having adequate knowledge of [English] and of the operations to be carried out, including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents, for the satisfactory and safe execution of the Services.
- c. The Operator's Representative shall appoint a suitable person as construction or operations manager as applicable (the "Manager"). The Manager shall supervise all work done at the Site, Existing *INFRASTRUCTURE / FACILITY* and New *INFRASTRUCTURE / FACILITY* by the Operator and shall be present at the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY* through normal working hours except when on leave, sick or absence connected with the proper performance of the Contract. Whenever the Manager is absent from the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY*, a suitable person shall be appointed to act as his or her deputy.

## 15.3 Operator's Personnel

- a. The Operator shall provide and employ on the Site for the performance of the Services such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract (the "Operator's Personnel"). The Operator is encouraged to use local labour that has the necessary skills. The Operator shall provide all expertise needed to carry out the Services including the expertise listed in the Operator's Bid.
- b. Unless otherwise provided in the Contract, the Operator shall be responsible for the recruitment, employment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.
- c. The Operator shall be responsible for obtaining all necessary permits and visas from the appropriate authorities for the entry of all labour and personnel to be employed on the Site into the Country.
- d. The Operator shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to their various home countries. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Operator defaults in providing such means of transportation and temporary maintenance, the Owner may provide the same to such personnel and recover the cost of doing so from the Operator.

- e. The Operator shall at all times during the progress of the Contract use its best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees and the labour of its Subcontractors.
- f. The Operator shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognised festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labour.

## **15.4 Replacement of Operator's Personnel**

The Design-Build Engineer or the CSCU Director, as applicable, may require the Operator to remove and replace any member of the Operator's Personnel who,

- a. persists in any misconduct or lack of care;
- b. carries out duties incompetently or negligently;
- c. fails to comply with any provision of the Contract; or
- d. persists in any conduct which gives the Owner reasonable cause to be dissatisfied with him or her.

## **15.5 [Existing Staff]**

If the Operator is obliged to retain staff employed by the Owner, it shall do so in accordance with the Existing Staff Appendix.

## **15.6 Subcontractors**

- a. The Operator shall not enter into any contract or contracts that will result in the Operator exceeding the maximum percentage of subcontracting permitted by the Owner in respect of the DesignBuild Services and the Operations Services, as set out in the Bidding Documents.
- b. Except with respect to the Subcontractors named in the Operator's Bid, the Operator shall not enter into a contract with any Subcontractor without the prior consent of the Owner.
- c. The Operator shall be responsible for the observance by Subcontractors of the terms and conditions of the Contract and shall ensure that all relevant terms of the Contract are included in the Operator's contracts with Subcontractors.
- d. Subcontracting by the Operator shall not relieve the Operator of any of its obligations under the Contract and the Operator shall be responsible for the acts, omissions and defaults of all Subcontractors, and the Subcontractors, employees, agents and sub-subcontractors, as fully as if they were acts, omissions or defaults of the Operator or the Operator's Personnel.

## ARTICLE 16 - LIABILITY AND RISK DISTRIBUTION

### 16.1 Defect Liability

- a. The Operator warrants that the Site and New *INFRASTRUCTURE / FACILITY* or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant and Equipment supplied and of the work executed.
- b. The Defect Liability Period shall be 18 months after the date of Completion of the New *INFRASTRUCTURE / FACILITY* or 12 months from the date of Operational Acceptance of the New *INFRASTRUCTURE / FACILITY*, whichever first occurs.
- c. If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Site, New *INFRASTRUCTURE / FACILITY* or Plant and Equipment supplied or of the work executed by the Operator, the Operator shall promptly, in consultation and agreement with the Owner regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good, as the Operator shall, at its discretion, determine, such defect as well as any damage to the New *INFRASTRUCTURE / FACILITY* caused by such defect. The Operator shall not be responsible for the repair, replacement or making good of any defect or of any damage to the New *INFRASTRUCTURE / FACILITY* arising out of or resulting from normal wear and tear.
- d. The Operator's obligations under this Section 16.1 shall not apply to,
  - i. any designs, specifications or other data designed, supplied or specified by or on behalf of the Owner; and
  - ii. any other materials supplied or any other work executed by or on behalf of the Owner, except for the work executed by the Owner under Section 16.1(j).
- e. The Owner shall give the Operator a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Owner shall give all reasonable opportunity for the Operator to inspect any such defect.
- f. The Owner shall give the Operator all necessary access to the New *INFRASTRUCTURE / FACILITY* and the Site to enable the Operator to perform its obligations under this Section 16.1.
- g. The Operator may, with the consent of the Owner, remove from the Site any Plant and Equipment, Operator's Equipment (Design-Build) and Operator's Equipment (Operations) or any part of the New *INFRASTRUCTURE / FACILITY* that are defective if the nature of the defect, or any damage to the New *INFRASTRUCTURE / FACILITY* caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.
- h. If the repair, replacement or making good is of such a character that it may affect the efficiency of the New *INFRASTRUCTURE / FACILITY* or any part thereof, the Owner may give to the Operator a notice requiring that tests of the defective part of the New *INFRASTRUCTURE / FACILITY* shall be made by the Operator immediately upon completion of such remedial work, whereupon the Operator shall carry out such tests.

- i. If such part fails the tests, the Operator shall carry out further repair, replacement or making good, as the case may be, until that part of the New *INFRASTRUCTURE / FACILITY* passes such tests. The tests shall be agreed upon by the Owner and the Operator.
- j. If the Operator fails to commence the work necessary to remedy such defect or any damage to the New *INFRASTRUCTURE / FACILITY* caused by such defect within a reasonable time, which shall in no event be considered to be less than 15 days, the Owner may, following notice to the Operator, proceed to do such work, and the reasonable costs incurred by the Owner in connection therewith shall be paid to the Owner by the Operator or may be deducted by the Owner from any monies due the Operator or claimed under the Performance Security.
- k. If the New *INFRASTRUCTURE / FACILITY* or any part thereof cannot be used by reason of such defect or making good of such defect, the Defect Liability Period of the New *INFRASTRUCTURE / FACILITY* or such part, as the case may be, shall be extended by a period equal to the period during which the New *INFRASTRUCTURE / FACILITY* or such part cannot be used by the Owner because of any of the aforesaid reasons.
- l. Except as provided in Sections 16.1 and 16.5, the Operator shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the New *INFRASTRUCTURE / FACILITY* or any part thereof, the Plant and Equipment, design or engineering or work executed that appear after Completion of the Site, the New *INFRASTRUCTURE / FACILITY* or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or wilful action of the Operator.

## 16.2 Limitation of Liability

Except in cases of criminal negligence or wilful misconduct,

- a. the Operator shall not be liable to the Owner in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits of interest costs, provided that this exclusion shall not apply to any obligation of the Operator to pay liquidated damages to the Owner; and
- b. the aggregate liability of the Operator to the Owner, whether under the Contract, in tort or otherwise, shall not exceed the aggregate of the total Contract Price (including the Monthly Operations Payment times the original estimate of months during the New Operations Period) and the total available Performance Incentive Compensation, provided that this limitation shall not apply to any obligation of the Operator to indemnify the Owner with respect to patent infringement.

## 16.3 Transfer of Ownership and Existing Equipment and Materials

### 16.3.1 Transfer of Ownership

- a. Ownership of the Plant and Equipment, including spare parts, to be imported into the Country shall be transferred to the Owner upon delivery at the Site.

- b. Ownership of the Plant and Equipment procured in the Country shall be transferred to the Owner when the Plant and Equipment are brought on to the Site.
- c. Ownership of any Plant and Equipment in excess of the requirements of the New *INFRASTRUCTURE / FACILITY* shall revert to the Operator upon Completion of the New *INFRASTRUCTURE / FACILITY* or such earlier time if the Owner and the Operator agree that the Plant and Equipment in question are no longer required for the New *INFRASTRUCTURE / FACILITY*.
- d. Subject to Section 16.3.1(e), ownership of the Operator's Equipment (Design-Build) and Operator's Equipment (Operations), including spare parts, shall remain with the Operator or its Subcontractors.
- e. The Owner may, in its sole discretion, purchase as of the End Date any of the Operator's Equipment (Operations), including spare parts, at the fair market value of such Operator's Equipment (Operations) as determined by an independent valuator and the Operator shall transfer ownership and possession of such Operator's Equipment (Operations) to the Owner as of the End Date.
- f. Notwithstanding the transfer of ownership of the Plant and Equipment, the responsibility for care and custody of the Plant and Equipment, Operator's Equipment (Design-Build) and Operator's Equipment (Operations), together with the risk of loss or damage thereto, shall remain with the Operator pursuant to Section 16.4 until the End Date.

#### **16.3.2 Existing Equipment and Materials**

- a. The Owner shall transfer the care, control and responsibility for all existing equipment, materials, supplies and consumables, if any, used to operate and maintain the Existing *INFRASTRUCTURE / FACILITY* (the "Existing Equipment and Materials") to the Operator on the Design-Build Starting Date at no cost to the Operator.
- b. The Operator shall, no later than 15 days after the Design-Build Starting Date prepare a list of the Existing Equipment and Materials and submit it to the Owner for its review and approval. The Operator shall update the list of Existing Equipment and Materials annually and submit it to the Owner for its review and approval.
- c. The Operator shall return all Existing Equipment and Materials on the list, as updated, to the Owner on the End Date in the same condition as they were transferred to the Operator, except for reasonable wear and tear and at no cost to the Owner.

#### **16.4 Care of the Site and New *INFRASTRUCTURE / FACILITY***

- a. Except as provided in Sections 16.9 and 16.4(2), the Operator shall be responsible for the care and custody of the Site, Existing *INFRASTRUCTURE / FACILITY* and New *INFRASTRUCTURE / FACILITY* or any part thereof until the End Date and shall make good at its own cost any loss or damage that may occur to the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY* from any cause whatsoever during such period. The Operator shall also be responsible for any loss

or damage to the Site, Existing Facility or New Facility caused by the Operator or its Subcontractors in the course of any work carried out, pursuant to Section 16.1.

- b. If any loss or damage occurs to the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY* or any part thereof by reason of,
  - i. insofar as they relate to the Country, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor or operator could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks, taken out under Section 16.6;
  - ii. any use or occupation by the Owner or any Third Party, other than a Subcontractor, authorised by the Owner of any part of the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY*; or
  - iii. any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Owner, or any such matter for which the Operator has disclaimed responsibility herein,

the Owner shall pay to the Operator all sums payable in respect of the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY* executed, notwithstanding that the same be lost, destroyed or damaged. If the Owner requests the Operator in writing to make good any loss or damage to the Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY* thereby occasioned, the Operator shall make good the same at the cost of the Owner in accordance with Section 10.1. If the Owner does not request the Operator in writing to make good any loss or damage to the New *INFRASTRUCTURE / FACILITY* thereby occasioned, the Owner shall either request a change in accordance with Section 17.1, excluding the performance of that part of the New *INFRASTRUCTURE / FACILITY* thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the New *INFRASTRUCTURE / FACILITY*, the Owner shall terminate the Contract pursuant to Section 18.2.1.

- c. The Operator shall be liable for any loss of or damage to any Operator's Equipment (Design-Build), Operator's Equipment (Operations) or any other property of the Operator used or intended to be used for purposes of the Site, Existing *INFRASTRUCTURE / FACILITY* or the New *INFRASTRUCTURE / FACILITY*, except where such loss or damage arises by reason of any of the matters specified in Sections 16.4(b)(ii) and 16.9.
- d. With respect to any loss or damage caused to the New *INFRASTRUCTURE / FACILITY* or any part thereof, the Operator's Equipment (Design-Build) or the Operator's Equipment (Operations) by reason of any of the matters specified in Section 16.9(a), the provisions of Section 16.9(c) shall apply.

## 16.5 Indemnification

- a. Subject to Section 16.5(e), the Operator shall indemnify and hold harmless the Owner and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property, arising in connection with the Operator's performance of the Services and by reason of the negligence of the Operator or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Owner, its contractors, employees, officers or agents.
- b. If any proceedings are brought or any claim is made against the Owner that might subject the Operator to liability under Section 16.5(a), the Owner shall promptly give the Operator a notice thereof and the Operator may at its own expense and in the Owner's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- c. If the Operator fails to notify the Owner prior to the expiration of 30 days after receipt of a notice given pursuant to Section 16.5(b) that it intends to conduct any such proceedings or claim, then the Owner shall be free to conduct the same on its own behalf. Unless the Operator has so failed to notify the Owner within the 30 day period, the Owner shall make no admission that may be prejudicial to the defense of any such proceedings or claim.
- d. The Owner shall, at the Operator's request, provide all available assistance to the Operator in conducting such proceedings or claim, and shall be reimbursed by the Operator for all reasonable expenses incurred in so doing.
- e. The Party entitled to the benefit of an indemnity under this Section 16.5 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

## 16.6 Insurance

- a. To the extent specified in Schedule 8 (Insurance), the Operator shall, at its own expense, take out and maintain in effect or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in Schedule 8. The identity of the insurers and the form of the policies shall be subject to the prior approval of the Owner who shall not unreasonably withhold such approval. The Operator shall submit appropriate certificates of insurance demonstrating that the Operator has met its obligations pursuant to this Section 16.6 to the Owner no later than the Effective Date.
  - i. Cargo Insurance During Transport - Covering loss or damage, occurring while in transit from the Operator's or Subcontractor's works or stores until arrival at the Site, to the Plant and Equipment, Operator's Equipment (Design-Build) and Operator's Equipment (Operations), including spare parts therefor;

- ii. Installation All Risks Insurance - Covering physical loss or damage to the New *INFRASTRUCTURE / FACILITY* at the Site occurring prior to the Completion of the New *INFRASTRUCTURE / FACILITY*, with an extended maintenance coverage for the Operator's liability in respect of any loss or damage occurring during the Defect Liability Period while the Operator is on the Site for the purpose of performing its obligations during the Defect Liability Period;
  - iii. Third Party Liability Insurance - Covering bodily injury or death suffered by Third Parties, including the Owner's personnel, and loss of or damage to property occurring in connection with the Services;
  - iv. Professional Liability Insurance - Covering loss or damage by reason of professional negligence in the design, construction and operation of the Site and New *INFRASTRUCTURE / FACILITY*;
  - v. Automobile Liability Insurance - Covering use of all vehicles used by the Operator or its Subcontractors, whether or not owned by them, in connection with the Services and execution of the Contract;
  - vi. Workers' Compensation - In accordance with the requirements of the Applicable Law;
  - vii. Employer's Liability - In accordance with the requirements of the Applicable Law; and
  - viii. Other Insurance - Such other insurance as may be set out in Schedule 8.
- b. The Owner shall be named as co-insured under all insurance policies taken out by the Operator pursuant to Section 16.6(a), except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Operator's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Operator pursuant to Section 16.6(a), except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.
  - c. The Operator shall deliver to the Owner certificates of insurance, or copies of the insurance policies, as evidence that the required policies are in full force and effect. The certificates shall provide that no less than 21 days notice shall be given to the Owner by insurers prior to cancellation or material modification of a policy.
  - d. The Operator shall ensure that, where applicable, the Subcontractors take out and maintain in effect adequate insurance policies for their employees and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Operator.
  - e. If the Operator fails to take out or maintain in effect the insurances referred to in Section 16.6(a), the Owner may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Operator under the Contract any premium that the Owner shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Operator.
  - f. Unless otherwise provided in the Contract, the Operator shall prepare and conduct all and any claims made under the policies effected by it pursuant to this Section



16.6, and all monies payable by any insurers shall be paid to the Operator. The Owner shall give to the Operator all such reasonable assistance as may be required by the Operator. With respect to insurance claims in which the Owner's interest is involved, the Operator shall not give any release or make any compromise with the insurer without the prior consent of the Owner. The Operator must also assist the Owner should the Owner make insurance claims.

- g. When each insurance premium has been paid, the Operator shall submit a copy of receipts to the Owner and shall notify the Owner's Representative that it has done so.
- h. The Operator shall comply with the conditions stipulated in each of the insurance policies. The Operator shall make no material alteration to the terms of any insurance without the prior approval of the Owner. If an insurer makes, or purports to make, any such alteration, the Operator shall notify the Owner immediately.
- i. Nothing in this Section 16.6 limits the obligations, liabilities or responsibilities of the Operator, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Operator.

## **16.7 Unforeseeable Physical Conditions**

- a. In this Section 16.7, "physical conditions" means natural physical conditions and manmade and other physical obstructions and pollutants, which the Operator encounters at the Site when performing of the Design-Build Services, including sub-surface and hydrological conditions but excluding climatic conditions.
- b. If the Operator encounters adverse physical conditions which it considers to have been Unforeseeable, the Operator shall give notice to the Design-Build Engineer as soon as practicable.
- c. The Operator's Notice pursuant to Section 16.7(b) shall describe the physical conditions, so that they can be inspected by the Design-Build Engineer, and shall set out the reasons why the Operator considers them to be Unforeseeable. The Operator shall continue performing the Design-Build Services, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Design-Build Engineer may give. If an instruction constitutes a Change Section 17.1.3 shall apply.
- d. If and to the extent that the Operator encounters physical conditions which are Unforeseeable, gives the notice required by Section 16.7(b), and suffers delay or incurs Cost due to these conditions, the Operator shall be entitled subject to Section 1.11 to,
  - i. an extension of time for any such delay, if completion is or will be delayed, under Section 2.2.4; and
  - ii. payment of any such Cost, which shall be included in the Contract Price.
- e. After receiving such notice and inspecting or investigating these physical conditions, the Design-Build Engineer shall proceed in accordance with Section 14.2.6 to agree or determine,

- i. whether and to what extent these physical conditions were Unforeseeable; and
  - ii. the amount of delay or Cost, if any, pursuant to Section 16.7(d).
- f. Before additional Cost is finally agreed or determined under Section 16.7(e), the DesignBuild Engineer, pursuant to Section 14.2.6, may also review whether other physical conditions were more favourable than could reasonably have been foreseen when the Operator submitted the Bid. If and to the extent that these more favourable conditions were encountered, the Design-Build Engineer may proceed in accordance with Section 14.2.6 to agree or determine the reductions in Cost which were due to these conditions, which may be included, as deductions, in the Contract Price. The net effect of all adjustments under Section 16.7(d)(ii) and all these reductions, for all the physical conditions encountered on the Site, shall not result in a net reduction in the Contract Price.
- g. The Design-Build Engineer may take account of any evidence of the physical conditions foreseen by the Operator when submitting the Bid, which may be made available by the Operator, but shall not be bound by any such evidence.

## **16.8 Force Majeure**

- a. “Force Majeure” shall mean any event,
  - i. beyond the reasonable control of the Owner or of the Operator, as the case may be; and
  - ii. which is unavoidable notwithstanding the reasonable care of the Party affected.
- b. Force Majeure shall include the events listed below in this Section 16.8(b) if the conditions set out in this Section 16.8(1)(a) and (b) are satisfied:
  - i. war, hostilities or warlike operations, whether a state of war be declared or not, invasion, act of foreign enemy and civil war;
  - ii. rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts;
  - iii. confiscation, nationalisation, mobilisation, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
  - iv. strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague;
  - v. earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster; and

- vi. shortage of labour, materials or utilities where caused by circumstances that are themselves Force Majeure.
- c. If the Parties are prevented, hindered or delayed from or in performing any of their obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within 14 days after the occurrence of such event.
- d. The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with Section 2.2.4(a) for events of Force Majeure during the Design-Build Period. If the Time for Completion is extended in accordance with Section 2.2.4(a), the End Date shall be extended for a period of time equal to the period of time during which the relevant event of Force Majeure continued.
- e. The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its or their obligations under the Contract, but without prejudice to either Party's right to terminate the Contract under Sections 16.8(g) and 16.9(f).
- f. No delay or non-performance by either Party hereto caused by the occurrence of any event of Force Majeure shall,
  - i. constitute a default or breach of the Contract; or
  - ii. subject to Sections 16.4(b), 16.9(c) and 16.9(e), give rise to any claim for damages or additional Cost occasioned thereby, if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.
- g. If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than 60 days or an aggregate period of more than 120 days on account of one or more events of Force Majeure during the term of the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other, but without prejudice to either Party's right to terminate the Contract under Section 16.9(f).
- h. In the event of termination pursuant to Section 16.8(7), the rights and obligations of the Owner and the Operator shall be as specified in Sections 11.2.1(2) and 11.2.2(1).
- i. Notwithstanding Section 16.8(6), Force Majeure shall not apply to any obligation of the Owner to make payments to the Operator herein.

## **16.9 War Risks**

- a. "War Risks" shall mean any event specified in Section 16.8(2)(a) and (b) and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the Country.

- b. Notwithstanding anything contained in the Contract, the Operator shall have no liability whatsoever for or with respect to,
  - i. destruction of or damage to the Site and Plant and Equipment or any part thereof;
  - ii. destruction of or damage to property of the Owner or any Third Party; or
  - iii. injury or loss of life, if such destruction, damage, injury or loss of life is caused by any War Risks, and the Owner shall indemnify and hold the Operator harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.
- c. If the Site, Existing *INFRASTRUCTURE / FACILITY*, New *INFRASTRUCTURE / FACILITY* or any Plant and Equipment, Operator's Equipment (Design-Build), Operator's Equipment (Operations) or any other property of the Operator used or intended to be used for the purposes of the Services sustains destruction or damage by reason of any War Risks, the Owner shall pay the Operator for,
  - i. any part of the New *INFRASTRUCTURE / FACILITY* so destroyed or damaged, to the extent not already paid for by the Owner;
  - ii. replacing or making good any Operator's Equipment (Design-Build), Operator's Equipment (Operations) or other property of the Operator so destroyed or damaged; and
  - iii. so far as may be required by the Owner, and as may be necessary for completion of the Services, replacing or making good any such destruction or damage to the Site, Existing *INFRASTRUCTURE / FACILITY*, New *INFRASTRUCTURE / FACILITY* or any part thereof.
- d. If the Owner does not require the Operator to replace or make good any such destruction or damage to the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY*, the Owner shall either request a Change in accordance with Section 17.1 excluding the performance of that part of the Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY* thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY*, shall terminate the Contract, pursuant to Section 19.2.1.
- e. Notwithstanding anything contained in the Contract, the Owner shall pay the Operator for any increased Costs that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, if the Operator notifies the Owner in writing of any such increased Cost as soon as practicable.
- f. If, during the term of the Contract, any War Risks occur that financially or otherwise materially affect the execution of the Contract by the Operator, the Operator shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Services. If the execution of the Services becomes impossible or is substantially prevented for a single period of more than 60 days or an aggregate period of more than 120 days on account of any War Risks, the Parties

will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other.

- g. In the event of termination pursuant to Section 16.9(d) or 16.9(f), the rights and obligations of the Owner and the Operator shall be as specified in Section 19.2.1(b) and 19.2.2(a).

## **16.10 Change in Laws and Regulations**

- a. If, after a date which 30 days is prior to the Submission Deadline in the Bidding Documents, in the Country, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed, which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Operator or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, or the Time for Completion shall be reasonably adjusted to the extent that the Operator has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the Contract Price adjustment provisions where applicable.

## **16.11 Patent Indemnity**

### **16.11.1 Indemnity by Operator**

- a. The Operator shall indemnify and hold harmless the Owner and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Owner may suffer as a result of any infringement or alleged infringement by the Operator, Subcontractors, or their employees, agents, or representatives, of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing.

### **16.11.2 Notice of Claim**

- a. If any proceedings are brought or any claim is made against the Owner arising out of the matters referred to in Section 16.11.1, the Owner shall promptly give the Operator a notice thereof, and the Operator may at its own expense and in the Owner's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- b. If the Operator fails to notify the Owner no later than 30 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Owner shall be free to conduct the same on its own behalf. Unless the Operator has so failed to notify the Owner no later than the 30 day period, the Owner shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

- c. The Owner shall, at the Operator's request, give all available assistance to the Operator in conducting such proceedings or claim, and shall be reimbursed by the Operator for all reasonable expenses incurred in so doing.

#### 16.11.3 Indemnity by Owner

- a. The Owner shall indemnify and hold harmless the Operator and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Operator may suffer as a result of any infringement or alleged infringement by the Owner of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the Effective Date arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Owner.

### 16.12 **Functional Guarantees**

- a. The Operator guarantees that during the Tests and Inspection set out in Design Build Schedule Article 5, the New *INFRASTRUCTURE / FACILITY* and all parts thereof shall attain the Functional Guarantees specified in the Design Build Specifications (the "Functional Guarantees"), subject to and upon the conditions therein specified.
- b. If, for reasons attributable to the Operator, the minimum level of the Functional Guarantees are not met either in whole or in part, the Operator shall at its cost and expense make any such changes, modifications or additions to the New *INFRASTRUCTURE / FACILITY* or any part thereof as may be necessary to meet at least the minimum level of the Functional Guarantees. The Operator shall notify the Owner upon completion of the necessary changes, modifications or additions, and shall request the Owner to repeat the applicable Tests and Inspection until the minimum level of the Functional Guarantees has been met. If the Operator eventually fails to meet the minimum level of Functional Guarantees, the Owner may consider termination of the Contract, pursuant to Section 19.2.3.
- c. If, for any reasons attributable to the Operator, the Functional Guarantees are not attained either in whole or in part, but the minimum level of the Functional Guarantees is met, the Operator shall, at the Operator's option, either
  - i. make such changes, modifications or additions to the New *INFRASTRUCTURE / FACILITY* or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Owner to repeat the Tests and Inspection; or
  - ii. pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions of the Liquidated Damages Appendix.
- d. The payment of liquidated damages under Section 16.12(c) up to the limitation of liability specified in Schedule 5, shall completely satisfy the Operator's guarantees under Section 16.12(3), and the Operator shall have no further liability whatsoever to the Owner in respect thereof.

# ARTICLE 17 - CHANGE IN CONTRACT ELEMENTS

## 17.1 Change to the Design-Build Services

### 17.1.1 Introducing a Change

- a. Subject to Sections 17.1.2(f) and 17.1.2(j), the Owner shall have the right to propose, and subsequently require, that the Design-Build Engineer order the Operator from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Design-Build Services (the “Change”), provided that such Change falls within the general scope of the Design-Build Services and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Design-Build Services and the technical compatibility of the Change envisaged with the nature of the Design-Build Services as specified in the Contract.
- b. The Operator may from time to time during its performance of the Contract propose to the Owner, with a copy to the Design-Build Engineer, any Change that the Operator considers necessary or desirable to improve the quality, efficiency or safety of the Design-Build Services. The Owner may at its discretion approve or reject any Change proposed by the Operator.
- c. Notwithstanding Section 17.1.1(a) and 17.1.1(b), no change made necessary because of any default of the Operator in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.
- d. The procedure on how to proceed with and execute Changes is specified in Section 17.1.2 and 17.1.3, and the Design-Build Engineer shall provide Operator with further details and sample forms on the Change procedures prior to the Design-Build Starting Date.

### 17.1.2 Changes Originating from Owner

- a. If the Owner proposes a Change pursuant to Section 17.1.1(a), it shall send to the Operator a “Request for Change Proposal,” requiring the Operator to prepare and furnish to the Design-Build Engineer as soon as reasonably practicable a “Change Proposal,” which shall include the following:
  - i. brief description of the Change;
  - ii. effect on the Time for Completion;
  - iii. estimated cost of the Change; and
  - iv. effect on any other provisions of the Contract.
- b. Prior to preparing and submitting the Change Proposal, the Operator shall submit to the Design-Build Engineer an “Estimate for Change Proposal,” which shall be an estimate of the cost of preparing and submitting the Change Proposal.
- c. Upon receipt of the Operator’s Estimate for Change Proposal, the Owner shall,
  - i. accept the Operator’s estimate with instructions to the Operator to proceed with the preparation of the Change Proposal;

- ii. advise the Operator of any part of its Estimate for Change Proposal that is unacceptable and request the Operator to review its estimate; or
  - iii. advise the Operator that the Owner does not intend to proceed with the Change.
- d. Upon receipt of the Owner's instruction to proceed under Section 17.1.2(c)(i) (the "Change Order"), the Operator shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with Section 17.1.2(a).
- e. The pricing of any Change shall, as far as practicable, be calculated in accordance with the prices included in the Contract. If such prices are inequitable, the Parties thereto shall agree on specific rates for the valuation of the Change.
- f. If, before or during the preparation of the Change Proposal, it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Operator under this Section 17.1 would be to increase or decrease the Contract Price by more than 15 per cent, the Operator may give a written notice of objection thereto prior to furnishing the Change Proposal. If the Owner accepts the Operator's objection, the Owner shall withdraw the proposed Change and shall notify the Operator in writing thereof.
- g. The Operator's failure to object pursuant to Section 17.1.2(f) shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Operator represents.
- h. Upon receipt of the Change Proposal, the Owner and the Operator shall mutually agree upon all matters therein contained. No later than 14 days after such agreement, the Owner shall, if it intends to proceed with the Change, issue the Operator with a Change Order.
- i. If the Owner decides not to proceed with the Change for whatever reason, it shall notify the Operator prior to the expiration of 14 days after the agreement on the Change. Under such circumstances, the Operator shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Operator in its Estimate for Change Proposal submitted in accordance with Section 17.1.2(b).
- j. If the Owner and the Operator cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Owner may nevertheless instruct the Operator to proceed with the Change by issue of a "Pending Agreement Change Order."
- k. Upon receipt of a Pending Agreement Change Order, the Operator shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.



- l. If the Parties cannot reach agreement prior to the expiration of 60 days after the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Adjudicator in accordance with the provisions of Section 1.8.

#### **17.1.3 Changes Originating from Operator**

- a. If the Operator proposes a Change pursuant to Section 17.1.1(b), the Operator shall submit to the Design-Build Engineer a written “Application for Change Proposal,” giving reasons for the proposed Change and including the information specified in Section 17.1.2(a).
- b. Upon receipt of the Application for Change Proposal, the Parties shall follow the procedures outlined in Sections 17.1.2(h) and 17.1.2(j). If the Owner chooses not to proceed, the Operator shall not be entitled to recover the costs of preparing the Application for Change Proposal.

#### **17.1.4 Payment in Applicable Currencies**

- a. If the Contract provides for payment of the Contract Price in more than one currency, then whenever a Change is agreed, approved or determined pursuant to Section 17.1.2 or 17.1.3, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the Change, and to the proportions of various currencies specified for payment of the Contract Price.

#### **17.1.5 Design-Build Period**

- a. Sections 17.1.1 to 17.1.4 shall apply during only the Design-Build Period.

### **17.2 Change to the Operations Services**

- a. Except as specifically provided in Section 17.2(b) or elsewhere in the Contract, the Operator shall make no claim whatsoever for any adjustment to the Contract Price during the New Operations Period.
- b. The Operator or the Owner may request an adjustment to the Monthly Operations Payment if: [## Stipulate Terms].

In the event of such a change, the Operator or the Owner, as applicable, shall be entitled to receive an increase or decrease equal to the actual increase or decrease in Cost demonstrated by the Operator. The Operator or the Owner shall submit a request for an adjustment pursuant to this Section 17.2 to the CSCU Director.

## **ARTICLE 18 - WARRANTIES**

### **18.1 Owner**

The Owner represents and warrants to the Operator that, as at the date of this Contract and the Effective Date:

- a. it has full power and authority to enter into this Contract;

- b. it has taken all necessary action for the authorisation of its entry into this Contract and the performance of its obligations under this Contract;
- c. it has full power, right and authority under Applicable Law to contractually allow/permit the Operator to provide the Services and use the Site pursuant to the terms of the Contract;
- d. it has obtained all necessary approvals, consents, permits, authorisations that it should obtain to ensure that the Operator can fully discharge its obligations under this Contract and is not in violation of any Applicable Laws.

## 18.2 Operator

The Operator represents and warrants to the Owner as at the date of this Contract and the Effective Date that:

- a. it is a corporation duly established under the Applicable Laws and/or its own country;
- b. it has full power and authority to enter into this Contract;
- c. it is not aware of any pending or actual litigation relating to it or to any parent company of the Operator that could materially impair the Operator's ability to perform its obligations under the Contract; and
- d. it has taken all necessary action for the authorisation of its entry into this Contract and the performance of its obligations under this Contract.

# ARTICLE 19 - SUSPENSION AND TERMINATION

## 19.1 Suspension

### 19.1.1 Suspension by the Owner

- a. The Owner may request the Design-Build Engineer or CSCU Director, as applicable, by notice to the Operator, to order the Operator to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Operator shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY*, until ordered in writing to resume such performance by the DesignBuild Engineer or CSCU Director, as applicable.
- b. If, by virtue of a suspension order given by the Design-Build Engineer or CSCU Director, as applicable, other than by reason of the Operator's default or breach of the Contract, the Operator's performance of any of its obligations is suspended for an aggregate period of more than 90 days, then at any time thereafter and provided that at that time such performance is still suspended, the Operator may give a notice to the Design-Build Engineer or CSCU Director, as applicable, requiring that the Owner shall, no later than 30 days after the Owner's receipt of the notice, order the resumption of such performance or request and subsequently order a Change in accordance with Section 17.1, excluding the performance of the suspended obligations from the Contract.

- c. If the Owner fails to order the resumption of performance in accordance with Section 19.1.1(b), the Operator may, by a further notice to the Design-Build Engineer or CSCU Director, as applicable, elect to treat the suspension, where it affects a part only of the Services, as a deletion of such part in accordance with Section 17.1 or, where it affects the whole of the Services, as termination of the Contract pursuant to Section 19.2.1.

#### 19.1.2 Suspension by the Operator

- a. If, the Owner has,
  - i. failed to pay the Operator any sum due under the Contract within the period specified in the Contract;
  - ii. failed to approve any invoice or supporting documents without just cause under the Contract; or
  - iii. has committed a substantial breach of the Contract,the Operator may give a notice to the Owner that requires payment of such sum, with interest thereon as stipulated in Article 12 requires approval of an invoice or supporting documents, or specifies a breach and requires the Owner to remedy the same, as the case may be.
- b. If the Owner fails to pay the sums required by the Operator in accordance with Section 19.1.2(a) or fails to remedy the breach or take steps to remedy the breach no later than 14 days after receipt of the Operator's notice, then the Operator may, upon giving 14 days' notice to the Owner, suspend performance of all or any of its obligations under the Contract, or, in the case of the Design-Build Services, reduce the Operator's rate of progress.
- c. If the Operator is unable to carry out any of its obligations under the Contract for any reason attributable to the Owner, including the Owner's failure to provide possession of or access to the Site or other areas in accordance with Section 11.2, then the Operator may, upon giving 14 days' notice to the Owner, suspend performance of all or any of its obligations under the Contract, or, in the case of the Design-Build Services, reduce the Operator's rate of progress.
- d. If the Operator's performance of its obligations is suspended or the rate of progress is reduced pursuant to this Section 19.1.2, then the Time for Completion shall be extended in accordance with Section 2.2.4, and additional Costs incurred by the Operator as a result of such suspension or reduction shall be paid by the Owner to the Operator in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Operator's default or breach of the Contract.
- e. During the period of suspension, the Operator shall not remove from the Site or New *INFRASTRUCTURE / FACILITY* any Equipment, Operator's Equipment (Design-Build), Operator's Equipment (Operations), or any part of the New *INFRASTRUCTURE / FACILITY*, without the prior written consent of the Owner.

## 19.2 Termination

### 19.2.1 Termination for Owner's Convenience

- a. The Owner may at any time terminate the Contract for any reason by giving the Operator a notice of termination that refers to this Section 19.2.1(a).
- b. Upon receipt of the notice of termination under Section 19.2.1(a),
  - i. the Operator shall, either immediately or upon the date specified in the notice of termination,
  - ii. cease all further work, except for such work as the Owner may specify in the notice of termination for the sole purpose of protecting that part of the *INFRASTRUCTURE / FACILITY* already executed, or any work required to leave the Site in a clean and safe condition;
  - iii. terminate all Subcontracts; and
  - iv. remove all Operator's Equipment (Design-Build) and, except if the Owner asserts its rights pursuant to Section 16.3.1(e), Operator's Equipment (Operations) from the Site, repatriate the Operator's Personnel and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition; and
  - v. the Operator, subject to the payment specified in Section 19.2.2, shall,
    - A. deliver to the Owner the parts of the New *INFRASTRUCTURE / FACILITY* executed by the Operator up to the date of termination; and
    - B. deliver to the Owner all the Contract Records, including the Design-Build Documents, prepared by the Operator or its Subcontractors as at the date of termination.

### 19.2.2 Payment upon Termination by the Owner for Convenience

- a. Upon termination of this Contract pursuant to Section 19.2.1, the Owner shall make only the following payments to the Operator,
  - i. any portion of the Contract Price payable to the Operator for Services satisfactorily performed prior to the date of termination and calculated as set out in Section 12.2;
  - ii. the Costs reasonably incurred by the Operator in the removal of the Operator's Equipment (Design-Build) and, except if the Owner asserts its rights pursuant to Section 16.3.1(e), Operator's Equipment (Operations) from the Site and in the repatriation of the Operator's Personnel and its Subcontractors' personnel;
  - iii. any amounts required to be paid by the Operator to its Subcontractors in connection with the termination of any Subcontracts, including any reasonable cancellation charges;

- iv. the reasonable Costs incurred by the Operator in protecting the Site, Existing *INFRASTRUCTURE / FACILITY* and New *INFRASTRUCTURE / FACILITY* and leaving the Site in a clean and safe condition; and
  - v. the reasonable Cost of satisfying all other obligations, commitments and claims that the Operator may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Section 19.2.2(a).
- b. The Operator acknowledges that the only payments to be made to the Operator on termination by the Owner are set out in this Section 19.2.2. The Operator shall not make a claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract.

### 19.2.3 Termination for Operator's Default

- a. The Owner, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances, by giving a notice of termination and its reasons therefor to the Operator, referring to this Section 19.2.3(a):
- i. If the Operator becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Operator is a corporation, a resolution is passed or order is made for its winding up, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, a receiver is appointed over any part of its undertaking or assets, or if the Operator takes or suffers any other analogous action in consequence of debt;
  - ii. If the Operator assigns or transfers the Contract or any right or interest therein in violation of the provision of Section 1.9; or
  - iii. If the Operator, in the judgment of the Owner has engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purpose of this Section 19.2.3(a)(iii),
    - A. "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
    - B. "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Owner, and includes collusive practice among bidders, prior to or after bid submission designed to establish bid prices at artificial non-competitive levels and to deprive the Owner of the benefits of free and open competition.
- b. If the Operator,
- i. has abandoned or repudiated the Contract;
  - ii. has without valid reason failed to commence work on the Site, Existing *INFRASTRUCTURE / FACILITY* or New *INFRASTRUCTURE / FACILITY* promptly or has suspended, other than pursuant to Section 19.1.1(b), the progress of

Contract performance for more than 30 days after receiving a written instruction from the Owner to proceed;

- iii. persistently fails to carry out the Services in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause; or
- iv. refuses or is unable to provide sufficient materials, services, labour or personnel to perform the Services,

then the Owner may, without prejudice to any other rights it may possess under the Contract, give a notice to the Operator stating the nature of the default and requiring the Operator to remedy the same. If the Operator fails to remedy or to take steps to remedy the same within 14 days after its receipt of such notice, then the Owner may terminate the Contract forthwith by giving a notice of termination to the Operator that refers to this Section 19.2.3(b).

- c. Upon receipt of the notice of termination under Sections 19.2.3(a) or 19.2.3(b) the Operator shall, either immediately or upon such date as is specified in the notice of termination,
  - i. cease all further work, except for such work as the Owner may specify in the notice of termination for the sole purpose of protecting that part of the Site, Existing *INFRASTRUCTURE / FACILITY* and New *INFRASTRUCTURE / FACILITY* already executed, or any work required to leave the Site, Existing *INFRASTRUCTURE / FACILITY* and New *INFRASTRUCTURE / FACILITY* in a clean and safe condition;
  - ii. terminate all Subcontracts;
  - iii. deliver to the Owner the parts of the New *INFRASTRUCTURE / FACILITY* executed by the Operator up to the date of termination; and
  - iv. deliver to the Owner all Contract Records, including the Design-Build Documents, prepared by the Operator or its Subcontractors as of the date of termination.
- d. The Owner may enter the New *INFRASTRUCTURE / FACILITY* and upon the Site, expel the Operator, and, if the New *INFRASTRUCTURE / FACILITY* is not completed, the Owner may complete the *INFRASTRUCTURE / FACILITY* itself or by employing any Third Party. The Owner may, to the exclusion of any right of the Operator over the same, take over and use with the payment of a fair rental rate to the Operator, with all the maintenance costs to the account of the Owner and with an indemnification by the Owner for all liability including damage or injury to persons arising out of the Owner's use of such equipment, any Operator's Equipment (Design-Build) and Operator's Equipment (Operations) owned by the Operator and on the Site in connection with the Existing *INFRASTRUCTURE / FACILITY* and New *INFRASTRUCTURE / FACILITY* for such reasonable period as the Owner considers expedient for the completion of the New *INFRASTRUCTURE / FACILITY*. Upon completion of the New *INFRASTRUCTURE / FACILITY* or at such earlier date as the Owner thinks appropriate, the Owner shall give notice to the Operator that such Operator's Equipment (Design-Build) and, except if the Owner asserts its rights pursuant to Section 16.3.1(e), Operator's Equipment (Operations) will be returned to the Operator at or near the Site and shall return such Operator's Equipment

(Design-Build) and Operator's Equipment (Operations) to the Operator in accordance with such notice. The Operator shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

#### 19.2.4 Payment upon Termination for Operator's Default

- a. If the Contract is terminated pursuant to Section 19.2.3 and, subject to Section 19.2.4(b), the Operator shall be entitled to be paid,
  - i. any portion of the Contract Price payable to the Operator for Services satisfactorily performed prior to the date of termination;
  - ii. the value of any unused or partially used Plant and Equipment on the Site, except to the extent that such Plant and Equipment have already been paid for by the Owner; and
  - iii. the Costs, if any, incurred by the Operator in protecting the Site and New *INFRASTRUCTURE / FACILITY* and in leaving the Site in a clean and safe condition pursuant to Section 19.2.3(c)(i).

Any sums due the Owner from the Operator accruing prior to the date of termination shall be deducted from the amount to be paid to the Operator under this Contract.

- b. If the Owner completes the New *INFRASTRUCTURE / FACILITY* pursuant to Section 19.2.3(d), the cost of completing the New *INFRASTRUCTURE / FACILITY* by the Owner shall be determined, and, if the sum that the Operator is entitled to be paid, pursuant to Section 19.2.4(a), plus the reasonable costs incurred by the Owner in completing the New *INFRASTRUCTURE / FACILITY*, exceeds the Contract Price, the Operator shall be liable for such excess as follows;
  - i. If such excess is greater than the sums due the Operator under Section 19.2.4(a), the Operator shall pay the balance to the Owner; or
  - ii. if such excess is less than the sums due the Operator under Section 19.2.4(a), the Owner shall pay the balance to the Operator.
- c. The Parties shall agree in writing on the computation described in Section 19.2.4(b) and the manner in which any sums shall be paid.

#### 19.2.5 Termination by Operator

- a. If,
  - i. the Owner has,
    - A. failed to pay the Operator any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the corresponding Terms and Procedures of Payment Appendix, or commits a substantial breach of the Contract, the Operator may give a notice to the Owner that requires payment of such sum, with interest thereon as stipulated in Section 5.2(3), requires approval of such invoice or supporting documents, or specifies the breach and requires the Owner to remedy the same, as the case may be; and

B. failed to pay such sum together with such interest, failed to approve such invoice or supporting documents or give its reasons for withholding such approval, failed to remedy the breach or take steps to remedy the breach no later than 14 days after receipt of the Operator's notice; or

ii. the Operator is unable to carry out any of its obligations under the Contract for any reason attributable to the Owner, including the Owner's failure to provide possession of or access to the Site or other areas,

then the Operator may give a notice to the Owner thereof, and if the Owner has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach no later than 30 days after receipt of such notice, or if the Operator is still unable to carry out any of its obligations under the Contract for any reason attributable to the Owner no later than 30 days after receipt of the notice, the Operator may, by a further notice to the Owner referring to this Section 19.2.5(a), forthwith terminate the Contract.

b. The Operator may terminate the Contract forthwith by giving a notice to the Owner to that effect, referring to this Section 19.2.5(b),

- i. if the Owner becomes bankrupt or insolvent;
- ii. has a receiving order issued against it, or compounds with its creditors;
- iii. being a corporation, if a resolution is passed or order is made for its winding up, other than a voluntary liquidation for the purposes of amalgamation or reconstruction; or
- iv. a receiver is appointed over any part of its undertaking or assets, or if the Owner takes or suffers any other analogous action in consequence of debt.

c. If the Contract is terminated under Section 19.2.5(a) or 18.2.5(b), then,

- i. the Operator shall immediately,
  - A. cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Site, Existing *INFRASTRUCTURE / FACILITY* and New *INFRASTRUCTURE / FACILITY* already executed, or any work required to leave the Site in a clean and safe condition; and
  - B. terminate all Subcontracts; and
- i. the Operator, subject to the payment specified in Section 19.2.6, shall
  - A. deliver to the Owner the parts of the New *INFRASTRUCTURE / FACILITY* executed by the Operator up to the date of termination; and
  - B. deliver to the Owner all Contract Records, including the DesignBuild Documents, in existence as of the date of termination.



- d. Termination by the Operator pursuant to this Section 19.2.5 is without prejudice to any other rights or remedies of the Operator that may be exercised in lieu of or in addition to rights conferred by this Section 11.2.5.

#### 19.2.6 Payment upon Termination by Operator

- a. If the Contract is terminated under Sections 19.2.5(a) or 19.2.5(b), the Owner shall pay to the Operator all payments specified in Section 19.2.2(a), and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Operator arising out of, in connection with or in consequence of such termination.

#### 19.2.7 General Provisions - Termination

- a. In this Section 19.2, the expression “New *INFRASTRUCTURE / FACILITY* executed” shall include all work executed, Services provided, and all Plant and Equipment acquired, or subject to a legally binding obligation to purchase by the Operator and used or intended to be used for the purpose of the performing the Services, up to and including the date of termination.
- b. In this Section 19.2, in calculating any monies due from the Owner to the Operator, account shall be taken of,
  - i. any sum previously paid by the Owner to the Operator under the Contract, including any advance payment paid pursuant to the Terms and Procedures of Payment Appendix;
  - ii. any sum owing by the Operator to the Owner under the Contract, including Liquidated Damages - Delay or liquidated damages calculated pursuant to Section 5.4.

## SIGNATURES

IN WITNESS THEREOF the Parties hereto have executed this Contract the Day and year before written.

**SIGNED BY THE [OWNER] REPRESENTED BY**

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**WITNESSED BY**

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_ and

**SIGNED BY [OPERATOR] REPRESENTED BY**

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**WITNESSED BY**

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Position:** \_\_\_\_\_

## SCHEDULE 1: SERVICE AREA

Map of Service Area

## SCHEDULE 2: SITE

Map of Site

## SCHEDULE 3: DESIGN-BUILD SPECIFICATIONS

### Design Considerations

In preparing the design for the Site and the New *INFRASTRUCTURE / FACILITY* and the Design-Build Documents, the Operator shall,

- seek to protect public health and safety;
- seek to maximise the protection of the environment and minimise any adverse environmental impacts caused by the Site and the New *INFRASTRUCTURE / FACILITY* throughout the Service Area and Country, including as may be required, recommended or advisable pursuant to any technical standard or environmental assessments conducted on, at or near the Site and the New *INFRASTRUCTURE / FACILITY*;
- ensure that the Site and the New *INFRASTRUCTURE / FACILITY* are designed to meet the requirements of the Technical Specifications including a detailed review of the following measures to deal with environmental mitigation:
  - training materials to assist the Owner in t long-term monitoring;
  - the impact to local property values and the mitigation traffic;
  - the control of clinical and hazardous waste;
  - the impact of construction and operations noise on the local community; and
  - the air quality impact to the Site and the New *INFRASTRUCTURE / FACILITY* including the impact gas, dust and equipment emissions during construction and operations, odours during operation and exhaust from traffic.

### Design Responsibilities - Off-Site Issues

- In preparing the design for the Site and the New *INFRASTRUCTURE / FACILITY* and the Design-Build Documents, the Operator shall include as part of the design,
- improvements to or design all access routes from existing local roads to the Site and *INFRASTRUCTURE / FACILITY* and intersections with local roads designed to ensure that no line up of trucks is so long as to extent to local roads; and
- plans and designs for the extension to the Site and *INFRASTRUCTURE / FACILITY* of all utility services required for all of the Services.

### Design Responsibilities - On Site Issues

In preparing the design for the Site and the New *INFRASTRUCTURE / FACILITY* and the Design-Build Documents, the Operator shall ensure the following in accordance with the relevant Technical Specification,

Description of Services	▪ Technical Specification
The design for the Site and the New	

<i>INFRASTRUCTURE / FACILITY</i> and the Design Build Documents:	
(a) makes adequate preparation and plans and takes adequate measures for controlling access to the Site and the New <i>INFRASTRUCTURE / FACILITY</i> by animals and humans and vehicular traffic at the perimeter of the Site and the New <i>INFRASTRUCTURE / FACILITY</i> , including plans for ditches, berms, plantings and vegetation, fencing, lockable gates at vehicular access points;	<ul style="list-style-type: none"> <li>▪ <i>[Chain link fencing shall be 1.8m in height and razor wire shall be installed where theft or vandalism is expected]</i></li> <li>▪ <i>[General Quality Standard]</i></li> <li>▪ <i>[Ditch/berm/planting and configuration shall be capable of deterring animals]</i></li> <li>▪ <i>[Fencing shall include perimeter fencing and internal fencing, material storage and equipment compounds, fuel storage facilities; and]</i></li> <li>▪ <i>[Fencing shall include lockable gates at vehicular access points]</i></li> </ul>
(b) includes the creation of an internal perimeter access corridor inside or, with appropriate local and other approvals, surrounding the Site lands	<ul style="list-style-type: none"> <li>▪ <i>[Access corridor must have minimum width of 5 meters and be in accordance with the Environmental Assessment and the applicable environmental standards]</i></li> <li>▪ <i>[Access corridor must accommodate Site servicing, monitoring, devices, remedial measures, nuisance control measures and plating]</i></li> </ul>
(c) includes parking areas, internal access roads and haul routes to manage traffic flow at the Site and the New <i>INFRASTRUCTURE / FACILITY</i> ;	<ul style="list-style-type: none"> <li>▪ <i>[Single roads with a minimum width of 3 metres, excluding shoulders, or where volumes are higher, 2 lanes with a minimum of 6 metres, excluding shoulders]</i></li> <li>▪ <i>[Roads must be constructed such that there is no inhibition of traffic movement]</i></li> <li>▪ <i>[Roads must be designed and constructed such that the flow of traffic is uninterrupted under all weather conditions]</i></li> <li>▪ <i>[Parking lots shall be sized sufficiently to accommodate staff and visitors, with a</i></li> </ul>
	<ul style="list-style-type: none"> <li>▪ <i>minimum capacity of [##] vehicles]</i></li> <li>▪ <i>[Roads must be designed and sized to ensure safe and efficient traffic flow for a minimum gross vehicle weight of [##] tonnes]</i></li> </ul>

	<ul style="list-style-type: none"> <li>▪ <i>[Roads must be designed to be structurally stable and such that the roads drain and have no ponding or surface washouts]</i></li> <li>▪ <i>[Roads must be designed and constructed to be erosion resistant]</i></li> </ul>
(d) provides utilities services at the Site and the New <i>INFRASTRUCTURE / FACILITY</i> such as electricity, telephone, potable water, non-potable water and sewage collection and disposal	<ul style="list-style-type: none"> <li>▪ <i>[In accordance with local utility requirements or national codes [## Name and citation of local utility requirements or codes inserted here.]]</i></li> <li>▪ <i>[In the absence of existing requirements or codes, site specific requirements to be developed and inserted here.]</i></li> <li>▪ <i>[New INFRASTRUCTURE / FACILITY and Site services shall include, electricity, a minimum of [##] telephone land lines, potable water, water for other purposes (sanitary facilities, cleaning, irrigation, and fire protection) and sanitary sewage collection and disposal treatment]</i></li> <li>▪ <i>[Utility services shall have a service life at least equal to the projected New INFRASTRUCTURE / FACILITY life]</i></li> </ul>

## Surface and Ground Water Management

In preparing the design for the Site and the New *INFRASTRUCTURE / FACILITY* and the Design-Build Documents, the Operator shall,

<b>Description of Services</b>	<b>Technical Specification</b>
(a) inspect and a prepare a program to test the Site lands with respect to water elevations, water flow, water generation, absorption, storage and drainage on, in, under and surrounding the planned Site and the New <i>INFRASTRUCTURE / FACILITY</i>	<ul style="list-style-type: none"> <li>▪ <i>[In accordance with the applicable environmental standards]</i></li> <li>▪ <i>[Design must include a minimum of 5 test wells, 2 upstream of the Site, and 3 test wells downstream of the Site at a reasonable distance from one another]</i></li> <li>▪ <i>[Monthly sampling and testing of surface water quality and groundwater levels and quality commencing no later than 1 month after the Effective Date]</i></li> <li>▪ <i>[Design shall ensure that there is no adverse impact on groundwater levels, flow or quality, and no long-term change to groundwater elevations]</i></li> <li>▪ <i>[Design must include an engineered barrier]</i></li> </ul>
(b) plan and design the surface drainage at the	<ul style="list-style-type: none"> <li>▪ <i>[In accordance with the applicable environmental standards]</i></li> </ul>

Site and the New <b>INFRASTRUCTURE / FACILITY</b> with adequate water drainage channels, pipes, sewers, structures and appurtenances, including for higher, adequate to manage the highest seasonal levels and volumes of stormwater	<ul style="list-style-type: none"> <li>▪ <i>[Design must ensure that, if applicable, natural surface water drainage is relocated, with existing flow capacity maintained or improved, if required]</i></li> <li>▪ <i>[Design must ensure that there is no obstructions to, or contamination of surface water]</i></li> </ul>
(c) plan and design the Site and the New <b>INFRASTRUCTURE / FACILITY</b> with adequate protection from flooding whether from rain, groundwater, high rivers, storms or any other source	<ul style="list-style-type: none"> <li>▪ <i>[In accordance with the applicable environmental standards]</i></li> <li>▪ <i>[Design must ensure that there is no contamination of groundwater or surface water]</i></li> </ul>

#### **Site Administrative *INFRASTRUCTURE / FACILITY***

The Operator shall be responsible for the administration of the Site and New **INFRASTRUCTURE / FACILITY** during the Design-

Build Period and the Operator shall design,

- temporary office facilities for use by the Operator and its Subcontractors in the administration and execution of the Design-Build Services;
- new permanent office facilities as part of the New **INFRASTRUCTURE / FACILITY** for use in the administration of the Operations Services to accommodate personnel, furniture, utility services, a lunch room, washrooms and public toilets;
- appropriate signage for the Site and the New **INFRASTRUCTURE / FACILITY** in [English], including signs that,
- identify the New **INFRASTRUCTURE / FACILITY**, sub-components of the New **INFRASTRUCTURE / FACILITY** and the Owner;
- direct traffic in an orderly manner;
- identify the temporary and permanent locations of the main onsite administrative offices of the Operator, the Design-Build Engineer, the Owner and the Subcontractors;
- provide warning and hazard notification in designated areas where warranted;



- list hours and days of operation;
- identify areas of the New *INFRASTRUCTURE / FACILITY* that are restricted to visitors and are accessible to only designated employees of the Operator;
- the landscaping for the *INFRASTRUCTURE / FACILITY* as contemplated by the Design-Build Documents;
- any and all weigh scales, temporary scales, a weigh scale house for attendants, equipment to accommodate anticipated truck traffic volumes and truck sizes and types, support systems to record data from the scales and transmit it electronically to other locations, and wheel washing facilities [designed to weigh incoming trucks and vehicles with a minimum delay of 15 minutes at peak times][weigh scales must have a minimum capacity of 30 tonnes][data system must be capable of being linked to billing system and generate written records];
- a building for the repair and servicing of all equipment and storage of tools, spare parts and consumables;
- a secure *INFRASTRUCTURE / FACILITY* for the storage, measurement and dispersal of fuels and provide for the prevention and collection of fuel leaks,[with a minimum design capacity of [##] litres and adequate provision for fire-fighting equipment; and

## SCHEDULE 4: OPERATIONS SPECIFICATIONS

### 1. List of Plans and Programs

The Operator shall develop:

- a. an Operations Start-up Plan/Program including a detailed and comprehensive program for each of the following:
  - i. [Relevant Activities]
  - ii. Occupational Health and Safety;
  - iii. Environmental Management and Mitigation;
  - iv. Maintenance Management;
  - v. Financial Management and Customer Services Information Systems; and
  - vi. Community Liaison and Public Education;
- b. an Operations Plan/Program including:
  - i. Operations Plan;
  - ii. Standard Operating Procedures;
  - iii. Operations and Maintenance Manuals for the New *INFRASTRUCTURE / FACILITY* and all vehicles and Equipment under the Operator's control;
  - iv. Materials Management Plan
  - v. Closure and Rehabilitation Plan; and
  - vi. Transition Plan; and
- vii. an Asset Management Program including,
  - A. Mid-Term Condition Survey prior to the end of the third year of the Operations Services Period;
  - B. Final Condition Survey prior to the End Date; and
  - C. Asset Remediation Plans at the time of the Mid-Term and Final Condition Surveys a plan to remediate any deficiencies in the New *INFRASTRUCTURE / FACILITY*.

### 2. Environmental Management and Mitigation Plan

The Environmental Management and Mitigation Plan shall include programs to mitigate environmental impacts at the New *INFRASTRUCTURE / FACILITY* and neighbouring properties, including,

- a. [## Relevant Details]

### 3. Operations Plan

The Operations Plan shall include a plan or program with respect to,

- a. monitoring and recording access to the New *INFRASTRUCTURE / FACILITY*;
- b. establishing and maintaining an office at the New *INFRASTRUCTURE / FACILITY*;
- c. managing workshops, stores and warehouses;
- d. managing all aspects of exterior lighting;
- e. providing and maintaining telephone, electric and other utility services; and
- f. providing and maintaining fencing to secure the New *INFRASTRUCTURE / FACILITY*.

#### **4. Closure and Rehabilitation Plan**

The Operator shall develop a plan for the closure and rehabilitation the New *INFRASTRUCTURE / FACILITY* (the

“Closure and Rehabilitation Plan”), which shall include,

[## Details]

#### **5. Transition Plan**

At least two years prior to the End Date, the Operator shall develop a plan to hand-over the New *INFRASTRUCTURE / FACILITY* to the Subsequent Operator at the end of the term of the Contract (the “Transition Plan”).

The Transition Plan shall include,

- a. plans to transfer the New *INFRASTRUCTURE / FACILITY* to the Subsequent Operator;
- b. transition plans with respect to the Operator’s Personnel including a plan for transition of the Operator’s Personnel to a Subsequent Operator;
- c. a proposed process for the transfer of all Contract Records to the Owner;
- d. plans to transfer operations and maintenance functions to the Subsequent Operator; and
- e. a program to train staff of the Owner in all aspects of the operation and maintenance of the New *INFRASTRUCTURE / FACILITY*.

No later than 6 months prior to the End Date, the Operator shall carry out the training program prepared in accordance with Operation Specification 3.6(2)(e).

#### **6. Annual Data Report** The Annual Data Report shall include,

- a. quantitative and qualitative data with respect to and analysis and a description of,
  - i. the level and quality of performance of the New *INFRASTRUCTURE / FACILITY* in the first year of operations including data, analysis and descriptions with respect to [usage / operations / performance]);

- ii. the remaining capacity of the New *INFRASTRUCTURE / FACILITY* and its projected life;
  - iii. level, type and frequency of maintenance of the New *INFRASTRUCTURE / FACILITY*, vehicles and equipment;
  - iv. type and frequency of breakdown and breakdown repairs to the New *INFRASTRUCTURE / FACILITY* and vehicles and equipment;
  - v. response times for breakdown repairs;
  - vi. events which resulted in the temporary closure of the New *INFRASTRUCTURE / FACILITY* and/or the suspension of New *INFRASTRUCTURE / FACILITY* operations;
  - vii. the volume and type of cover material used;
  - viii. the condition of groundwater and surface water at the New *INFRASTRUCTURE / FACILITY* and the impacts of the New *INFRASTRUCTURE / FACILITY* on the groundwater and surface water off-site;
  - ix. the effectiveness of any security systems to prevent scavenging; and
  - x. the effectiveness of programs to control environmental nuisances, including odours, litter, pests, insects, rodents and birds
- b. an analysis and description of the level and quality of performance of the *INFRASTRUCTURE / FACILITY* in the first year of operations with respect to billings, collection and customer service including an analysis and description of, billing and collection losses including an analysis of unpaid accounts; and
  - c. an analysis and description of the customer service including an analysis and description of the handling of customer complaints and percentage of queries or complaints that were resolved during the Customer's first contact with the New *INFRASTRUCTURE / FACILITY*; and
  - d. an analysis and description of key characteristics of the New *INFRASTRUCTURE / FACILITY*'s work force in the first year of operations including statistics with respect to overtime, absenteeism, days lost to workplace accidents, productivity and staff training.

The Operator shall include, in the Annual Data Report, all calculations, estimates and assumptions, including those used to measure performance in respect of and to calculate, estimate and set the base line standards.

## 7. Operations

The Operator shall have responsibility for all operations at the New *INFRASTRUCTURE / FACILITY*, including all matters listed in OSA Section 4.2, and shall operate the New *INFRASTRUCTURE / FACILITY* in accordance with the Operations Plan.

The Operator shall be responsible for the management of surface water at the New Facility and the management of the effects of the New Facility on surface water at neighbouring properties including,

- a. ensuring the proper drainage of the New *INFRASTRUCTURE / FACILITY*;
- b. minimising the amount of soil and sediment entrained in run-off and carried off-Site;
- c. collecting, storing and treating polluted surface water and maintaining temporary storage facilities for polluted surface water pending treatment;
- d. monitoring surface water and impacts of the New *INFRASTRUCTURE / FACILITY* on surface water; and
- e. remediating impacts of the New *INFRASTRUCTURE / FACILITY* on surface water.

## **8. Groundwater Management**

The Operator shall be responsible for the management of groundwater at the New *INFRASTRUCTURE / FACILITY* and the management of the effects of the New *INFRASTRUCTURE / FACILITY* on the groundwater of neighbouring properties including,

- a. establishing groundwater flow patterns, seasonal groundwater elevations and the rate of groundwater flows;
- b. constructing wells or using existing wells to obtain representative upstream and downstream samples of groundwater flow, baseline groundwater quality and the type and extent of any contamination originating from the Site or the New *INFRASTRUCTURE / FACILITY*; and
- c. carrying out remedial measures to mitigate the impacts of the New *INFRASTRUCTURE / FACILITY* on groundwater, including making operational changes.

## **9. Repair, Replacement And Rehabilitation, Contingency And Capital Investment Program**

The Operator's obligation to carry out all repair, replacement and rehabilitation shall include all repair, replacement or rehabilitation related to,

- a. the New *INFRASTRUCTURE / FACILITY* or any part thereof; including,
- b. the surface water management system;
- c. the groundwater management system;
- d. the Site or any part thereof; and
- e. the Operator's Equipment (Operations),
- f. during the term of the Contract.

The Operator's obligation to carry out repair, replacement and rehabilitation shall exclude only a repair, replacement or rehabilitation that was directly caused as a result of a Force Majeure event, reasonably unforeseeable or directly caused as a result of a War Risk.

## **10. Contingency Fund**

The Owner shall establish a contingency fund (the "Contingency Fund") to fund repair, replacement and rehabilitation that the Operator is not responsible for pursuant to Operation Specification 3.1.1.

If the Operator believes, because of the exclusions set out in Operation Specification 3.1.1(2), that a repair, replacement or rehabilitation should be paid for from the Contingency Fund, it shall make an application to the CSU to access the Contingency Fund. Such application shall set out,

- a. the basis upon which the repair, replacement or rehabilitation meets the criteria set out in

Operation Specification 3.1.1(2); and

- b. a detailed description of the scope and nature, including an estimate of cost, of the repair, replacement or rehabilitation.

## **11. Capital Investment Program**

Except for the Design-Build Services, the Operator shall not be responsible for carrying out any capital investment programs which may be carried out in parallel by the Owner.

The Operator shall cooperate with the Owner, or its designates, at no cost to the Owner and at the Owner's request, in the implementation by the Owner, or its designates, of any capital investment program. The Owner will endeavour to cooperate with the Operator to minimise the impact on the operations caused by the capital investment program.

The Operator's co-operation pursuant to Operation Specification 3.2(2) shall include,

- a. advice to the Owner as to capital improvements to the New *INFRASTRUCTURE / FACILITY* that the Operator recommends be investigated;
- b. advice to the Owner as to the Operator's perspectives on capital improvements that are suggested by the Owner or Third Parties; and
- c. a review of selected engineering reports related to any capital improvements from an operational perspective.

The Operator shall nominate an individual to act as a liaison between the Operator and the Owner, or the Owner's designates, with respect to co-operating with the Owner in the carrying out of any capital investment program.

## **12. Financial Management And Customer Service**

The Operator shall,

- a. collect all amounts related to the Operations Services from Customers,

- b. through the Operator's billing offices at the *INFRASTRUCTURE / FACILITY*;
- c. through banks, post offices or cashiers in billing offices; or
- d. by other means as may be agreed to by the Owner;
- e. identify and record all outstanding accounts and take all necessary measures to collect outstanding accounts;
- f. submit to the Owner as part of the Quarterly Reports a summary and analysis of unpaid accounts; and
- g. manage all aspects of both existing and new contracts with Customers.

### **13. Complaints**

The Operator shall,

- a. establish and implement procedures for receiving, handling and resolving complaints from members of the public about the New *INFRASTRUCTURE / FACILITY*; and
- b. establish and implement procedures for receiving, handling and resolving complaints from customers.

### **14. [Collection and Handling of Revenues**

- a. The Owner shall open and maintain a deposit account (the "Revenue Account") at a bank chosen by the Owner which has a branch in the Country to be used solely for the deposit of all Revenues.
- b. The Operator shall directly deposit all of the Revenues into the Revenue Account, which shall be a dedicated account for Revenues. The Operator acknowledges that at all times ownership of the Revenues rests with the Owner. The Operator shall deposit all Revenues, whether in the form of cash, cheques or other form, to the Revenue Account on the day of receipt. If it is not possible for the Operator to deposit Revenues on the day of receipt, the Revenues shall be deposited by the Operator on the next banking day.
- c. At all times, all Revenues shall be the property of the respective Owner. Until such time as the Operator deposits the Revenues into the Revenue Account, the Revenues shall be in the care and custody of the Operator.
- d. The Operator shall not deposit nor permit the deposit of the Revenues into any account other than the Revenue Account.
- e. The Operator shall be liable for any loss, theft or destruction of the Revenues which occurs prior to the deposit of the Revenues into the Revenue Account. In the event of any loss or theft of Revenues before they are deposited to the Revenue Account, the Operator shall pay the amount of such losses to the Owner forthwith and without recourse to any defence or objection.]

## SCHEDULE 5: LIQUIDATED DAMAGES

### LIQUIDATED DAMAGES FOR DELAY

#### Delay of Completion - Liquidated Damages (Section 2.2.6(2))

In the event that the Operator fails to complete the performance of the Design-Build Services by the Time for Completion, the Operator shall pay Liquidated Damages - Delay of *[## Insert calculation of Liquidated Damages-Delay. Eg. US \$10,000 for each day or part thereof that the Design-Build Services are not completed after the Time of Completion.]*

#### Maximum Liquidated Damages (Section 2.2.6(2))

The Maximum Liquidated Damages - Delay shall be *[## Insert maximum sum in the same currency as Liquidated Damages - Delay are payable].*

#### Operator's Acknowledgements

The Operator acknowledges and agrees that,

- a. a failure of the Operator to meet the Technical Specifications is a breach of the Contract;
- b. the Operator shall pay to the Owner liquidated damages (the "Liquidated Damages") upon an Occurrence; and
- c. Liquidated Damages payable under this Liquidated Damages Schedule do not constitute the only or the full quantum of damage incurred by the Owner as a result of an Occurrence and represent only a genuine pre-estimate of the damages that will be suffered by the Owner upon an Occurrence.

### LIQUIDATED DAMAGES FOR BREACH OF CONTRACT

#### Definition of Damages

For the purposes of this Liquidated Damages Schedule, the Operator shall be obliged to pay Liquidated Damages if it breaches certain identified Technical Specifications as identified in this Liquidated Damages Schedule.

#### No Waiver

The right of the Owner to receive such Liquidated Damages shall not limit any of its other rights pursuant to the Contract including, without limitation, the Owner's rights pursuant to GC Section 1.6 and 11.2.

#### Calculation for Breach of Technical Standards

- a. Liquidated Damages shall be paid by the Operator for each Occurrence and the amount of the Liquidated Damages for each Occurrence shall be calculated pursuant to the formulae set out in the chart as follows:

Occurrence	Amount of Liquidated Damages for the Occurrence
------------	---



The Operator fails to [##] [Note: The occurrence and technical standard will have to be inserted. See the following sample occurrences:]	[## Insert amount or formula to calculate the liquidated damages or penalties]
[The Operator fails to achieve the minimum operational / performance standards] ]	[## amount and currency] for each occurrence monitored at the end of each quarter of the New Operations Period]
[The Operator fails to maintain leachate heads within 1 m of the top of the engineered barrier)]	[## amount and currency] for each occurrence during the New Operations Services Period]
[The Operator fails to make the Site available for use]	[## amount and currency] for each day or part day when the Site and New INFRASTRUCTURE / FACILITY are not available for use during the Contract Term]
[The Operator is in breach of any of the conditions stipulated in the Environmental Compliance Certificate]	[In accordance with any penalties imposed upon the Owner by any regulatory authority.]
[The Operator fails to deliver any of the reports contemplated under the Contract within the time limits specified in the Contract]	[## amount and currency ] for each occurrence during the Contract Term]

- b. Liquidated Damages shall not be calculated for an Occurrence listed above if the cause of the Occurrence was beyond the Operator's control.
- c. The total amount of Liquidated Damages payable by the Operator in any month shall not exceed 40 per cent of the fee for that month.

#### **Payment of Liquidated Damages**

- a. The Operator shall provide the Owner with an account for its review and approval of any Liquidated Damages payable to the Owner for a month within 15 days after the end of the applicable month. If the Operator does not provide the Owner with such an account within such 15 day period, the Owner may request that the CSCU Director or the Design-Build Engineer, as applicable, provide the account.
- b. Upon approval of the account by the Owner, the Operator shall pay the Liquidated Damages to the Owner in *Local Currency* to a bank account in *City* as directed by the Owner.
- c. The Owner may, in its sole discretion, deduct any Liquidated Damages payable by the Operator from any amount owed by the Owner to the Operator.

## SCHEDULE 6: CONTRACT PRICE ADJUSTMENT FORMULA

Prices payable to the Operator for the Operations Services in accordance with the Contract shall, no sooner than 18 months after the New Operations Starting Date, be subject to adjustment during performance of the Operations Services to reflect changes in the cost of labour and material components for the Operations Services, in accordance with the following formula:

$$P_1 = P_0 \left[ a + b \frac{L_1}{L_0} + c \frac{M_1}{M_0} \right]$$

in which:

$P_1$  = adjustment amount payable to the Operator for Operations Services;  $P_0$  = Contract price (base price);

$a$  = fixed element representing profit and overhead in Contract price ( $a$  = \_\_\_\_ %) for Operations Services;

$b$  = estimated percent of labour component in Contract price ( $b$  = \_\_\_\_ %) for Operations Services;

$c$  = estimated percent of Operator's Equipment (Operations) component in Contract price ( $c$  = \_\_\_\_ %);

$L_0, L_1$  = labour indexes applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively; and

$M_0, M_1$  = material indexes for the major raw materials in the country of origin on the base date and the date for adjustment, respectively.

The sum of the three coefficients  $a$ ,  $b$  and  $c$  shall be one (1) in every application of the formula.

The Bidder shall indicate the source of labour and materials indexes and the base date indexes in its Bid.

<u>Item</u>	<u>Source of Indexes Used</u>	<u>Base Date Indexes</u>
[##]	[##]	[##]

- a. The base date shall be the date 30 days prior to the Bid closing date.
- b. The following conditions shall apply:
  - i. Price adjustment will be applied only if the resulting increase or decrease is more than 2% of the Contract price for Operations Services;
  - ii. No price increase will be allowed for periods of delay in the performance of the Operations Services for which the Operator is responsible. The Owner will, however, be entitled to any price decrease occurring during such periods of delay;

- iii. The total adjustment (plus or minus) shall be subject to a ceiling amount of \_\_\_\_ percent (\_\_\_%) of the Contract price for Operations Services;
- iv. If the currency in which the Contract price for Operations Services,  $P_0$ , is expressed is different from the currency of the country of origin of the labour or materials indexes, a correction factor will be applied to avoid incorrect adjustments of the Contract price for Operations Services. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above; and
- v. No price adjustment shall be payable on the portion of the Contract price for Operations Services paid to the Operator as an advance payment.

# SCHEDULE 7: TESTS TO BE COMPLETED BY THE OPERATOR

## SECTION 1 - TESTS ON PLANT AND EQUIPMENT

The Tests on the Plant and Equipment and the applicable standard of performance for the Tests on the Plant and Equipment shall be in accordance with:

*[Note: ## Insert list, for example:]*

- a. [the adopted standards and codes of practice;]
- b. [manufacturer's or supplier's recommendations or specifications;]
- c. [the approved construction quality assurance procedures and inspections; and]
- d. [good engineering practice.]

## SECTION 2 - TESTS ON COMPLETION

The Tests on Completion and the applicable standard of performance for the Tests on Completion shall be:

*[Note: ## Insert list, for example:]*

- a. [All mechanical Plant and Equipment shall be activated and tested under normal field conditions to ensure full functioning in accordance with the supplier's or manufacturer's specifications and recommendations. Any and all control systems shall be verified as operational and functioning in accordance with the supplier's or manufacturer's specifications and recommendations;]
- b. [All pumps shall be activated and tested under normal field conditions to ensure full functioning in accordance with the supplier's or manufacturer's specifications and recommendations. The achievable flow capacity and discharge rates shall be verified under the stipulated range of design working conditions;]
- c. [All pipework, and associated valves and controls, shall be pressure-tested to ensure the absence of leaks, the continuity of the pipework, the absence of blockages and restrictions and the functioning of any and all control valves and monitoring systems. The capacity of the pipework shall be verified under the stipulated range of design working conditions;]
- d. [All electrical systems shall be activated and tested to ensure proper functioning in accordance with the approved design. All electrical systems shall be tested to ensure continuity of electrical circuits, the functioning of all controls and cut-off systems and to ensure that installations have been performed in accordance with designated electrical standards. Third party verification of the correct and safe installation of primary electrical circuits shall be provided;]
- e. [All automatic controls shall be activated and tested to ensure that they are activated automatically in accordance with stipulated trigger conditions specified in the approved design. *High and low trigger levels shall be tested as appropriate;*]  
*and*

- f. *[All measurement systems, including associated computer programs and software, shall be calibrated and their full functioning confirmed under the anticipated range of normal working condition;].*

### **SECTION 3 - TESTS ON COMMISSIONING**

The Tests on Commissioning and the applicable standard of performance for the Tests on Commissioning shall be:

*[Note: ## Insert list, for example:]*

- a. [The full operation and functioning of the New INFRASTRUCTURE / FACILITY]
- b. [The New INFRASTRUCTURE / FACILITY shall function efficiently and with no breach of environmental or performance standards throughout the whole period of the trial;] and
- c. [All control and operational Plant and Equipment and systems shall function efficiently and in conformity with the approved design]

### **SECTION 4 - TESTS ON OPERATIONAL ACCEPTANCE**

The Tests on Operational Acceptance and the applicable standard of performance for the Tests on Operational Acceptance shall be:

*[Note: ## Insert list.]*

### **SECTION 5 - FUNCTIONAL GUARANTEES**

The Operator's Functional Guarantees are as follows:

*[Note: Will need minimum standards for Functional Guarantees and corresponding liquidated damages. ## Insert list, for example:]*

- a. [The New INFRASTRUCTURE / FACILITY shall function and operate efficiently in accordance with the Technical Specifications and in accordance with the approved design;]
- b. [The New INFRASTRUCTURE / FACILITY shall provide capacity in order to comply with the project requirements, including adopting and ensuring the minimum specified levels of usage / performance / operations;]
- c. [The Operator shall design, construct, install and operate all appropriate mitigation and control measures to ensure no unauthorised discharges and emissions to the environment beyond any levels specified and contemplated under the Applicable Law; and]

## SCHEDULE 8: INSURANCES

The Operator shall take out and maintain the following insurance policies in the specified sums and with the specified deductibles as set out below:

Cargo Insurance During Transport	<i>[## Insert the amount of coverage required in the appropriate currency, the deductible that is permissible and any other conditions of the insurance.]</i>
Installation All Risks Insurance:	<i>[## Insert the amount of coverage required in the appropriate currency, the deductible that is permissible and any other conditions of the insurance.]</i>
Third Party Liability Insurance:	<i>[## Insert the amount of coverage required in the appropriate currency, the deductible that is permissible and any other conditions of the insurance.]</i>
Professional Liability Insurance:	<i>## [Insert the amount of coverage required in the appropriate currency, the deductible that is permissible and any other conditions of the insurance.]</i>
Automobile Liability Insurance:	<i>[## Insert the amount of coverage required in the appropriate currency, the deductible that is permissible and any other conditions of the insurance.]</i>
Worker's Compensation:	<i>[## Insert the amount of coverage required in the appropriate currency, the deductible that is permissible and any other conditions of the insurance.]</i>
Owner's Liability:	<i>[## Insert the amount of coverage required in the appropriate currency, the deductible that is permissible and any other conditions of the insurance.]</i>
Other Insurance:	<i>[## Insert the type of insurance required, amount of coverage in the appropriate currency, the deductible that is permissible and any other conditions of the insurance.]</i>

## SCHEDULE 9: ADJUDICATOR

The Adjudicator shall be paid by the hour at the rate of [##]

The Adjudicator will be paid reimbursable expenses as set out below

## APPENDIX 1: OPERATOR'S BID