



PETROBRAS

PRIVILEGED AND CONFIDENTIAL

DESIGN AND ENGINEERING SERVICES CONTRACT

DESIGN AND ENGINEERING SERVICES CONTRACT

BETWEEN

PETRÓLEO BRASILEIRO S.A. - PETROBRAS

AND

HALDOR TOPSØE A/S

in Rio de Janeiro, RJ, Brasil

dated

_____ **2011**

for the

UFN V Project

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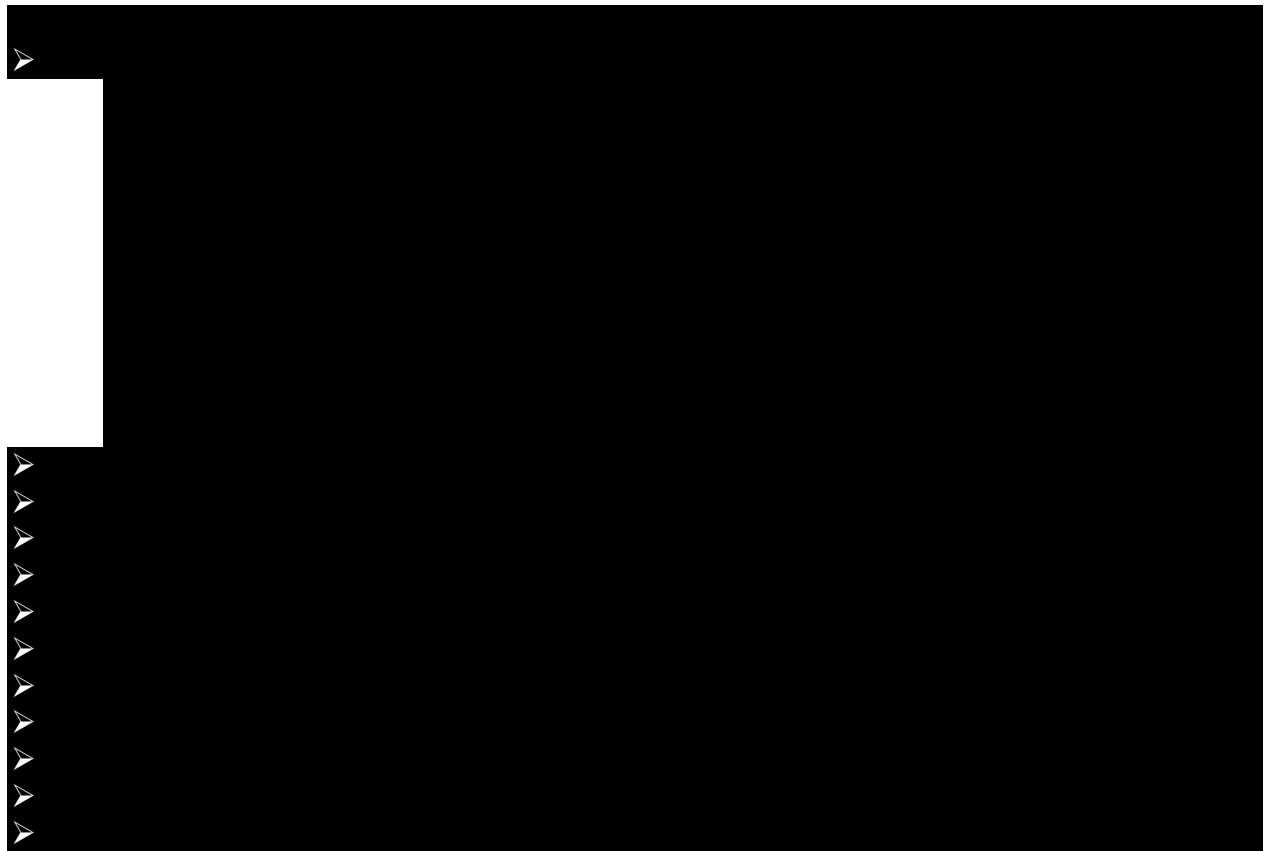
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DESIGN AND ENGINEERING SERVICES CONTRACT

DESIGN AND ENGINEERING SERVICES CONTRACT (the “Contract”) dated _____ 2011,

By and between:

- (1) **PETRÓLEO BRASILEIRO S.A. - PETROBRAS**, a private and public joint stock company incorporated under the Laws of Brazil, with headquarters at Avenida República do Chile 65, in the City of Rio de Janeiro, ZIP Code 20031-912, State of Rio de Janeiro, Federal Republic of Brazil, enrolled with the National Register of Legal Entities (C.N.P.J.) of the Ministry of Finance under No. 33.000.167/0001-01 (the “**Owner**”); and
- (2) **HALDOR TOPSØE A/S**, a company created and incorporated under the laws of Denmark, having its principal place of business at Nymøllevej 55, DK-2800 Kgs. Lyngby, Denmark and company registration number 41853816 (“**Contractor**”).

Recitals

- (A) The Owner desires to have Contractor perform basic design, front end engineering design, technical assistance and training services relating to the Plant (as hereinafter defined); and
- (B) Simultaneously with the execution and delivery hereof, the Parties (as hereinafter defined) are entering into the Technology Supply Agreement (as hereinafter defined) in respect of the Plant; and
- (C) Contractor represents and warrants it has the technical knowledge, financial capacity, experience and facilities for undertaking the execution of such services; and
- (D) Contractor has declared its willingness to undertake the services described in clause (A) above on the terms and conditions hereinafter set forth.

In consideration of the mutual undertakings of the Parties, the Parties hereby agree as follows:

1. Definitions and Interpretation**1.1. Definitions**

As used in this Contract (including the Schedules hereto), the words and expressions below shall, unless the context otherwise requires, have the meanings respectively assigned to them:

“**Acceptance**” is defined in Clause 3.16.

“**Acceptance Date**” is defined in Clause 3.16.

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- “Actual Cost”** of any item, means the actual, direct, out-of-pocket costs reasonably incurred and paid by Contractor in respect of such item, without mark-up or adjustment for contingency, profit, overhead, risk, waste or any other reason.
- “Affiliate”** means, with respect to either Party, a Person that controls, is controlled by, or is under common control with, such Party. For the purposes of this definition, the term **“control”** means the beneficial ownership of fifty percent (50%) or more of the voting shares of a company or other entity, as applicable, or of the equivalent rights to determine the decisions of such company or other entity.
- “aMDEA PROCESS SUPPLIER”** is defined in the Technology Supply Agreement.
- “AMMONIA UNIT”** is defined in the Technology Supply Agreement.
- “Anti-Bribery Laws”** is defined in Clause 20.1.
- “Applicable Laws”** means all Laws relating to the Project or the performance of the Work.
- “Applicable Permits”** means any Permit of or from any Governmental Authority having jurisdiction over the Project or the performance of the Work.
- “Application for Payment”** means an application for payment in substantially the form of [REDACTED]
- “Approved Subcontractor”** means, with respect to any portion of the Work, any Subcontractor designated as an approved Subcontractor therefor in [REDACTED]
- “Arbitral Tribunal”** is defined in Clause 14.4.1.
- “Bankruptcy Event”** with respect to any Person, means (a) such Person’s suspension of payment of, or request from any court of a moratorium on payment of, all or a substantial part of such Person’s debts, (b) such Person’s making of a general assignment or any composition with or for the benefit of its creditors, (c) any filing or consent by answer or otherwise by such Person to the filing

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against it of a petition for relief or reorganisation or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganisation, moratorium or other similar Law of any jurisdiction or (d) any order under the bankruptcy or insolvency Laws of any jurisdiction (i) entered for the winding up, bankruptcy, liquidation, dissolution, custodianship or administration with respect to such Person or any substantial part of such Person's property, or (ii) constituting an order for relief with respect to such Person, or (iii) approving a petition for relief or reorganisation or any other petition in bankruptcy or insolvency Law with respect to such Person, or (iv) approving any petition filed in bankruptcy or insolvency Law against such Person.

"BED" means basic engineering design.

"Brazilian Subcontractor" **FEED** is defined in Clause 5.1.2.

"Business Day" means, in the case of any payment to be made in:

- (a) Reais, any Day on which commercial banks are open to conduct business in Rio de Janeiro, Brazil, and excludes Saturdays and Sundays; or
- (b) Euros, any Day on which commercial banks are open to conduct business in (i) Rio de Janeiro, Brazil, and (ii) Denmark, and excludes Saturdays and Sundays.

"Change Estimate" means an estimate submitted by Contractor pursuant to Clause 16.3.1.

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“Change in Law”

means:

- (a) the enactment, re-enactment, adoption, promulgation or modification of any Applicable Law after the date hereof;
- (b) an order of any Governmental Authority or a decision of a court of competent jurisdiction with respect to any Applicable Law or Applicable Permit, which order or decision is (i) issued after the date hereof and (ii) final and nonappealable; or
- (c) the imposition of any condition or requirement after the date hereof on or with respect to the issuance, maintenance or renewal of any Applicable Permit

that, in the case of sub-clause (a), (b) or (c) above, are more burdensome on a Party than the conditions or requirements of Applicable Laws or Applicable Permits in effect on the date hereof, and, in the case of Applicable Permits, more burdensome than the conditions or requirements committed to in applications for Applicable Permits where a Permit has not been issued prior to the date hereof but an application with respect thereto has been filed with the approval of the Parties; provided that no Change in Law shall be deemed to have occurred as a result of the enactment, adoption, promulgation or modification of any Applicable Law prior to the date hereof that, by its terms (and not as a result of the decision of any Governmental Authority suspending the effectiveness or application of such Applicable Law), does not take legal effect until after the date hereof.

“Change in Work”

means any addition to, deletion from, suspension of or other modification of the Work.

“Change Order”

means an agreement in the form of [REDACTED], executed by the Owner and Contractor, that authorises a Change in Work.

“Claims”

is defined in Clause 12.3.1.

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“Codes and Standards” means the codes of practice and other published standards (other than Applicable Laws) referenced in [REDACTED]. Any reference to any Code or Standard shall include all published consolidations, amendments or replacements thereof.

“Comparable Facilities” means process and industrial facilities having components of a size, type and design comparable to those used in the Plant.

“Completion Guarantee” is defined in Clause 9.1.

“Completion Guarantee Event” means the activity specified in [REDACTED] under the heading “Completion Guarantee Event”.

“Completion Guarantee Event Deadline” means the date specified in respect of the Completion Guarantee Event in [REDACTED] under the heading “Completion Guarantee Event Deadline”.

“Confidential Information” is defined in Clause 13.1.

“Contract” is defined in the preamble hereto, and shall include the Terms and Conditions, the Schedules and all fully executed Change Orders and other amendments, supplements and other modifications hereof.

“Contract Price” is defined in Clause 7.1.

“Contract Price Adjustment Taxes” means any Taxes in respect of payments made by the Owner to Contractor hereunder that are imposed by the Federative Republic of Brazil (or any Governmental Authority thereof or therein) or the jurisdiction in which the Owner is organized, excluding any such Taxes:

- (a) imposed on or measured by or with respect to profits, net income, net worth, franchise or doing business or similar Taxes;
- (b) imposed by reason of a present or former connection between such jurisdiction and

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Contractor (or a shareholder or Affiliate thereof) other than a connection arising solely by reason of Contractor's performance of the Work or having entered into or receiving payments under this Contract;

- (c) imposed by reason of a failure of Contractor to comply with any applicable certification, identification, information, documentation, application, notification or other reporting requirement; or
- (d) imposed by reason of any action, failure to act or decision of Contractor, such as a change in location of an office or establishment or a change in taxation method.

“Contractor” is defined in the preamble hereto.

“Contractor Event of Default” is defined in Clause 18.1.1.

“Contractor Indemnified Person” means the Contractor, any Subcontractor and their respective successors, assigns, employees, agents, shareholders, members, partners, other owners thereof, officers, directors and Affiliates, and anyone else acting on behalf of the Contractor.

“CONTRACTOR INTELLECTUAL PROPERTY” is defined in the [REDACTED]

“Contractor Person” means (a) Contractor, (b) any Subcontractor, (c) any employee, agent, shareholder, member, partner, other owner thereof, director, officer, Affiliate, successor or assign of Contractor or any Subcontractor or of any other Person directly or indirectly employed by any of the foregoing or (d) any other Person for whom Contractor or any Subcontractor may be liable.

“Contractor's Insurance” means, in respect of Contractor, the insurance required to be maintained by Contractor pursuant to Clause 12.1.1.

“Contractor's means a person designated by Contractor as its

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Representative”	representative in accordance with Clause 3.7.
“CRTPA”	means the Contract (Rights of Third Parties) Act 1999.
“Data”	means designs, models, drawings, prints, information, calculations, computer printouts, data, studies, forms, analyses, samples, transparencies, specifications, reports, manuscripts, working notes, documentation, manuals, photographs, negatives, software, or any other similar items that are related to the Plant, whether in hard copy, electronic or other form.
“Day”	means a calendar day.
“Defaulting Party”	is defined in Clause 18.6.
“Defect”	means the failure of any portion of the Work to comply with the Standard of Care.
“Delay LDs”	is defined in Clause 9.2.1.
“Delayed Payment Rate”	means the lower of (a) two percent (2%) above LIBOR and (b) the maximum rate allowable under Applicable Law.
“Disclosing Party”	is defined in Clause 13.1.
“Dispute”	is defined in Clause 14.1.
“Euros” and “€”	means the lawful currency of certain of the European Union countries.
“Excusable Event”	is defined in Clause 15.3.1.
“Expert”	is defined in Clause 14.5.1.
“Expert Matters”	is defined in Clause 14.5.2.
“FEED”	means Front End Engineering Design ([REDACTED])
“Final Milestone”	means the last Milestone listed in the Payment Schedule.
“Final Milestone Payment”	means the Milestone Payment relating to the Final

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Milestone.

“Force Majeure Event” is defined in Clause 15.1.1.

“Good Industry Practice” means those good, sound and professional practices, methods and acts engaged in or approved by a significant proportion of the industry that is involved in providing engineering services and any other services similar to the Work. “Good Industry Practice” is not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather is a spectrum of reasonable and proper practices, methods and acts.

“Governing Law” is defined in Clause 22.1.1.

“Governmental Authority” means:

- (a) any country, state or other subdivision (political or otherwise) thereof; and
- (b) any regional or municipal authority thereof, or any other central, state or local government or any legislature, ministry, department, commission, board, authority (judicial or otherwise), instrumentality, agency, corporation or commission under the direct or indirect control (as to matters of policy or otherwise) or ownership of any entity referred to in sub-clause (a) above.

“ICC” means the International Chamber of Commerce.

“ICC Centre” is defined in Clause 14.5.3(c).

“ICC Rules” is defined in Clause 14.4.1.

“IMPROVEMENTS” is defined in the Technology Supply Agreement.

“Indemnified Person” means an Owner Indemnified Person or a Contractor Person.

“Intellectual Property” means all forms of intellectual property and any other proprietary rights or interests, including patents and patent applications, copyrights, trademarks, trade

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secrets, trade names and know-how, including any thereof related to any Data, including any of the foregoing rights embodied in any tangible form, including a work of authorship, a process diagram, a drawing, a blueprint, a model, a specification, a report, a manuscript, a document, a manual, a database, a computer program, a design for an apparatus or process or system, working notes, a plan or a mode of operation.

“ISBL” is defined in the [REDACTED]

“KNOW-HOW FEE” is defined in the [REDACTED]

“Laws” means all laws, treaties, ordinances, judgments, decrees, injunctions, writs, orders and stipulations of any court, arbitrator or Governmental Authority and statutes, rules, regulations, orders and interpretations thereof of any national, state, county, municipal, tribal, regional, environmental or other governmental Authority. Any reference to any Law shall include all published statutory and administrative provisions consolidating, amending or replacing such Law, and shall include all published rules and regulations promulgated thereunder.

“LIBOR” means the London inter-bank offered rate for one-month U.S. dollar deposits that appears on Reuters BBA Page LIBOR 01 (or such other page as may replace that page for the purpose of displaying offered rates of leading banks for London inter-bank deposits as aforesaid) as at 11.00 a.m. (London time) on the relevant day; provided that if this rate is not available, then the rate quoted in London for 30-day U.S. dollar deposits by the London head branch of Barclays Bank plc at approximately 11.00 a.m. (London time) on the relevant Day for value two (2) banking Days later in London, or, if this rate is not available, the rate published on the relevant date in the Financial Times at which U.S. dollar deposits were offered in the London inter-bank market for a period of one (1) month, or, if this rate is not available, the rate then quoted by such bank as the Parties may agree.

“Lien” means any lien (statutory or other), pledge, mortgage,

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security interest, deed of trust, charge, fiduciary transfer, assignment, deposit arrangement, fiduciary assignment, claim, hypothecation, attachment or other encumbrance of any kind in respect of any portion of the Work, whether or not filed, recorded or otherwise perfected or effective under applicable Law, or any preferential arrangement having the practical effect of constituting a security interest with respect to the payment of any obligation with, or from the proceeds of, any asset or revenue of any kind, as well as the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement, any financing or similar statement or notice filed under any recording or notice statute, and any consignment, or bailment having substantially the same effect as any of the foregoing relating to such asset, including materialmen's, labourers', mechanics', subcontractors' and vendors' liens.

- “Liquidated Damages”** means the Delay LDs and the Performance LDs.
- “Losses”** is defined in Clause 12.3.1.
- “Milestone”** means any event described in the [REDACTED] that entitles Contractor to receive a Milestone Payment.
- “Milestone Payment”** means any instalment payment of the Contract Price contemplated by the [REDACTED].
- “Milestone Report”** means a report substantially in the form of [REDACTED] to be provided in relation to each Milestone confirming, inter alia, the completion of the relevant Milestone.
- “Minimum Performance Guarantees”** means the specifications set forth in Articles 7.2 through 7.7 of the [REDACTED]
- “Non-Excusable Event”** is defined in Clause 15.3.4(c).
- “Notice of Dispute”** is defined in Clause 14.2.

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- “Operative”** is defined in Clause 22.13.
- “Other Contractors”** means (a) all other Persons with whom the Owner or any Affiliate of the Owner enters into a contract or agreement for or relating to the engineering, construction and/or procurement of any facilities in connection with the Project and (b) such Persons’ subcontractors.
- “Other Party”** is defined in Clause 18.6.
- “Owner”** is defined in the preamble hereto.
- “Owner-Caused Delay”** is defined in Clause 15.2.1.
- “Owner Event of Default”** is defined in Clause 18.2.1.
- “Owner Indemnified Persons”** means the Owner, the Owner’s Engineer, the Project Parties and the Other Contractors and their respective successors, assigns, employees, agents, shareholders, members, partners, other owners thereof, officers, directors and Affiliates, and anyone else acting on behalf of the Owner.
- “Owner Person”** means (a) the Owner, (b) the Owner’s Engineer, (c) any Project Party, (d) any Other Contractor and (e) any employee, agent, shareholder, member, partner, other owner thereof, director, officer, Affiliate, successor or assign of any of the foregoing or of any other Person directly or indirectly employed by any of the foregoing (other than Contractor and its Subcontractors).
- “Owner Specifications and Drawings”** means any of the following that are provided to Contractor by the Owner, any Owner Person or any contractor of any thereof: specifications, drawings, designs, models, prints, samples, transparencies, reports, manuscripts, working notes, documentation, manuals, photographs, negatives, tapes, discs, software and any similar items.
- “Owner’s Engineer”** means the engineering firm (or, in case there shall be more than one (1) such firm, each of the engineering firms) retained by the Owner to report on progress in

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	the performance of the Work and to review the Applications for Payment, the Acceptance of the Work and other matters relating to this Contract.
“Owner’s Representative”	means a person designated by the Owner as its representative in accordance with Clause 4.1.
“OSBL”	is defined in the [REDACTED].
“P&ID”	means piping and instrumentation diagram.
“Parties”	means the Owner and the Contractor.
“Payment Schedule”	means [REDACTED]
“Performance Guarantee”	means the performance guarantees by Contractor set forth in the Performance Guarantee Undertaking.
“Performance Guarantee Undertaking”	means Contractor’s performance guarantee undertaking on the terms and conditions in [REDACTED]
“Performance LDs”	means the liquidated damages payable by Contractor for the failure to achieve any Performance Guarantee set forth in the Performance Guarantee Undertaking.
“Permit”	means any permit, approval, consent, waiver, exemption, variance, franchise, authorisation, license or similar order of or from any Governmental Authority.
“Person”	means any natural person or entity, including a corporation, partnership, limited liability company, other company, joint venture, association, trust, unincorporated organisation or Governmental Authority.
“Personal Injury”	means any injury to a person, including bodily injury, illness, disease, mental anguish or death.
“Plant”	means the nitrogen fertiliser unit project, known as UFN V or UFN V Plant or UFN V Project, to be built in Uberaba, State of Minas Gerais, Brazil; [REDACTED]

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[REDACTED]

“Price Index” means the price index published by the “Conjuntura Econômica” magazine of Getúlio Vargas Foundation, referring to National Cost for Civil Construction and Public Works – Consulting – Column 39, or any successor price index.

“PROCESSES” is defined in the [REDACTED].

“PRODUCTS” is defined in the [REDACTED].

“Project” means the design and engineering of the Plant and all activities incidental thereto.

“Project Agreement” means this Contract, the [REDACTED] or any other major commercial agreement relating to the Plant.

“[REDACTED]”

[REDACTED]

“Project Party” means any party to a Project Agreement other than the Owner.

“Project Schedule” is defined in Clause 3.11.

“Reais” or “R\$” means the lawful currency of Brazil.

“Reais FEED Contract Price” means the portion of the Contract Price payable in Reais, which shall be assigned to the Brazilian FEED Subcontractor pursuant to Clause 7.8.

“Receiving Party” is defined in Clause 13.1.

“Release of Claims” means a Release of Claims in substantially the form of [REDACTED]

“Relevant Data” is defined in Clause 18.1.4(a).

“Rely-Upon Information” means data, information, documents and design that:

- (a) is specified and listed in the [REDACTED] (other than the data, information,

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documents and design specified and listed therein as to be defined or provided by Contractor); or

(b) is received by Contractor from the Owner's Representative.

“Review Date” is defined in Clause 7.9.1.

“Reviewers” means the Owner personnel referenced in Clause 3.9.2.

“Standard of Care” is defined in Clause 11.1(a).

“Subcontract” means any agreement or contract referred to in the definition of “Subcontractor” in this Clause 1.1.

“Subcontractor” means a contractor having a direct or indirect agreement or contract with Contractor or with any other Subcontractor for the performance of a portion of the Work.

“Taxes” means occupational, sales, works, use, value added, excise, unemployment, income, profit, excess profit, gross receipts, license, withholding, personnel, property, services and other taxes (including taxes measured by wages earned by employees of Contractor), import, customs or other duties, fees (including fees for public services), social, betterment and other contributions, charges and imposts and duties imposed by any Governmental Authority, together with any interest, penalties and additions with respect thereto.

“Technical Information” means all design calculations, design drawings, standard drawings, design philosophies, design standards, standard specifications, purchase specifications, detailed drawings, material lists, samples, vendor documents and other product data related to the Work, in each case provided by Contractor.



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[REDACTED]

[REDACTED]

“Termination Date” is defined in Clause 18.9.

“Termination Payment” is defined in Clause 18.7.2.

“Undisputed” in respect to any matter, means that a Notice of Dispute has not been submitted in respect thereof in accordance with Clause 14.2.

“UNIT” is defined in the [REDACTED].

“Warranty Period” is defined in Clause 11.1(c).

“Wilful Misconduct” means a deliberate act or omission that (a) deviates from a reasonable course of action or from any provision of this Contract and (b) is done or omitted with knowledge of, or conscious indifference to, harmful, avoidable and reasonably foreseeable consequences.

“Work” means:

- (a) design and engineering work for the Plant, as more particularly described in the Technical Specifications;
- (b) technical assistance, training and other services relating to the Plant, as more particularly described in the Technical Specifications;
- (c) all other work, services, goods, deliverables (including the Technical Information), duties and activities performed or provided (or to be performed or provided) by Contractor pursuant to the Technical Specifications; and
- (d) any work to be performed by Contractor as contemplated by (i) a Change Order complying with the requirements of Clause 16.4 or (ii) an amendment complying with the requirements

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of Clause 22.12.

“Work Commencement Date”

means the date notified by the Owner to Contractor as the date on which the Work shall commence.

“Work Day”

means any Day other than a Saturday, Sunday or public holiday in Rio de Janeiro, Brazil.

1.2. Interpretation

- 1.2.1. All references in this Contract to Clauses and Schedules are references to Clauses of, and Schedules to, this Contract.
- 1.2.2. Where the context requires, words denoting the singular shall include the plural and vice versa.
- 1.2.3. The headings in this Contract are for convenience only and shall not affect the interpretation or construction of this Contract.
- 1.2.4. All dates and periods of time shall be determined by reference to the Gregorian calendar. Unless otherwise specified, any reference to a time of day means the time of day in Rio de Janeiro, Brazil.
- 1.2.5. The words **“include”** and **“including”** shall not be construed as being by way of limitation.
- 1.2.6. References in this Contract to a Party shall include its successors and permitted assigns.
- 1.2.7. References to any gender include all others if applicable in the context.
- 1.2.8. The term **“or”** is not exclusive.
- 1.2.9. The words **“hereof”**, **“herein”**, and **“hereunder”** and words of similar import refer to this Contract as a whole and not to any particular provision of this Contract.
- 1.2.10. Any reference to this Contract or any agreement, contract, instrument or other document shall be a reference to this Contract or such agreement, contract, instrument or other document as amended, supplemented, modified, revised, suspended, replaced, restated or novated from time to time.
- 1.2.11. All obligations under this Contract of either Party are continuing obligations throughout the term hereof.
- 1.2.12. If the Price Index or another index or similar reference referred to in this Contract is changed or no longer published or reported by the Person (or such Person’s successor)

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who, at the date hereof, publishes or reports such index or reference, then the Parties shall use their best efforts to replace such index with the best substitute for the changed or no-longer-published index or reference.

1.2.13. In case of any inconsistency between two (2) or more of the following provisions of this Contract, the following order of precedence will govern matters of interpretation:

- (a) Clauses 1 through 22;
- (b) Change Orders executed by the Parties;
- (c) [REDACTED]; and
- (d) the Technical Specifications.

1.2.14. In the case of any conflict in respect of any provision of this Contract and any provision of the [REDACTED], the provision of the [REDACTED] shall control.

1.2.15. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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2. Object

The object of this Contract is the performance by Contractor of basic engineering design of the ISBL and OSBL, FEED of the Plant, technical assistance and training services relating to the Plant, as described in the Technical Specifications.

3. The Work

3.1. Generally

3.1.1. Contractor shall perform the Work in accordance with this Contract. Contractor shall be responsible for all items of the Work. Without limiting the generality of the foregoing, Contractor shall:

- (a) perform and furnish, or cause to be performed and furnished, the Work such that the Work complies with the Standard of Care;
- (b) perform all of the Work in a professional and careful manner, in accordance with all requirements of this Contract and in accordance with Good Industry Practice;
- (c) furnish the services of all supervisors, engineers, draftsman and other personnel and resources necessary for the proper performance of the Work;
- (d) comply with, and require that its employees, agents, representatives and subcontractors comply with, all Applicable Laws and Applicable Permits during performance of the Work;
- (e) if Contractor discovers any error or inaccuracy in any information and/or data supplied by the Owner (including any Rely-Upon Information), provide prompt notice thereof to the Owner, specifying in reasonable detail the nature of such error or inaccuracy; and
- (f) comply with the Technical Specifications.

3.1.2. Contractor shall commence the performance of its design and engineering Work on the Work Commencement Date.

3.1.3. Contractor shall be fully responsible for, and shall be fully knowledgeable about, the Work, irrespective of whether Contractor or any Subcontractor may furnish such services or deliverables.

3.1.4. Contractor shall have sole responsibility for the Work.

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3.2. Contractor's Expertise and Qualifications

- 3.2.1. Contractor represents and warrants that it has the requisite knowledge, know how, skill and experience to perform the Work. It is expressly agreed and understood that the Owner is relying upon Contractor's judgment and expertise in the performance of the Work in accordance with this Contract.
- 3.2.2. Contractor represents and warrants that Contractor and its employees are trained, skilled practitioners at performing the Work and shall perform the Work with diligence according to reasonably prudent professional standards.

3.3. Interrelation of Documents

This Contract, the Codes and Standards and all other reference standards cited herein or therein are essential parts of the requirements of this Contract. A requirement occurring in any of the materials identified in the preceding sentence is as binding as though occurring in all such materials. All requirements are intended to be complementary and to describe and provide for the complete Work. If Contractor discovers any apparent error or discrepancy of a material nature, it shall promptly notify the Owner for the Owner's interpretation. The Owner shall notify Contractor of its interpretation of such error or discrepancy within ten (10) Work Days after Contractor's notification thereof.

3.4. Documents

██████████ All documents and other information submitted by Contractor to the Owner hereunder shall be in the English language and submitted in both hard copy and native electronic format. Contractor shall follow the procedures set forth in ██████████
██████████

- 3.4.2. Unless specifically stated otherwise elsewhere in this Contract, Contractor shall provide all information for the Owner's review and/or approval in time to allow the Owner at least ten (10) Work Days to complete such review and/or approval. In the case of large submissions to the Owner, Contractor shall endeavour to give the Owner more than ten (10) Work Days to complete such review and/or approval, in which case the Owner shall, within three (3) Work Days after receipt of such submission, inform Contractor of such longer period of time (not to exceed an additional ten (10) Work Days) that the Owner requires for such review and/or approval as (a) the Owner may reasonably request and (b) Contractor, acting reasonably, may approve. Any such information not reviewed and/or approved by the Owner within the relevant time period shall be deemed approved by the Owner for all purposes and Contractor may rely upon such deemed approval.

3.5. Permits

- 3.5.1. The Owner shall inform Contractor of the Applicable Permits necessary for the performance of the obligations hereunder in Brazil other than those identified in the

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Technical Specifications. Contractor shall obtain and maintain all Applicable Permits necessary for the performance of its obligations hereunder; provided that if any such Applicable Permit is not identified in the Technical Specifications, the Owner shall reimburse Contractor for its Actual Cost in obtaining and maintaining such Applicable Permit and any reasonable delay in the Contractor's performance of its obligations hereunder directly related to obtaining and maintaining such Applicable Permit shall be an Excusable Event.

- 3.5.2. Contractor shall comply with Applicable Permits necessary for the performance of its obligations hereunder.
- 3.5.3. The Owner shall comply with all Brazilian Applicable Permits necessary for the performance of its obligations hereunder.
- 3.5.4. At the Kick-Off Meeting (a) the Contractor shall confirm to the Owner those Applicable Laws that the Contractor believes it is required to comply with in order to perform any of the Work in Brazil and (b) the Owner shall confirm whether or not such Applicable Laws so notified by the Contractor is accurate and complete. To the extent the Contractor is required to comply with any other Applicable Law than identified pursuant to the preceding sentence in order to perform any of the Work in Brazil, then the Owner shall reimburse the Contractor for its Actual Cost in complying with any such Applicable Law and any reasonable delay in the Contractor's performance of its obligations hereunder directly related to complying with such Applicable Law shall be an Excusable Event.

3.6. Owner's Resident Engineers and Other Representatives

The Owner's resident engineers and other representatives of the Owner shall review and comment on the BED documents at Contractor's offices during the preparation of the BED of the Plant in accordance with this Contract.

- 3.6.1. The Owner's resident engineers will remain at Contractor's offices throughout the whole period of Contractor's design of the Plant and documentation of that design in the BED of the Plant in order for the Owner's engineers and other representatives to review, approve and receive detailed explanations for their full understanding of the technical documents. During the preparation and explanation of such BED, Contractor's Representative or his designee shall be available to the Owner's resident engineers and other representatives of the Owner, as well as to give the Owner's resident engineers and other representatives of the Owner detailed explanations for their full understanding of the technical documents.
- 3.6.2. The Owner's representatives shall stay at Contractor's offices, for a mutually agreed period, for each of the following events:

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- (a) a process flow diagram review meeting after completion of heat and material balance to review the first issue of the process flow diagrams and the process work of the Plant, which is expected to last one (1) week;
- (b) a P&ID and plot plan review meeting after completion of the first issue of the P&IDs and plot plan (preliminary issue) for the Owner's comments, which is expected to last two (2) weeks, in order to comment on P&IDs and plot plan of the Plant;
- (c) a final documentation review meeting after completion of the first issue of the BED to comment and review all documents, which is expected to last two (2) weeks; and
- (d) technical and coordination meetings.

3.6.3. Contractor shall provide for the Owner's resident engineers suitable offices with standard project design engineer facilities (with individual computers, Internet, electronic mail access, intranet and telephones). Such office shall be in the same location as Contractor's project team.]

3.7. Contractor's Representative

Contractor shall employ a skilful and competent Contractor's Representative and competent assistants. Except as otherwise expressly specified herein, any direction or communication given by the Owner or the Owner's Representative to Contractor's Representative shall be deemed as having been given to Contractor. The Owner's approval of Contractor's Representative shall not be deemed to be a waiver of any right that the Owner may have under this Contract if Contractor fails to perform any portion of the Work in accordance with the requirements of this Contract. The initial Contractor's Representatives shall be notified by Contractor to the Owner no later than ten (10) Work Days after the date hereof. Any Contractor's Representative may be changed by Contractor from time to time, with prior written notice to the Owner. The Contractor's Representative shall act as Contractor's authorised representative for all purposes of this Contract. All decisions by Contractor's Representative relating to this Contract that are set forth in writing shall be binding on Contractor.

3.8. Technical Information

3.8.1. Contractor has the responsibility for reviewing, preparing, approving and submitting to the Owner for review and comment the Technical Information required under this Contract promptly and in such a sequence to avoid any delay to the Work.

3.8.2. Unless an item of Technical Information is labelled as "final", "approved", "verified" or the like, it shall be considered preliminary. When Contractor reviews, approves and submits any Technical Information labelled as "final", Contractor shall have determined and verified materials, field measurements, field conditions and field

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construction criteria related thereto and shall have checked and coordinated the information contained within such submittals with the requirements of the Work; provided that Contractor shall not have any obligation to verify any Rely-Upon Information.

- 3.8.3. Contractor shall supply advanced technical information to Owner so that Owner may proceed with procurement of major pieces of equipment. Such advanced technical information shall be provided in accordance with the schedule to be mutually agreed therefor at the Kick-Off Meeting.
- 3.8.4. The Owner's inspection, review, approval and/or comment of or on any portion of the Work or the individual assigned by Contractor to perform any portion of the Work shall not mean that the Owner has (a) control over any portion of the Work, (b) assumed any responsibility or liability for the performance of any portion of the Work or (c) waived any of Contractor's obligations under this Contract. Contractor shall not be relieved of responsibility for deviations from the requirements of this Contract by the Owner's review, approval and/or comment of or on any of Contractor's Technical Information. Subject to the foregoing limitations, the Owner shall have the same right to review and comment on Technical Information created by Subcontractors and made available by Contractor to the Owner.
- 3.8.5. If any Rely-Upon Information contains an error or inaccuracy that affects any portion of the Work, Contractor shall:
- (a) promptly notify the Owner of such error or inaccuracy;
 - (b) be entitled to a Change Order in accordance with Clause 16.4 to the extent reasonably necessary to accommodate the impact of such error or inaccuracy on the Work; and
 - (c) not proceed with any of such portion of the Work unless it has received from the Owner:
 - (i) instructions on how to proceed, which the Owner shall provide within ten (10) Work Days of receiving the notice pursuant to sub-clause (a) above; and
 - (ii) confirmation that Contractor shall be entitled to a Change Order in respect thereof.

3.9. Right of Inspection; Contractor-Provided Facilities

- 3.9.1. The Owner shall have the right to observe and review, at its own expense, the progress of the Work as it proceeds.

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- 3.9.2. Contractor shall provide office space at Contractor's offices located in [Nymøllevvej 55, DK-2800 Kgs. Lyngby, Denmark and company registration number 41853816] for [ten (10)] Owner personnel for [eight (8)] months until the completion of the basic engineering packages for the Plant.
- 3.9.3. When using Contractor's office space, a Reviewer shall comply with all of Contractor's work hours and routines.
- 3.9.4. No Reviewer is authorised to revoke, alter or waive any provision of this Contract except as provided in Clause 22.12.
- 3.9.5. Subject to reasonable confidentiality, safety and security requirements, the Owner, the Owner's Representative and the Reviewers and their respective representatives shall have the right to see and copy any document that Contractor provides, or is required to provide, to the Owner pursuant to this Contract.

3.10. Health, Safety and Environmental

- 3.10.1. In performing the Work, Contractor shall, and shall use reasonable endeavours to cause each Subcontractor to, comply with:
- (a) all applicable health, safety and environmental Laws in performing the Work;
 - (b) in the case of any Work that is performed in Brazil at the Owner's facilities, the Owner's disciplines, regulations and standards in force at such facilities to the extent such disciplines, regulations and standards have been provided to Contractor in writing; and

[REDACTED]

- 3.10.2. Contractor shall appoint one or more qualified safety officers to carry out the safety provisions. The safety officer's name(s) shall be reported to the Owner and a safety officer shall be available by telephone during non-working hours.

3.11. Project Schedule

A project schedule for the Work is set forth [REDACTED]. Contractor shall execute the Work diligently and without interruption to completion and shall use commercially reasonable efforts to perform the Work in accordance with the Project Schedule and Completion Guarantee; provided that, except for the Completion Guarantee, Contractor is not a guarantor of the Project Schedule.

3.12. Quality Management

Contractor shall exercise quality control over the Work in accordance with the provisions of [REDACTED].

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3.13. References to Certain Sources

3.13.1. Any reference in this Contract to standard specifications, manuals or codes of any technical society, organisation or association or to the Laws of any Governmental Authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Law, except as may be otherwise specifically stated; provided that no provision of any specification, manual, code or Law (whether or not specifically incorporated by reference in this Contract) shall be effective to change the duties and responsibilities of either Party or any of its consultants, agents or employees from those set forth in this Contract.

3.13.2. It shall be an Excusable Event in respect of Contractor if (a) any Code or Standard is enacted, adopted, promulgated or modified after the date hereof that affects any of the Work and (b) the Owner instructs Contractor to comply with such Code or Standard, in which case Contractor shall comply with such Code or Standard.

3.14. Defects

3.14.1. Contractor shall promptly correct any Defect in the Work, including the re-performance of any portion of the Work that fails to meet the Standard of Care.

3.14.2. Throughout Contractor's performance of the Work, the Owner may provide written notice to Contractor setting forth any Defect in the Work that the Owner, acting reasonably, believes exists. The issuance of any such notice shall not be deemed a waiver of any Defect not set forth in such notice. If any such Defect cannot be corrected immediately by re-performance of the Work, Contractor shall (a) immediately notify the Owner thereof and (b) not later than three (3) Work Days after its receipt of such notice, Contractor shall provide the Owner a schedule and description of corrective action or request for deviation that Contractor intends to take.

[REDACTED]

[REDACTED]

3.16. Acceptance

Upon completion of the Work, Contractor shall notify the Owner in writing thereof and request confirmation thereof by the Owner ("**Acceptance**"). Within thirty (30) Days after receipt of such notice, the Owner shall either (a) confirm to Contractor in writing that the Work was completed on the date indicated therein (such date, the "**Acceptance Date**") or (b) provide Contractor with a list of the Work that the Owner believes was not completed. Any Work included in such notice to the Owner for which the Owner does not provide written objection within thirty (30) Days after receipt of such notice shall be

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deemed complete and accepted by the Owner (and the "Acceptance Date" for the Work shall be the date indicated therein by Contractor). With respect to Work listed by the Owner as incomplete, Contractor shall complete the Work and the foregoing completion procedure shall be repeated. The Owner shall not unreasonably withhold or delay Acceptance. On the Acceptance Date, Contractor shall enter into a term of final receipt (termo de recebimento definitivo), in form and substance satisfactory to the Owner.

3.17. The Owner's Instructions

Subject to Clauses 3.10 and 16, Contractor shall comply with all instructions of the Owner that are consistent with the provisions and objectives of this Contract.

3.18. Contractor Review of the Technical Specifications, Etc.

3.18.1. Each Party confirms that it has examined in detail the Technical Specifications and the various reports, studies and plans and the documents referenced in the Technical Specifications and has checked all such documents for any errors and verified the consistency and sufficiency of the information contained therein.

3.18.2. (a) Contractor acknowledges that the Owner Specifications and Drawings may not be complete in every detail. Contractor shall comply with their manifest intent and general purpose, taken as a whole, and shall not make use of any errors or omissions therein to the extent known to Contractor to the detriment of the Work. Should any conflict, error, omission or discrepancy be identified by Contractor in any of the Owner Specifications and Drawings, the Owner's instructions or work done by others, Contractor shall notify the Owner at once and the Owner will, within ten (10) Work Days following receipt of such notice, issue instructions on how to proceed. Contractor shall not proceed with any of the Work in question (i) prior to receiving such instructions and (ii) unless the Owner has confirmed that Contractor shall be entitled to a Change Order for the impact of such instructions.

(b) Without prior written approval from the Owner, Contractor shall not deviate from the Technical Specifications, which approval shall not be unreasonably withheld if such deviation is required by any Applicable Law, Codes and Standards, Good Industry Practice or any provision of this Contract.

(c) If the Project Schedule will be delayed by "Hold" markings on any Owner Specifications and Drawings, (i) Contractor shall report such potential delay to the Owner not less than five (5) Work Days prior to the start of the delay and (ii) such delay shall be an Excusable Event.

(d) Contractor shall not have any obligation to verify any Rely-Upon Information.

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3.19. Work Performed in Brazil

The following provisions shall apply to any Work to be performed in Brazil.

- 3.19.1. Before commencing any of the Work to be performed in Brazil, Contractor shall present a decree of authorisation to operate in Brazil; provided that if Contractor has never operated in Brazil and a decree of authorisation has not yet been issued, it may be replaced by a power of attorney, in form and substance satisfactory to the Owner, issued by Contractor to a Brazilian company, satisfactory to the Owner, pursuant to which Contractor grants broad powers of attorney to such Brazilian company to be accountable for matters of an administrative, judicial and business nature (Ad Judicia and Ad Negotia Clauses). If such power of attorney is issued outside of Brazil and/or in a language other than Portuguese, it shall be authenticated in the country of origin, certified by the Brazilian Consulate in the country of origin and translated into Portuguese by a sworn public translator.
- 3.19.2. Contractor shall submit, whenever so requested, documentary evidence of fulfilment of its labour obligations, including social security contributions and Brazil's Government Severance Indemnity Fund (FGTS) deposits for its employees or those of Subcontractors contracted in Brazil.
- 3.19.3. Contractor shall (a) comply with the duties in respect of salaries, labour Laws, social security and welfare and (b) pay for any extra charges that are or may come due to its workers or those of its Subcontractors according to the Applicable Laws of the country of origin.

4. The Owner's Responsibilities

4.1. The Owner's Representative

The Owner's Representative shall act as the Owner's authorised representative and may make decisions that shall be binding on the Owner. Except as otherwise expressly specified herein, (a) any direction or communication given by Contractor to the Owner's Representative shall be deemed as having been given to the Owner and (b) all written communications by Contractor to the Owner shall be made to the attention of the Owner's Representative. The Owner's Representative may delegate his or her authority to another person from time to time.

4.2. Owner-Provided Facilities

Until the Acceptance Date, the Owner shall provide such facilities as may be mutually agreed by the Parties for the Contractor Persons' personnel while working in Brazil. When using such facilities, each Contractor Person and its personnel shall comply with all of the Owner's work hours and routines.

5. Subcontracting

5.1. Selection of Subcontractors

5.1.1. Contractor shall select Subcontractors in connection with the performance of the Work such that all design, engineering and labour meet all relevant Codes and Standards and the reliability and performance requirements set forth in this Contract.

[REDACTED]

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- 5.1.4. Acceptance by the Owner of a Subcontractor (whether or not listed in [REDACTED]) shall not:
- (a) give rise to any claim by Contractor against any Owner Person if such Subcontractor breaches its Subcontract;
 - (b) give rise to any claim by such Subcontractor against any Owner Person;
 - (c) create any contractual obligation by any Owner Person to such Subcontractor;
 - (d) give rise to a waiver by the Owner of any of its rights to reject any applicable portion of the Work containing a Defect; or
 - (e) relieve Contractor of any of its duties, liabilities or obligations under this Contract.

5.2. Contractor's Liability

Contractor shall remain responsible for all of its obligations under this Contract, including the Work, regardless of whether a Subcontract is made or whether Contractor relies upon any Subcontractor to any extent. Contractor's use of a Subcontractor for any portion of the Work hereunder shall in no way increase Contractor's rights or diminish Contractor's liabilities with respect to the Owner and this Contract, and in all events Contractor's rights and liabilities hereunder with respect to the Owner and this Contract shall be as though Contractor had itself performed such portion of the Work.

5.3. No Inconsistent Technical Terms in Subcontracts

No Subcontract shall contain any technical term that is materially inconsistent with this Contract. Upon request by the Owner, Contractor shall submit to the Owner the unpriced technical portions of any Subcontract within two (2) weeks after such request.

5.4. Subcontractor Insurance

Unless covered by Contractor's Insurance, Contractor shall require all Subcontractors [REDACTED] obtain, maintain and keep in force during the time they are engaged in performing services hereunder adequate insurance coverage consistent with Contractor's Insurance (provided that the maintenance of any such Subcontractor insurance shall not relieve Contractor of its other obligations pursuant to Clause 12.3). Contractor shall, upon the Owner's request, furnish the Owner with evidence of such Subcontractor's insurance.

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5.5. No Privity with Subcontractors

Except as expressly provided in this Contract, the Owner shall not, by virtue of this Contract, be deemed to have any contractual obligation to or relationship with any Subcontractor.

5.6. Dispute Resolution

Contractor shall use reasonable efforts to cause each Subcontract between Contractor and any Subcontractor to provide that, in respect of disputes under such Subcontract the subject matter of which is common to any Dispute under this Contract, such Subcontractor shall be bound by the outcome of the dispute resolution procedures set forth in Clause 14.

6. Contractor's Personnel

6.1. Project Personnel Generally

The Owner shall have the right at any time to require the removal of any personnel of any Contractor Person involved in the Work for good cause. Contractor, at its expense, shall replace such personnel with personnel suitably qualified as soon as reasonably practicable upon at least five (5) Work Days' prior notice; provided that no such prior notice shall be required in the case of an emergency or situation involving the potential for Personal Injury or property damage.

6.2. Costs of Contractor's Personnel

6.2.1. Contractor shall be solely responsible, at its expense, for providing all of the requirements of its personnel, if any, including:

- (a) salaries, wages, insurance (including worker's compensation insurance), termination payments, rest leave and benefits under applicable Law and labour contracts; and
- (b) all Taxes assessed or levied against or on account of salaries or other compensation or benefits paid to or for the benefit of Contractor's employees, including deductions and remittance of personal income tax and other employee-related statutory impositions to the appropriate Governmental Authority.

6.3. Solicitation of Employment

6.3.1. During the term of this Contract and for a period of one hundred eighty (180) Days thereafter, neither Party shall, directly or indirectly, for itself or on behalf of, or in conjunction with, any other Person, solicit, hire, contract with or engage the employment of an employee of the other Party with whom such Party or its personnel

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have had contact during the course of the Work unless such Party (a) has obtained the written consent of the other Party to such hiring and (b) pays to the other Party a fee to be mutually agreed upon.

6.3.2. Clause 6.3.1 shall not apply to the solicitation, hiring, contracting or employing of an employee where such employee:

- (a) is solicited by an advertisement in a newspaper or periodical of general circulation or by an employee or executive search firm acting on behalf of a Party where such Party did not, directly or indirectly or in any manner, instruct or encourage such solicitation;
- (b) is selected by a public selection process in accordance with Brazilian Law; or
- (c) approaches a Party without having been first solicited by such Party.

7. Contract Price and Payment

7.1. Contract Price

As full consideration to Contractor for the full and complete performance of the Work and all costs incurred in connection therewith, the Owner shall pay (subject to all the terms and conditions of this Contract), and Contractor shall accept compensation in accordance with [REDACTED] (the “**Contract Price**”). Except as expressly provided in this Contract, the Contract Price is fixed and non-adjustable, and the Contract Price shall not be subject to any correction or adjustment unless agreed in writing by the Owner and Contractor.

7.2. Payment of the Contract Price

7.2.1. The Contract Price shall be paid in accordance with the procedures set forth in this Clause 7.2. The Contract Price includes risk premium and all social and labour charges, if any, to be paid to any Contractor Person. If Contractor is required by Applicable Laws to pay any risk premium to its employees, Contractor shall, upon request by the Owner, provide evidence of payment of such risk premium.

7.2.2. The Contract Price shall be paid in instalments in accordance with the Payment Schedule. The Owner shall have no obligation to make any Milestone Payment to Contractor unless all conditions precedent for such Milestone Payment set forth in the Payment Schedule have been satisfied; provided that if one or more of the conditions precedent to a Milestone Payment have not been satisfied, the Owner shall have the right (in the Owner’s sole and absolute discretion), but not the obligation, to make a partial payment of a Milestone Payment. Upon Contractor’s completion of a Milestone, but prior to payment of the related Milestone Payment, Contractor shall submit a Milestone Report and supporting evidence to the Owner. Upon the Owner’s agreement that a Milestone has been completed, Contractor shall submit a complete

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Application for Payment and Milestone Report to the Owner (one (1) original and two (2) copies). In the case of Contractor's Final Milestone, this shall be accompanied by a Release of Claims from Contractor. The Owner shall review such documents in accordance with Clause 7.4.

7.2.3. The Owner shall not be obligated to pay any portion of the Contract Price that the Owner is entitled to withhold pursuant to Clause 7.3. Further, if this Contract is terminated before the Final Milestone Payment is made, the Owner shall not be obligated to make further payment except as provided in Clause 18.7.2.

7.2.4. Contractor shall not submit more than one Application for Payment during any calendar month. The amount payable in respect of each Application for Payment shall be due and payable on the date that is thirty (30) Days after the Owner approves such Application for Payment and all accompanying documentation. Amounts payable shall be paid as follows:

- (a) payments due from the Owner to Contractor in Reais shall be made by means of a payment slip issued by a banking institution (simple and registered collection format of the "Cnab240" standard type) in the name of Contractor or the Brazilian FEED Subcontractor; and
- (b) payments due from the Owner in Euros shall be made through deposits by the Owner credited into Contractor's current account, at the bank agencies indicated by Contractor; provided that such payments:
 - (i) shall only be effected after Registration of Financial Operations ("ROF") with SISBACEN, pursuant to the terms stipulated by the Central Bank of Brazil; and
 - (ii) shall be made through remittance to the bank account abroad indicated in writing by Contractor.

7.3. The Owner's Right to Withhold Payments

7.3.1. Notwithstanding anything herein to the contrary, the Owner may withhold all or a portion of the Contract Price otherwise payable to Contractor if, in the reasonable judgment of the Owner:

- (a) there is a failure by Contractor to provide the relevant Application for Payment, Milestone Report or accompanying documentation required by Clause 7.2;
- (b) in the case of a Milestone Payment, Contractor has not completed the Milestone to which such Milestone Payment relates in accordance with this Contract;

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- (c) a Contractor Event of Default exists;
- (d) unless a Notice of Dispute has been submitted in respect thereof in accordance with Clause 14.2, any Defect has not been corrected within a reasonable period of time after the Owner shall have notified Contractor thereof; or
- (e) the Owner shall have incurred any expense in respect of the Work performed by any Contractor Person resulting from tax, social security or labour obligations, together with their consequences (such as fines of any kind).

7.3.2. The amount withheld by the Owner pursuant to this Clause 7.3 shall be determined by the Owner in its reasonable judgment; provided that:

- (a) if Contractor disputes the Owner's determination as to whether any amount should have been withheld or the amount properly withheld, or as to any determination made by the Owner pursuant to Clause 7.2, Contractor shall have the burden of proof to show that the Owner's judgment was not reasonable;
- (b) no interest shall accrue or be due upon any payment withheld by the Owner pursuant to this Clause 7.3 or as a result of the non-fulfilment of the conditions in Clause 7.2 or as a result of any determination by the Owner pursuant to Clause 7.4, unless in any such instance the Owner's judgment as to whether such amount should have been withheld was not reasonable, in which case the Owner shall be liable for interest as provided in Clause 22.8 commencing on the date that the amount would have been due and payable had the Owner approved the relevant Application for Payment, Milestone Report and accompanying documentation on the date specified in Clause 7.4.2;
- (c) in no event shall any payment made be in excess of the sum of the relevant amount payable pursuant to such Application for Payment plus any interest owing or amounts due to Contractor pursuant to sub-clause (d) below in respect of an earlier period; and
- (d) any amount so withheld under this Clause 7.3 shall be paid to Contractor on the date that is thirty (30) Days after the Owner's receipt of evidence of the cure of the event giving rise to the Owner's right to withhold such amount.

7.3.3. The Owner, upon at least ten (10) Work Days' prior written notice to Contractor, may deduct and set off, against any part of the balance due or to become due to Contractor under this Contract, any liquidated or sum certain amount due from Contractor to the Owner under or in connection with this Contract except to the extent that any such amount is subject to the dispute resolution procedures of Clause 14.

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7.4. Review Prior to Payment

- 7.4.1. The Owner shall review each Application for Payment, Milestone Report and accompanying documentation to determine (in addition to any other determination to be made pursuant to this Contract) (a) the amount of the Work that has been performed and (b) whether the Work has been performed in accordance with this Contract. The Owner's determination of the amount of the Work that has been performed shall be final for purposes of determining the amount payable in respect thereof; provided that Contractor shall have the right to submit any dispute in respect thereof to the dispute resolution procedures of Clause 14.
- 7.4.2. If the Owner is unable to approve an Application for Payment or Milestone Report or intends to withhold any amount thereof pursuant to Clause 7.3, the Owner shall so notify Contractor within ten (10) Days after the Owner's receipt of such Application for Payment, in which case Contractor shall have the right to submit another Application for Payment or Milestone Report in lieu thereof. The Owner has the right, for any of the reasons set forth in Clause 7.3.1:
- (a) to reject in whole or in part an Application for Payment and/or a Milestone Report or nullify in whole or in part a payment previously issued, because of subsequently discovered evidence or observations; and
 - (b) to make deductions for such nullification from any Application for Payment.

7.5. Waivers Upon Payments

- 7.5.1. The payment by the Owner to Contractor of any portion of the Contract Price does not constitute a waiver by the Owner of the Owner's rights against Contractor as specified in this Contract. The Owner's payment to Contractor of any portion of the Contract Price shall not be a representation by the Owner that it has made an exhaustive or continuous inspection to check the quality or quantity of the Work, or reviewed design or engineering means, methods, techniques, sequences or procedures, or reviewed copies of requisitions received from Subcontractors, examined to ascertain the manner in which Contractor has used prior payments on account of the Contract Price or approved or accepted any portion of the Work.
- 7.5.2. Except as set forth in the Release of Claims, the acceptance of the Final Milestone Payment by Contractor shall be a waiver by Contractor of all claims for the Work other than:
- (a) claims that have been submitted for resolution in accordance with Clause 14;
 - (b) claims in respect of events or circumstances occurring after the Acceptance Date;

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- (c) claims of fraud or criminal conduct occurring after acceptance of the Final Milestone Payment; and
- (d) claims surviving the Acceptance Date or termination of this Contract pursuant to Clause 18.8.

Subject to the foregoing exceptions, acceptance of the Final Milestone Payment by Contractor shall represent Contractor's complete satisfaction with the final compensation for all claims and the Work.

7.6. No Duty to Subcontractors

The Owner shall not have any duty or obligation to ensure the payment of money to a Subcontractor. Subcontractors and third parties shall not be deemed third party beneficiaries of the Owner's obligations to pay Contractor. Notwithstanding the foregoing, the Owner shall have the right to pay any Subcontractor if Contractor fails to do so, but no such payment shall give rise to any duty or obligation by the Owner with respect to such Subcontractor.

7.7. Records

7.7.1. Contractor and its Subcontractors shall maintain true and correct records in connection with the Work and all transactions and shall retain all such records for thirty-six (36) months after the later of the Acceptance Date or termination of this Contract.

7.7.2. Contractor shall require, and shall require each of its Subcontractors to require, in all agreements in connection with the Work, its agreement to the provisions of this Clause 7.7.

7.8. Brazilian FEED Subcontractor

Contractor hereby authorizes the Owner to pay the Reais FEED Contract Price directly to the Brazilian FEED Subcontractor, which payment shall be a credit against the amount payable by the Owner to Contractor pursuant to an Authorization for Assignment of Credit Rights in the form of [REDACTED]. Such payment shall not be deemed to relieve or exempt Contractor from any of its responsibilities under this Contract.

7.9. Reais FEED Contract Price Inflation Adjustment

7.9.1. The Reais FEED Contract Price shall be adjusted upwards or downwards on an annual basis from the date hereof (each such anniversary, the "Review Date") in accordance with the following adjustment formula (which shall be expressed to four (4) decimal places, without rounding off):

$$P = P_0 \frac{MO}{\text{-----}}$$

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MO_0

where

P = adjusted Reais FEED Contract Price;

P_0 = initial Reais FEED Contract Price;

MO = definitive value of the Price Index for the month in which the adjustment is due;
and

MO_0 = value of the Price Index on the date hereof.

7.9.2. The Owner shall calculate the adjustments to the Reais FEED Contract Price and notify Contractor thereof.

7.9.3. If there is a delay in the publication of the Price Index, or the Owner and Contractor are unable to reach agreement on the action to be taken pursuant to Clause 7.9.4, a provisional adjustment to the Reais FEED Contract Price shall be made on the basis of the prevailing adjustment factor for the previous month. The Reais FEED Contract Price shall then be recalculated based on the definitive Price Index, or as may be determined by an Expert in accordance with Clause 7.9.5, and any difference shall be paid or offset at the time of the next payment.

7.9.4. If, in the opinion of either Party:

- (a) a publication needed to determine the Price Index for the month in which the adjustment is due is not available; or
- (b) any such publication fails or ceases to report the data necessary to calculate such Price Index; or
- (c) such Price Index has been published in error; or
- (d) such Price Index is so changed that it affects materially the validity of the index comparison over time,

then:

- (i) such Party may give notice to the other Party; and
- (ii) the Parties shall agree on the action to be taken to account for such circumstance.

7.9.5. If the Parties are not able to reach agreement on the action to be taken within thirty (30) Days after the notice provided under Clause 7.9.4, the matter shall be referred to an Expert in accordance with the procedures set forth in Clause 14.5.

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8. Taxes

- 8.1. All Taxes levied directly due to this agreement and/or its performance are of exclusive responsibility of the taxpayer so defined by law. Contractor shall pay any and all liabilities or claims for Taxes that may be imposed on or assessed or levied against Contractor on account of or resulting from performance of the Work or the payments made under this Contract, including Taxes on Contractor's income or profits there from and all Taxes imposed on or assessed or levied against or on account of salaries or other compensation or other benefits or amounts paid or provided to Contractor's employees. Contractor shall defend, indemnify and hold Owner harmless from and against any and all liabilities or claims for Taxes.
- 8.2. If it is so required by Applicable Laws, Owner shall deduct or withhold any Taxes from or in respect of any amount payable to Contractor hereunder and shall pay such Taxes to the relevant Governmental Authority in accordance with Applicable Laws. Any other Brazilian Taxes other than the Brazilian Withholding Income Tax (IRRF) up to a rate of 15% (fifteen per cent) and Brazilian Services Tax (ISS) up to a rate of 5% (five per cent) are not included in the price herein and are subject to the revision mentioned in Clause 8.3. Contractor's invoices to Owner shall expressly include the IRRF and the ISS in the composition of the Contract Price.
- 8.3. If during this agreement Contractor's tax burden raises or reduces directly by the creation, extinction or modification on taxes, tax rates, tax deductions, tax brackets and exemptions imposed by Governmental Authorities, the original price will be reviewed proportionally to the effective tax burden changed, with consequent reimbursement or reparation at the first opportunity.
- 8.4. The Parties shall cooperate with each other as may be reasonably requested in connection with the preparation of tax returns and filings and defense of tax audits relating to this agreement and the payments hereunder.

9. Completion Guarantee, Performance Guarantees and Liquidated Damages

9.1. Completion Guarantee

Contractor guarantees to cause the Completion Guarantee Event to be completed no later than the Completion Guarantee Event Deadline (the "**Completion Guarantee**").

9.2. Delay LDs

- 9.2.1. As part of the consideration for awarding this Contract, Contractor hereby agrees to pay as liquidated damages the amounts ("**Delay LDs**") described in this Clause 9.2.
- 9.2.2. If Contractor fails to achieve the Completion Guarantee Event on or before the Completion Guarantee Event Deadline, Contractor shall pay Delay LDs in the

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amounts specified in [REDACTED] for each full week after the Completion Guarantee Event Deadline until the date of completion of the Completion Guarantee Event.

9.2.3. If the Contract Price changes after the date hereof, the per diem amount of Delay LDs set forth in [REDACTED] shall be increased or decreased, as appropriate, pro rata in accordance with the change in the Contract Price; provided that, once paid, Delay LDs shall not be increased or decreased.

9.2.4. Payment of Delay LDs.

- (a) Subject to Clause 7.3.3, the Owner has the right to invoice Contractor for Delay LDs once per calendar month. Upon Contractor's receipt from the Owner of an invoice for Delay LDs, Contractor shall, within ten (10) Work Days after the receipt of such invoice, pay the Owner the amount of the Delay LDs due to the Owner.
- (b) The Delay LDs relating to late completion of the Completion Guarantee Event payable by Contractor pursuant to Clause 9.2.2 shall be payable as follows:
 - (i) prior to Contractor's delivery of the relevant Application for Payment and Milestone Report, Contractor shall pay such Delay LDs in accordance with Clause 9.2.4(a); and
 - (ii) Contractor shall pay the balance of such Delay LDs to the Owner concurrently with Contractor's delivery of such Application for Payment and Milestone Report

[REDACTED]

[REDACTED]

9.4. **Payments Reasonable**

The Parties hereby acknowledge and agree that the terms, conditions and amounts fixed pursuant to:

- (a) Clause 9.2 for Delay LDs are reasonable, considering the amount of the direct, unmitigated damages that the Owner may sustain by reason of Contractor's failure to achieve completion of the Completion Guarantee Event by the Completion Guarantee Event Deadline; and

[REDACTED] the [REDACTED] are reasonable, considering the amount of the direct, unmitigated damages that the Owner may sustain by reason of Contractor's failure to achieve any [REDACTED]

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9.4.2. Such amounts are agreed upon and fixed hereunder by the Parties because of the difficulty of ascertaining on the date hereof the exact amount of the direct, unmitigated damages that will actually be sustained by the Owner upon the occurrence of the circumstances for which such Liquidated Damages are payable. The Parties therefore agree that the liquidated damage amounts specified herein shall be applicable regardless of the amount of the actual damages actually sustained by the Owner.

9.5. Invalidity

If this Clause 9 or the [REDACTED] is declared to be unenforceable or invalid, in whole or in part, for any reason, Contractor shall be liable for any actual damages suffered by the Owner for which liquidated damages would have been payable, subject to the limitations on damages set forth in Clause 10 (other than the limitations set forth in Clause 10.1.1).

10. Limitations on Liability

10.1. Liquidated Damages

10.1.1. Subject to the remaining provisions of this Clause 10.1, Contractor's liability for failure to achieve:

- (a) the Completion Guarantee Event by the Completion Guarantee Event Deadline shall be limited to the payment of Delay LDs; and
- (b) the [REDACTED] shall be solely limited to the payment of the Performance LDs; provided that the Minimum Performance Guarantees have been achieved.

Payment of the Delay LDs and the Performance LDs shall constitute Contractor's sole remedy in respect of the foregoing circumstances.

[REDACTED] Subject to the remaining provisions of this Clause 10.1, the aggregate amount that Contractor shall be required to pay in respect of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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10.1.3. Contractor's obligation to meet the Minimum Performance Guarantees is absolute in respect of Clause 3.14. Contractor shall do all things necessary or appropriate to achieve all of the Minimum Performance Guarantees through Clause 3.14.

10.2. Limitation of Liability

Notwithstanding anything else stated in this Contract, Contractor's total, aggregate liability arising under this Contract (whether arising before or after termination of this Contract) shall be limited to twenty-five percent (25%) of the Contract Price; provided that such total liability cap shall be exclusive of:

- (a) Contractor's obligations under Clause 3.14;
- (b) Contractor's obligations under Clause 7.9;
- (c) any insurance proceeds received by Contractor in respect of Contractor's Insurance;
- (d) liability arising from or relating to fraud or Wilful Misconduct by Contractor or any of Contractor's Affiliates performing Work under this Contract;
- (e) Contractor's non-compliance with applicable fiscal, labour and social security legislation for companies established in Brazil performing Work under this Contract; and
- (f) If the Owner exercises its rights pursuant 18.1.3 and returns all or any portion of the Work, Contractor's obligations to refund to the Owner the entire amount of the Contract Price paid to Contractor corresponding to such Work.

10.3. Waiver of Consequential Damages

Neither Party shall be liable to the other Party in contract, tort (including negligence) or otherwise for any of the following categories of damages, costs, losses and expenses, in each case whether direct or indirect and whether or not foreseeable at the date hereof:

- (a) loss of profit, loss of revenue, loss of production, loss of goodwill, loss of use, loss of opportunity, loss of contract, loss of product, delayed production, plant downtime costs, punitive or exemplary damages or costs of obtaining or maintaining finance; and
- (b) indirect or consequential damages, costs, losses or expenses of whatsoever nature.

The foregoing waiver (i) by the Owner of certain rights as against Contractor shall also constitute a waiver of such rights as against the Contractor Persons and (ii) shall apply regardless of the fault or negligence of the Indemnified Person.

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10.4. Application of Limitations

The releases, limitations of liability, limitations of remedy and benefits of the indemnities expressed in this Contract:

- (a) shall apply regardless of whether the liability, remedy or subject of indemnity arises out of contract, tort (including negligence), strict liability or otherwise;
- (b) granted by the Owner to the benefit of Contractor shall extend to all of the Contractor Persons and their respective insurers; and
- (c) granted by Contractor to the benefit of the Owner shall extend to all Owner Indemnified Persons and their respective insurers.

11. Warranties

11.1. Warranty

Contractor warrants and guarantees that:

- (a) the Work shall comply with the following (the “**Standard of Care**”):
 - (i) the Work shall be performed in accordance with those standards of care and diligence normally practiced or approved by engineering and design firms in the industry associated with the engineering and design of Comparable Facilities, as such standards are appropriate in the circumstances of the Plant;
 - (ii) the Work shall be free from defects, errors or omissions in design or engineering services in light of all relevant Codes and Standards;
 - (iii) the Work shall conform to the Technical Specifications and all other requirements of this Contract;
 - (iv) the Work shall be performed in a professional and careful manner in accordance with all requirements of this Contract and Good Industry Practice;
 - (v) the Work shall comply with all Applicable Laws and Applicable Permits; ; and
 - (vi) the Plant shall be designed in accordance with recognised industry standards and in accordance with all relevant Codes and Standards, as such standards and Codes and Standards are appropriate in the circumstances of the Plant;

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provided that if two or more of the foregoing standards are in conflict as applied to any portion of the Work:

- (A) the Technical Specifications shall prevail in the case of a conflict with any other standard described above; and
 - (B) if Contractor identifies any other conflict, Contractor shall immediately notify the Owner, which shall resolve the conflict;
- (b) all designs, models, drawings, specifications, manuals and data supplied by it under this Contract shall be executed in accordance with the Standard of Care and the information supplied by the Owner (including the Owner Specifications and Drawings); and
- (c) the Work (including Work re-performed pursuant to Clause 11.2) shall be free of Defects until the Acceptance Date (or, if the Owner enters into a technical services agreement with Contractor, the date that is [twelve (12) months] after the Acceptance Date) (the “**Warranty Period**”).

11.2. Warranty Remedy

11.2.1. If any portion of the Work has any Defect and the Owner notifies Contractor thereof during the Warranty Period, Contractor shall promptly re-perform such portion of Work to the extent necessary to correct such Defect at its sole cost and expense.

11.2.2. Except as otherwise expressly provided in this Contract (including Clause 7.3), the remedies set forth in Clauses 3.14 and 11.2.1 shall be the Owner’s sole remedies, and Contractor’s sole liabilities, for any Defect in the Work. The cost of all repairs and replacements (including the cost of equipment, materials, and field labour) arising from any Defect shall be borne by the Owner. Correction of any Defect in the Work pursuant to either such Clause as contemplated therein shall constitute complete fulfilment of all obligations and liabilities of Contractor for such Defect, whether the claim of the Owner is based in contract, warranty, tort (including negligence and strict liability) or otherwise.

11.3. Subcontractor Warranties

If Contractor obtains more favourable warranties and guarantees from its Subcontractors than that provided in the Contract, such warranties and guarantees shall be assigned to the Owner, at its option, promptly after expiration of the Warranty Period.

11.4. Approvals Do Not Relieve Contractor

Approvals given by the Owner represent consent to the action proposed by Contractor, but shall not (a) be considered representations concerning the propriety, fitness or

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usefulness of the proposed action or (b) affect Contractor's obligation to strictly comply with this Clause 11.

11.5. No Implied Warranties

The obligations contained in this Clause 11 constitute Contractor's sole warranty obligations and the Owner's exclusive remedy in respect of quality of the Work, including Defects. Contractor makes no other express warranties (whether statutory or at law or in equity) in respect of quality of the Work. Implied warranties, including warranties of merchantability and fitness for a particular purpose or use, are expressly disclaimed by Contractor and waived by the Owner.

12. Insurance, Risk of Loss and Indemnification

12.1. Contractor's Insurance

12.1.1. During the period that the Work is performed, Contractor shall maintain such insurance as required in accordance with Applicable Laws.

12.1.2. The commercial general liability insurance shall:

- (a) contain waivers of subrogation rights against the Owner (but only to the extent of the liabilities assumed hereunder); and
- (b) name the Owner as an additional insured (but only to the extent of the liabilities assumed hereunder).

Contractor shall notify the Owner of any cancellation or material change to the insurance within five (5) Work Days after receipt of written notice thereof from the insurers.

12.1.3. Within fourteen (14) Days after the date hereof, Contractor shall provide the Owner with certificates of the Contractor's Insurance and the endorsements required by Clause 12.1. Acceptance of any such certificate by the Owner shall not constitute a waiver, release or modification of any of the insurance coverages and endorsements required under this Clause 12.1.3 if such certificate or documentary evidence is inconsistent with such coverages and endorsements.

12.1.4. Without in any way limiting Contractor's obligations hereunder, Contractor shall cause each of its Subcontractors (██) to obtain the insurance coverage and endorsements set forth in Clauses 12.1.1 and 12.1.2.

12.1.5. Contractor shall (a) not do anything to render any insurance policy required to be maintained hereunder void or invalid and (b) comply in all respects with the terms and conditions of such policies.

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12.2. Care, Custody and Control and Risk of Loss

Contractor shall have the care, custody and control and risk of loss of each portion of the Work until the Acceptance Date. Contractor shall not be responsible for the operation of the Plant.

12.3. Indemnification

12.3.1. Contractor shall indemnify, hold harmless and defend each Owner Indemnified Person from and against any and all losses, damages, liabilities, judgments, fines, costs and expenses (including court costs and experts' and attorneys' fees) (collectively, "**Losses**") and claims, demands, proceedings, actions, causes of action and suits (collectively, "**Claims**") that arise out of or are related to any:

- (a) any Personal Injury to any personnel of any Contractor Person;
- (b) the loss or destruction of, or damage to, any property of any Contractor Person; and/or
- (c) the loss or destruction of, or damage to, any property of any Contractor Indemnified Person while the same is in the care, custody or control of any Owner Person.

12.3.2. The Owner shall indemnify, hold harmless and defend each Contractor Person from and against any and all Losses and Claims that arise out of or are related to:

- (a) any Personal Injury to any personnel of any Owner Person;
- (b) the loss or destruction of, or damage to, any property of any Owner Person; and/or
- (c) the loss or destruction of, or damage to, any property of any Owner Indemnified Person while the same is in the care, custody or control of any Contractor Person.

12.3.3. The indemnities and exclusions of liability contained in Clauses 12.3.1 and 12.3.2:

- (a) shall apply solely and exclusively to any Loss or Claim that arises out of or in connection with the performance of this Contract or occurs or is caused during the performance of the Work (whether directly or indirectly in relation thereto);
- (b) shall apply without regard to the negligence, breach or fault of the indemnifying Party;
- (c) shall not relieve a Party from any liability whatsoever arising (during or after the performance of the Work) directly or indirectly from any failure by such

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Party properly to perform its obligations under this Contract, including those obligations relating to performance and care of the Work;

- (d) shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for either Party or any Subcontractor under any applicable workers' compensation act, disability act or other employee benefit act in the performance of the Work; and
- (e) notwithstanding the foregoing or any other provision of this Contract, in no event shall any Indemnified Person be indemnified for its own intentional acts or Wilful Misconduct.

12.3.4. The Parties intend that their respective rights, obligations and liabilities as provided for in this Clause 12.3 and all other provisions of this Contract relating to indemnification shall be exhaustive of the rights, obligations and liabilities of each of them to the other arising out of, under or in connection with any Claim, whether such rights, obligations and liabilities arise in respect or in consequence of breach of contract or statutory duty or a tortious or negligent act or omission that gives rise to a remedy at common law.

12.3.5. Each Indemnified Person shall promptly give the indemnifying Party notice of any claim made or proceeding commenced against such Indemnified Person for which such Indemnified Person claims to be entitled to indemnification under this Contract.

12.3.6. Each Indemnified Person shall use reasonable efforts to mitigate the Losses for which it is indemnified hereunder.

12.3.7. Each Party shall have the right, at its option, to participate at its own expense in the defence of any suit without releasing the other Party from any indemnity and defence obligation hereunder.

12.3.8. The Owner's acceptance of any of the Work shall not be construed to relieve Contractor of any obligation under this Contract.

12.3.9. This Clause 12.3 shall continue in effect and shall survive, notwithstanding any termination of this Contract for all occurrences prior to the effective date of termination of this Contract and whether or not the effects of such occurrence only arise or manifest themselves after such effective date.

13. Confidentiality.

13.1. Duty of Confidentiality

Any information directly or indirectly disclosed or furnished, whether in writing or in electronic, digital or any other form, by one Party (or its representatives, employees, directors, officers or Affiliates) (the "**Disclosing Party**") to the other Party (or its

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representatives, employees, directors, officers or Affiliates) (a “**Receiving Party**”) in connection with or in relation to this Contract or the Technology Supply Agreement (or the negotiation of any other agreement or document in relation hereto) that relates to the terms of this Contract or the Technology Supply Agreement or to the Work (“**Confidential Information**”) shall, unless otherwise agreed in writing between the Disclosing Party and the Receiving Party, be kept confidential and shall not be sold, traded, published or otherwise disclosed to any third party in any manner whatsoever (except as provided in Clause 13.2 or 13.3), by the Receiving Party. The obligations imposed under this Clause 13 shall apply regardless of Contractor’s ownership of copyrights in any works of authorship containing Confidential Information. It is agreed that the Technical Information includes Confidential Information of both Parties.

13.2. **Exceptions**

The obligations referred to in this Clause 13 do not apply to Confidential Information insofar as it:

- (a) was already known to the Receiving Party (except to the extent such information was disclosed to the Receiving Party pursuant to an agreement of confidentiality);
- (b) was received from a third party that had no duty to maintain such information in confidence;
- (c) was already in the public domain (other than as a result of a breach of the terms of this Clause 13 or a confidentiality obligation owed to the Disclosing Party); or
- (d) was independently developed by the Receiving Party without reliance on the Confidential Information, as clearly shown by contemporaneous documentary evidence.

For the purpose of the provisions of this Clause 13, disclosures made by the Disclosing Party to the Receiving Party that are specific (for example, relating to engineering and design practices and techniques, products, and operating conditions) shall not be deemed to be within the exceptions of sub-clauses (a) to (c) above because they are embraced by more general disclosure available to the public or in the possession of the Receiving Party. In addition, any combination of features shall not be deemed to be within the above exceptions merely because individual features thereof fall within the scope of such exceptions, but only if the combination itself is within the scope of those exceptions. The Parties agree that in the event all or part of the Confidential Information becomes part of the public domain or was in its possession or is received in the manner set forth under any of the exceptions of sub-clauses (a) to (c) above, it shall not divulge to any third party that it also received the same otherwise Confidential Information from the Disclosing Party or that the Disclosing Party or their Affiliates are applying any of that otherwise

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Confidential Information in their work or business, unless such application by the Disclosing Party is itself known to the public.

13.3. Permitted Disclosures

Any Confidential Information received by a Receiving Party from a Disclosing Party may be disclosed by the Receiving Party:

- (a) as reasonably necessary to any legal counsel, adviser, technical consultant, insurer, accountant, underwriter or provider of finance, guarantee or financial support (including any export credit agency, funding agency, insurance agency or similar institution in relation to that finance) or to any of their legal counsel and advisers, but in each case only in relation to matters contemplated under this Contract or the Technology Supply Agreement, and provided that such disclosure is solely to assist the purpose for which such Person was so engaged;
- (b) if required, and to the extent required, by any Applicable Laws, rule or regulation, or by a Governmental Authority or by the rules of any recognised stock exchange or agency established in connection therewith upon which the shares of the Receiving Party or a company falling within sub-clause (c) below are quoted; provided that the Receiving Party shall use reasonable efforts to provide the Disclosing Party timely notice so as to allow the Disclosing Party to seek a remedy with respect to the disclosure directly with the requesting Person;
- (c) as reasonably necessary, to any of its Affiliates (or any Person referred to in sub-clause (a) above acting in such capacity to any such Affiliate or shareholder for the purposes of this Contract or the Technology Supply Agreement);
- (d) to any arbitrator or Expert appointed in accordance with Clause 14.5;
- (e) to any other third party to the extent necessary for the Project, and for the design, engineering, construction, start-up, operation and maintenance of the Plant and the use, offer for sale, sale, import and export of the PRODUCTS; provided that, prior to such disclosure, such third party has entered into a confidentiality agreement with the Disclosing Party covering the Confidential Information; and
- (f) in the case of the Contractor to any Technology Supplier, Approved Subcontractors or Subcontractors.

The Receiving Party shall ensure that any Person listed in the preceding sub-clauses (a), (c), (d) or (e) to which it makes the disclosure (excluding legal counsel) undertakes to hold such Confidential Information subject to confidentiality obligations equivalent to

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those set out in Clause 13.1. If the Owner requests that Contractor enters into a confidentiality agreement with any third party pursuant to Clause 13.3(e) and Contractor refuses to do so, the Owner has a right to request that Contractor provides an explanation for such refusal. Contractor is obligated to enter into a confidentiality agreement under Clause 13.3(e) if the relevant third party requested by the Owner is not a competitor of Contractor or an Affiliate of a competitor of Contractor.

13.4. Press Releases

Contractor shall not make any public announcement or press release concerning the negotiation, execution of, or other matters directly or indirectly related to, this Contract or the [REDACTED] without the prior written consent of the Owner, which consent shall not be unreasonably withheld.

13.5. Survival

The foregoing obligations with regard to the Confidential Information in this Clause 13 shall remain in effect for twenty (20) years from the date hereof.

14. Dispute Resolution

14.1. Disputes

The Parties shall resolve all disputes, controversies and Claims arising out of, relating to or in connection with this Contract or the operations performed under this Contract, including the construction, existence, validity, enforceability, enforcement, breach, and termination of this Contract (a “**Dispute**”), exclusively in accordance with this Clause 14. The Parties may agree to refer any Dispute to an Expert in accordance with the procedures set forth in this Clause 14.

14.2. Notice of Dispute and Response

Either Party may notify the other Party in writing of any Dispute (a “**Notice of Dispute**”). Such Notice of Dispute shall (a) specify the nature and circumstances of such Dispute and (b) include a statement of such Party’s position with regard to such Dispute.

14.3. Settlement of Disputes by Negotiation

14.3.1. Within ten (10) Work Days after the receipt by a Party of a Notice of Dispute, the Parties shall meet and negotiate in good faith in an attempt to resolve the Dispute. At any such conference, each Party shall be represented by a person having authority to agree to a resolution of the Dispute.

14.3.2. All negotiations pursuant to this Clause 14.3, including the Notice of Dispute, shall be confidential and shall be treated as compromise and settlement negotiations, and no oral or documentary representations made by either Party during such negotiations

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shall be admissible for any purpose in any subsequent proceedings; provided that the above shall not prevent either Party from making such disclosures as may be required pursuant to Applicable Laws or the rules of any stock exchange to which such Party is subject.

14.4. Resolution of Disputes by Arbitration

- 14.4.1. Except in the case of an Expert Matter, if any Dispute is not resolved, for any reason, within sixty (60) Days after the delivery of the Notice of Dispute relating thereto (or such longer period as may be agreed by the Parties), such Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (“**ICC Rules**”) by three (3) arbitrators appointed in accordance with the ICC Rules (an “**Arbitral Tribunal**”), which arbitration shall be administered by the ICC. Each arbitrator shall be fluent in the English language. To the extent that the ICC Rules are in conflict with this Clause 14.4, the provisions of this Clause 14.4 shall prevail.
- 14.4.2. The place of arbitration shall be London, England or at such other place as the Parties shall mutually agree upon in writing.
- 14.4.3. The arbitration proceedings shall be conducted in the English language (provided that any person participating in the arbitration may speak through a translator) and all written submissions, awards and the reasons supporting them shall be in English. Any materials submitted in a language other than English shall be accompanied by a certified English translation, in which case the English language translation shall prevail, unless the document is a statutory or other official document.
- 14.4.4. Subject to the provisions of Clause 15 and any provisional order to the contrary, each Party shall continue to perform its obligations under this Contract during the continuation of the resolution of any Dispute pursuant to this Clause 14.4.
- 14.4.5. Each Party shall, at first instance, bear its own costs and fees of, and occasioned by, the arbitration (including attorneys’ fees) and shall share equally (as between both Parties) the advance on costs and fees. Thereafter, the Parties’ costs and the costs of the arbitration (including attorneys’ fees and other arbitration costs of a Party) shall be borne in the manner determined by the relevant Arbitral Tribunal. In the absence of any such determination by such Arbitral Tribunal, the situation as at first instance shall continue.
- 14.4.6. Resolution of a Dispute by arbitration shall, except as provided in the ICC Rules, be final and binding, and each Party hereby waives any and all rights to appeal, set aside or otherwise challenge any award insofar as such exclusion can validly be made. Without limiting the generality of the preceding sentence, the Parties agree to exclude any right to appeal any question of law to the courts of England under Section 45 or 69 of the Arbitration Act of 1996.

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- 14.4.7. Each Arbitral Tribunal shall have full authority to award any remedy or relief proposed by either Party, including damages, set-offs, equitable relief and provisional remedies such as a declaratory judgment, specific performance of any obligation created under this Contract, the issuance of an injunction, requiring the furnishing of security or guarantees and requiring the preservation of any thing or right under the control of a Party, and awarding damages for the failure of a Party to respect an Arbitral Tribunal's orders to that effect; provided that each Arbitral Tribunal is prohibited from awarding punitive or exemplary damages.
- 14.4.8. The award shall be in writing and shall state the reasons supporting such award. The arbitrators shall make the award and any other decisions or rulings strictly according to the Governing Law and not *ex aequo et bono* or as *amiable compositeur*, and shall not decide the Dispute by reference to any other doctrine or practice that would permit them to avoid this Contract or the Governing Law.
- 14.4.9. Any monetary award shall be made in Euros and shall be payable free of any tax, withholding, deduction or offset. If either Party is required to withhold or otherwise account for any such tax, withholding, deduction or offset, such Party shall:
- (a) pay and bear such tax, withholding, deduction or offset;
 - (b) ensure that the other Party receiving such award receives an amount equal to the amount of such award without deduction for any such tax, withholding, deduction or offset; and
 - (c) reimburse the other Party for any reasonable and documented payments made by the other Party with respect to such tax, withholding, deduction or offset.
- 14.4.10. An Arbitral Tribunal shall include pre-award and post-award interest (including compound interest) at a rate equal to the Delayed Payment Rate from the date of any breach until the date such award is paid in full, including interest due. Any reasonable and documented costs, expenses and fees incident to enforcing any award (including attorneys' fees) shall, to the maximum extent permitted by the Governing Law, be charged against the Party against whom such enforcement is sought.
- 14.4.11. Legal professional privilege, including privileges protecting attorney-client communications and attorney work product of each Party from compelled disclosure or use in evidence, as recognised by the applicable Laws governing each Party's relationship with its counsel, shall apply to and be binding in any arbitration proceeding conducted under this Clause 14.4.
- 14.4.12. Except to the extent necessary to enforce this Clause 14.4 or any arbitral award, to enforce other rights of the Parties hereunder, or as required by Applicable Laws or the rules of any stock exchange on which the shares of either Party or any of its Affiliates are listed or are in the process of being listed, each Party shall ensure that it and its Affiliates, its shareholders and all of the respective employees, officers, directors,

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counsel, consultants and expert witnesses of each Party, its Affiliates and its shareholders, shall (in accordance with Clause 13) maintain as confidential the fact of any arbitration proceedings, the arbitral award, filings or submissions exchanged or produced during the arbitration proceedings and briefs or other documents prepared in connection with such arbitration; provided that a Party may disclose such information to its Affiliates.

14.4.13. Each Party hereby submits to the exclusive jurisdiction of the English courts in any action, suit or proceeding with respect to the enforcement of the agreement to arbitrate in this Clause 14.4 and the non-exclusive jurisdiction of such courts with respect to the enforcement of any award thereunder. Each Party agrees not to plead or claim in any English court that any such action or proceeding has been brought in an inconvenient forum. Each Party agrees that the English courts shall have the power to provide any necessary interim relief prior to the formation of an Arbitral Tribunal. In addition, any party to the arbitration may apply to any court of competent jurisdiction for:

- (a) a provisional or conservatory order, including a preliminary injunction, in aid of the arbitration proceeding before the appointment of the arbitrators is completed; and
- (b) an order of enforcement of provisional remedies granted by an Arbitral Tribunal,

and an application for such an order shall not be deemed a violation or waiver of this Contract. The Parties waive, to the fullest extent permitted by Applicable Laws, any other right to apply to any court of competent jurisdiction for provisional remedies, whether under Article 23 of the ICC Rules (or any successor rule) or otherwise.

14.5. Resolution of Disputes by an Expert

14.5.1. Whenever a Dispute arises that involves an Expert Matter, such Dispute shall be exclusively resolved by an expert appointed as described in this Clause 14.5 (an “**Expert**”) in accordance with the procedures set forth in this Clause 14.5.

14.5.2. An expert shall determine such matters (“**Expert Matters**”) as the Parties may agree.

14.5.3. (a) An Expert:

- (i) shall be a natural person;
- (ii) shall be generally recognised as an expert in a field of expertise relevant to the Dispute that is the subject of the determination;
- (iii) shall not be a current or former employee or agent of either Party or any of its shareholders or Affiliates; and

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- (iv) shall not have any conflict of interest.
 - (b) If a Notice of Dispute indicates that the Dispute involves an Expert Matter, the Party receiving such Notice of Dispute shall, within thirty (30) Days after receipt of such Notice of Dispute, agree or deny that such Dispute is an Expert Matter. If a Notice of Dispute does not indicate that it involves an Expert Matter, but the Party receiving such Notice of Dispute believes that such Dispute involves an Expert Matter and wants to have it resolved by an Expert pursuant to this Clause 14.5, such Party shall, within thirty (30) Days after receipt of the Notice of Dispute, send a notice to the other Party stating that it believes that such Dispute involves an Expert Matter and wants to have it resolved by an Expert. Within fourteen (14) Days after receipt by the other Party of such notice, the other Party shall agree or deny in writing that such Dispute is an Expert Matter.
 - (c) The Parties shall exchange lists of up to three (3) proposed Experts, including the credentials of each nominee, within thirty (30) Days after (i) the Parties' agreement that the Dispute is an Expert Matter or (ii) the determination of an Arbitral Tribunal that such Dispute is an Expert Matter. If the Parties are unable to agree on an Expert within ten (10) Work Days after the exchange of lists, either Party may request the ICC International Centre for Expertise (the "**ICC Centre**") to make the selection in accordance with the provisions for appointment of experts under the ICC Rules for Expertise. The ICC Centre shall make the selection as promptly as possible and may take such independent advice as it deems fit.
- 14.5.4. Upon a Person being agreed or selected as aforesaid to function as an Expert, the Parties shall forthwith notify such Person in writing of such selection and the determination being sought, and shall request, inter alia, a covenant that such Expert will not during the term of the appointment accept any duty or acquire or agree to acquire any interest that materially conflicts with or might materially conflict with such Expert's function under such appointment. The Parties shall request the selected Person to confirm, within ten (10) Work Days, acceptance of the appointment as Expert on the terms proposed and to disclose any existing interest or duty that conflicts or may conflict with such Person's function as Expert under such appointment.
- 14.5.5. If the selected Person shall either be unwilling or unable to accept such appointment as Expert on the terms proposed or shall not have confirmed acceptance of such appointment within the ten (10) Work Day period specified in Clause 14.5.4, then, unless the Parties are able to agree within ten (10) Work Days after receiving notification thereof upon (a) different terms with such Person from those previously proposed or (b) the selection of a different Expert, then the matter shall be referred to the ICC Centre in accordance with Clause 14.5.3(c), which shall be requested to make

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an appointment or (as the case may be) a further appointment and the process shall be repeated until a person is found who accepts the appointment as Expert.

- 14.5.6. It shall be a requirement of each Expert's appointment that such Expert shall enter into a confidentiality undertaking with the Parties governing the matter in dispute.
- 14.5.7. (a) The Expert, after consulting with the Parties, shall establish the procedures to be applied, including the timing and number of written submissions, the timing and nature of any oral hearings, and the circumstances governing any presentation of evidence or witnesses; provided that there shall be no ex parte communications or proceedings.
- (b) In making any determination, an Expert shall consider the information provided by the Parties and shall conduct any further reasonable investigations as are necessary and appropriate in light of the surrounding facts and circumstances. If an Expert conducts any such investigation, it shall notify each Party thereof and each Party shall have a reasonable opportunity to address such investigation. An Expert may, at any time prior to making a determination, request clarification or further information from the Parties.
- (c) An Expert shall be entitled to obtain such independent professional, secretarial and/or technical advice and assistance as may be reasonably required.
- (d) The Expert determination process, both written and oral, shall be conducted in the English language.
- 14.5.8. (a) An Expert shall render a determination within one hundred eighty (180) Days following its acceptance of appointment pursuant to Clause 14.5.4 or 14.5.5. Such period of one hundred eighty (180) Days may be extended by agreement of the Parties, which agreement shall not be unreasonably withheld.
- (b) If an Expert does not render a determination within the relevant time period specified in paragraph (a) above, then:
- (i) the Parties may agree to extend such deadline; or
- (ii) if the Parties cannot agree on an extension, another Expert shall be appointed pursuant to the procedure described in this Clause 14.5 and, on acceptance of such appointment by the new Expert, the appointment of the original Expert shall cease; provided that if the previous Expert shall have rendered a decision prior to the new Expert's entering into a contract of appointment, then (A) such decision of such previous Expert shall (subject always to Clause 14.5.9) be binding upon the Parties and (B) the Parties shall withdraw instructions (if any) previously extended to the new Expert.

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- 14.5.9. An Expert's determination shall be in writing and shall be final and binding on the Parties and shall not be subject to challenge save in the event of:
- (a) fraud;
 - (b) failure by such Expert to disclose any relevant conflicting interest or duty;
 - (c) breach by such Expert of the covenant specified in Clause 14.5.4;
 - (d) the challenging Party being denied due process;
 - (e) the selection of such Expert or the procedure followed by such Expert was not in accordance with this Clause 14.5; or
 - (f) the recognition or enforcement of such determination would be contrary to the public policy of England.
- 14.5.10. The costs and expenses of an Expert, including an Expert's secretarial and administrative costs and expenses, any independent advisors to such Expert retained by such Expert in connection with a determination and any costs of such Expert's appointment if such Expert is appointed by the ICC Centre, shall be borne equally by each Party.
- 14.5.11. An Expert shall not be deemed to be an arbitrator or mediator but shall render its determination as an Expert.
- 14.5.12. Each Party shall comply with an Expert's determination. If a Party fails to comply with such determination, the other Party may initiate arbitral proceedings pursuant to Clause 14.4; provided that the arbitral proceedings shall be limited to reviewing the Expert's determination for the considerations set forth in Clause 14.5.9. The determination of the Arbitral Tribunal shall be an arbitral award for all purposes, including enforcement.
- 14.6. Consolidation of Disputes Under this Contract and/or the Technology Supply Agreement**
- 14.6.1. If, with respect to two (2) or more Disputes arising out of or in connection with this Contract and/or the Technology Supply Agreement, (a) the subject matters of such Disputes involve common questions of law or fact or (b) the independent resolution of each such Dispute could result in conflicting awards or obligations, such Disputes may be consolidated in a single proceeding if the Parties so agree. If such arbitrations are consolidated and more than one (1) Arbitral Tribunal has already been established, the first Arbitral Tribunal so established shall serve as the Arbitral Tribunal for the consolidated arbitration.

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- 14.6.2. Within thirty (30) Days following any final decision by such Arbitral Tribunal that such proceedings should be consolidated, each Party shall withdraw or move to dismiss any proceeding to which it is a party that will be resolved in such consolidated arbitration.
- 14.6.3. Notwithstanding anything in this Clause 14.6 to the contrary, no arbitration proceeding may be consolidated (or dismissed on the basis of this Clause 14.6) after evidentiary hearings in such proceeding have commenced.

14.7. Disputed Amounts

If a Party submits an invoice for payment of any amount payable hereunder and the other Party submits a Notice of Dispute in respect thereof in accordance with Clause 14.2, the Party submitting such invoice shall be entitled to payment of the Undisputed amount of such invoice; provided that:

- (a) the Owner shall not be required to make any payment in respect of any Milestone that is not completed; and
- (b) this Clause 14.7 is without prejudice to the provisions set out in Clause 7.3.

14.8. Subcontractors

Contractor shall require, and shall use its reasonable endeavours to ensure each of its Subcontractors to require, in all agreements in connection with the Work, dispute resolution provisions substantially identical to those set forth in this Clause 14.

15. Force Majeure Events and Other Excusable Events

15.1. Force Majeure

- 15.1.1. A “**Force Majeure Event**” shall mean any act, event or circumstance or combination of acts, events and circumstances that adversely affects, prevents or delays either Party in the performance of its obligations in accordance with the terms of this Contract, but only if and to the extent that such event or circumstance:
- (a) is not within the reasonable control, directly or indirectly, of such Party and its Affiliates (it being understood that if a causing event is within the reasonable control of an affected Party, the direct consequences thereof shall also be deemed to be within such Party’s reasonable control);
 - (b) was not the result of fault or negligence on the part of the affected Party or its Affiliates; and
 - (c) could not have been prevented or overcome through the exercise of due diligence, reasonable skill and care or reasonable efforts by the affected Party,

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including (A) the expenditure of reasonable sums of money or the pursuit of alternative means of performance and (B) all reasonable efforts to mitigate strikes and labour disturbances.

15.1.2. Force Majeure Events shall include the following, but only to the extent that such events or circumstances or their consequences satisfy the requirements of Clause 15.1.1:

- (a) fire, explosion, perils of the sea, unusually severe weather, epidemic or other acts of God;
- (b) war (whether declared or undeclared), riot, civil war, blockade, civil disturbance, insurrection, acts of public enemies, invasion, embargo, trade sanctions, revolution, sabotage, terrorism or the serious threat of terrorism;
- (c) strikes, lockout, or other industrial disturbances (excluding such events that are specific to the Plant or attributable to any actual or alleged unfair practice of the affected Party) resulting in broad-based disruptions in labour markets, transportation networks or supply of materials and equipment necessary to complete the Work;
- (d) chemical or radioactive contamination or ionising radiation;
- (e) any Governmental Authority's unreasonable delay, denial or refusal to grant or renew, or unreasonable revocation of any Applicable Permit; provided that the foregoing did not result from:
 - (i) the affected Party's non-compliance with any Applicable Law (other than such non-compliance resulting from a Change in Law); or
 - (ii) any condition to the granting or maintenance of such Applicable Permit that was in effect on the date hereof; and
- (f) any Change in Law that adversely affects the performance by either Party of its obligations hereunder.

15.1.3. The following shall not constitute a Force Majeure Event:

- (a) financial hardship or the inability of a Party to make a profit or achieve a satisfactory rate of return resulting from performance or failure to perform its obligations under this Contract;
- (b) failure or inability to perform attributable to changes in currency exchange rates;

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- (c) a Party's inability to raise financing for its obligations under this Contract or the unavailability of funds to pay amounts when due in the currency of payment;
- (d) changes in either Party's market factors, default of payment obligations or other commercial, financial or economic conditions;
- (e) late delivery, unless such event is caused by a Force Majeure Event; and
- (f) a breach of any provision of this Contract.

15.1.4. A delay in or total or partial failure of performance of a Party (excluding its obligation to make payments pursuant to this Contract) of its obligations under this Contract shall not constitute a default hereunder or give rise to any claim for damages or other relief if and to the extent such delay or failure is caused by any Force Majeure Event; provided that the affected Party gives written notice within seven (7) Days to the other Party of the circumstances constituting the occurrence and of the obligation or performance that is thereby delayed or prevented. Upon the occurrence of an event or circumstance considered by a Party to constitute a Force Majeure Event that may affect performance of its obligations, such Party shall endeavour to continue to perform its obligations as far as reasonably practicable. Such Party shall notify the other Party of any proposal (including any reasonable alternative means for performance and any ways to ameliorate the costs incurred by the other Party in respect thereof), but such Party shall not effect such proposal without the consent of the other Party.

15.1.5. If within a reasonable time after the commencement of a Force Majeure Event that has caused Contractor to suspend or delay performance of the Work, Contractor has failed to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either such Force Majeure Event or its direct or indirect effects, the Parties shall mutually agree on a course of action to be taken by Contractor. If the Parties are unable to agree, the Owner may, in its sole discretion and after notice to Contractor, at the Owner's expense, initiate such reasonable measures as will be designed to remove or relieve such Force Majeure Event occurrence or its indirect effects. At the Owner's request, Contractor shall resume full or partial performance of the Work; provided that the conditions are suitable to do so.

15.2. Owner-Caused Delay

15.2.1. "**Owner-Caused Delay**" shall mean:

- (a) a suspension of the Work pursuant to Clause 18.4;
- (b) except to the extent resulting from any Contractor Person's fault, negligence or failure to perform under this Contract in accordance with its terms, any

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unjustified interruption or delay of, or other adverse effect on, the Work during which Contractor is and continues to be willing and able to perform, due to:

- (i) an act or omission by any Owner Person (other than any such act or omission in accordance with Contractor's or a Subcontractor's instruction);
 - (ii) a failure of the Owner to perform its obligations under this Contract in a timely fashion; or
 - (iii) an error, omission, change, defect or delay in the Owner's performance of such obligations; or
- (c) any other event expressly identified as an Owner-Caused Delay in any provision of this Contract.

15.2.2. If the Owner fails to approve, review or comment upon any specific portion of the Work within the time specified in the Technical Specifications for the Owner's approval, review or comment thereof or thereon:

- (a) Contractor shall notify the Owner thereof; and
- (b) if the Owner fails to approve, review or comment upon such specific portion of the Work within three (3) Work Days after its receipt of the notice described in sub-clause (a) above:
 - (i) the Owner shall be deemed to have approved or reviewed such specific portion of the Work without comment and Contractor shall proceed accordingly; and
 - (ii) such failure by the Owner to approve, review or comment within such three (3) Work Day period shall constitute an Excusable Event.

15.3. Excusable Events and Contractor Relief

15.3.1. In addition to any relief provided under Clause 15.1 in the case of a Force Majeure Event, and subject to the remaining provisions of this Clause 15.3, Contractor shall be entitled to the relief set forth in Clause 15.3.2 in the case of:

- (a) a Force Majeure Event;
- (b) a Change in Law;
- (c) an Owner-Caused Delay;
- (d) any modification to design criteria or other information by any Owner Person made during the performance of the Work;

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- (e) any (i) revision, modification, amendment, addition, deletion, omission or alteration of the Work or (ii) other adverse effect on Contractor's performance of the Work, in each case as a result of any revision, modification, error or inaccuracy of the Rely-Upon Information;
- (f) any other event or circumstance identified as an Excusable Event in this Contract; and
- (g) any other event that the Parties agree shall be an Excusable Event

in each case that affects Contractor (any of the foregoing, an "**Excusable Event**"); provided that no instruction, decision or act of the Owner:

- (i) due to a Contractor Event of Default; or
- (ii) when any deletion from, or modification or addition to, the Work is to correct Contractor's failure to perform the Work in accordance with this Contract

shall constitute an Excusable Event.

15.3.2. If a delay in Contractor's performance results from an Excusable Event, the Project Schedule and the Completion Guarantee Event Deadline shall be extended only to the extent the delay can be shown to affect the dates therein. This analysis shall be based on the most current Project Schedule in effect at the start of such Excusable Event. If Contractor incurs an additional cost for its performance of the Work that results from an Excusable Event (other than a Force Majeure Event), the Contract Price shall be increased only to the extent that Contractor can show that such additional cost is caused by such Excusable Event.

15.3.3. The delay or non-performance by Contractor of the Work shall not in any way be excused except by an Excusable Event.

15.3.4. If the Work is delayed by one (1) or more causes occurring concurrently, the following rules shall apply:

- (a) The Owner shall notify Contractor that such causes are concurrent within twenty-one (21) Days after the Owner knows that such causes are concurrent;
- (b) if all of such causes are Excusable Events, the cumulative period thereof, minus the overlapping period(s), shall form the basis of the extension period; and
- (c) if such causes consist of one (1) or more Excusable Events and at least one (1) cause that is not an Excusable Event (a "**Non-Excusable Event**"), and such Non-Excusable Event would of itself, irrespective of the concurrent causes,

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have delayed the Work, no extension of time will be allowed for the period of delay resulting from such Non-Excusable Event.

15.3.5. Contractor shall not be entitled to relief in respect of any Excusable Event unless expressly set forth in this Contract.

15.4. Limitation on Relief and Mitigation

The excuse of performance shall be of no greater scope and of no longer duration than is reasonably required because of an Excusable Event and only to the extent that the non-performing Party has been delayed. The non-performing Party shall exercise all reasonable efforts to mitigate or limit (a) the effect of such Excusable Event on the performance of the Work and (b) the delay and damages to the other Party. The non-performing Party shall use reasonable commercial efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance.

15.5. No Excuse for Payment of Money

Notwithstanding the foregoing, the occurrence of a Force Majeure Event shall not constitute an excuse of a Party's obligations hereunder for the payment of monies to the other Party, except to the extent the occurrence thereof results in an adjustment of the amount or time for performance of such obligations; provided that in no event shall this Clause 15.5 limit the Owner's right pursuant to Clause 7.3 to withhold payment with respect to any portion of the Work not yet performed.

15.6. Claims

15.6.1. If Contractor intends to claim any relief under this Clause 15 in respect of any Excusable Event, it shall give notice to the Owner's Representative within fifteen (15) Work Days after Contractor has knowledge of the start of such Excusable Event. As soon as practicable thereafter, the Owner shall respond to such notice and either:

- (a) acknowledge that an Excusable Event has occurred; or
- (b) notify Contractor in writing that it does not believe that an Excusable Event has occurred, together with an explanation thereof.

15.6.2. Within fifteen (15) Work Days after Contractor's notice described in Clause 15.6.1(a) above (or such other time period as may be agreed by the Owner's Representative), Contractor shall send to the Owner's Representative an account, giving detailed particulars of the amount and basis of the claim. Where an Excusable Event has a continuing effect, such account shall be considered as interim. Contractor shall then, at such intervals as the Owner's Representative may reasonably require, send further interim accounts, giving the accumulated amount of the claim and any further particulars. Where interim accounts are sent to the Owner's Representative,

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Contractor shall send a final account within fifteen (15) Work Days after the end of the effects resulting from such Excusable Event.

- 15.6.3. Contractor shall keep such contemporary records as may be necessary to substantiate any claim at a location acceptable to the Owner's Representative. Without admitting the Owner's liability, the Owner's Representative shall, on receipt of such notice, inspect such records. Contractor shall permit the Owner's Representative to inspect all such records and shall (if instructed) submit copies thereof to the Owner's Representative.

16. Change Orders

16.1. Owner-Initiated Changes

The Owner shall be entitled, by notice to Contractor from time to time, to request that Contractor make a Change in Work, including changes in directing the acceleration of the Work; provided that such Change in Work shall not modify the nature or type of the Work. Such request shall be in writing and shall set out the proposed Change in Work in sufficient detail to enable Contractor (a) to identify the Owner's objectives in proposing such Change in Work and (b) to prepare the estimated impact of such Change in Work, in terms of costs and time, on the performance of the Work. Any deletion of an item of Work shall not invalidate any provision hereof or other requirement, and Contractor shall complete the balance of the Work not so deleted.

16.2. Contractor Notification of a Change

- 16.2.1. If Contractor believes that any Excusable Event has occurred, it shall give the Owner notice thereof in accordance with Clause 15.6. If Contractor does not notify the Owner within the time period specified in such Clause 15.6, Contractor shall not be entitled to relief hereunder to the extent that the Owner was prejudiced by such late notice.
- 16.2.2. Contractor shall notify the Owner of any Change in Work that, in its opinion, would either (a) result in cost savings to the Owner or (b) be necessary or advisable.

16.3. Change Estimates

- 16.3.1. Unless agreed otherwise with the Owner, Contractor shall submit a Change Estimate to the Owner within twenty-one (21) Days after being requested to do so or notifying the Owner of the related Excusable Event in accordance with Clause 15.6. A "**Change Estimate**" shall include the following:
- (a) a description of the work to be performed or to be omitted to achieve the Change in Work;

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- (b) the total estimated cost or saving of such Change in Work with full detailed supporting information and documents (including contractual rates, quantities, drawings, specifications and such other information or documents as the Owner may reasonably require);
- (c) the effects (if any) of such Change in Work on the Contract Price;
- (d) details of any and all other impacts (*e.g.*, abortive work, material requirements, overtime working or shift working); and
- (e) all supporting documentation.

16.3.2. Within ten (10) Work Days following receipt from Contractor of a Change Estimate, the Owner shall do one of the following:

- (a) accept such Change Estimate and issue a Change Order in accordance with Clause 16.4; or
- (b) reject such Change Estimate and return it to Contractor clearly marked as rejected and giving reasons.

At the request of the Owner, Contractor may be required to provide further information on the Change Estimate or to meet with the Owner to review and discuss the proposed Change in Work.

16.3.3. Failure by Contractor to submit a Change Estimate relating to an Excusable Event within the twenty-one (21)-Day period specified in Clause 16.3.1 shall be deemed to mean that such Excusable Event has no impact on the Contract Price. If a request or instruction by the Owner gives rise to a reduction in the Contract Price and Contractor does not provide its estimate of the cost impact within the time limit, then the Owner shall determine the value of the Change in Work and the reduction in the Contract Price.

16.4. Change Orders

16.4.1. The impact of any Excusable Event or Change in Work shall be confirmed by the issuance by the Owner of a Change Order, which shall include (a) all the relevant details of such Change in Work, (b) any adjustment to the Contract Price and (c) any adjustment to, or addition of, one or more Milestones and Milestone Payments. No Change in Work shall be effective, and Contractor shall not perform any extra or changed Work, unless such is embodied in a Change Order executed by the Parties. If any Change Order impacts the Contract Price, the change in the Contract Price shall be a lump sum unless the Parties otherwise agree. No adjustment to the Contract Price shall be effective unless included in a Change Order complying with the requirements of this Clause 16.4 or in an amendment complying with the requirements of Clause 22.12.

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16.4.2. No Change Order shall be issued, and no change in the Price shall be made, in connection with any correction of errors, omissions or Defects on the part of Contractor or any Subcontractor in the performance of the Work.

16.5. Costs Incurred in Preparing Change Orders

16.5.1. Costs incurred by Contractor with respect to the Owner-initiated Change Orders in preparing a Change Estimate and Change Order shall be identified in the Change Order and borne solely by the Owner; provided that:

- (a) Contractor shall have previously notified the Owner in writing of the estimated costs thereof and the Owner shall have authorized Contractor to proceed therewith;
- (b) the Owner's reimbursement obligation shall not exceed Contractor's estimate without the Owner's prior written approval of such additional expense; and
- (c) subject to Contractor's compliance with sub-clause (a) above, if the Owner rejects such Change Order, the Owner shall reimburse Contractor for the Actual Cost of preparing such Change Order.

16.5.2. All costs in preparing Contractor-requested Change Orders (including Change Orders resulting from an Excusable Event) shall be borne exclusively by Contractor.

16.6. No Suspension of the Work

Contractor shall not suspend performance of the unaffected portion of the Work while any request for any Change is under consideration by either Party.

17. Title

17.1. Warranty of Title

Contractor warrants good title to all of the Work.

17.2. Transfer of Title

17.2.1. The Parties' rights and obligations in respect of the grant to use the Work are solely governed by the [REDACTED], except that title or ownership in all tangible expressions of Technical Information, provided to the Owner shall pass to, and vest in, the Owner upon the earlier of:

- (a) the Acceptance Date; or
- (b) the Termination Date.

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The Parties expressly agree that no other title or ownership to CONTRACTOR INTELLECTUAL PROPERTY or Contractor Confidential Information shall pass to, or vest in, Owner.

18. Default and Termination or Suspension

18.1. Contractor Events of Default and Remedies

18.1.1. The occurrence of any of the following shall constitute a “**Contractor Event of Default**”:

- (a) a Bankruptcy Event occurs with respect to Contractor; or
- (b) Contractor fails to make payment to any of its Subcontractors (except for disputes with respect to the Work, which disputes need not relate to the payment that has not been made) in accordance with the agreements between Contractor and such Subcontractor; or
- (c) Contractor persistently or materially disregards or violates Applicable Laws or Applicable Permits; or
- (d) Contractor persistently allows Defects to exist; or
- (e) Contractor abandons the Work or fails to begin the Work within fifteen (15) Days after the Work Commencement Date; or
- (f) Contractor assigns or subcontracts Work other than as provided for in this Contract; or
- (g) Contractor fails to perform any material provision of this Contract and thereby prejudices in any way the Owner’s ability to receive continued funding for the Plant; or
- (h) Contractor fails to pay to the Owner any Undisputed amount due to the Owner by the due date required for such payment under this Contract; or
- (i) any representation or warranty made by Contractor herein shall prove to be false or misleading in any material respect as of the time made, confirmed or furnished; or
- (j) the Owner believes, in good faith, that Contractor has violated any Anti-Bribery Law; or
- (k) any of Contractor’s Insurance shall cease, for any reason, to be in full force and effect.

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18.1.2. If any Contractor Event of Default exists, the Owner may take one (1) or more of the following actions:

- (a) terminate this Contract upon written notice to Contractor;
- (b) exercise its rights under the Performance Guarantee Undertaking; and/or
- (c) subject always to Clause 10, exercise any other remedies available to the Owner, at law or in equity, including an action for damages and including attorneys' fees;

provided that the Owner shall have first provided to Contractor the following periods of notice and opportunity to cure:

- (i) in the case of a Contractor Event of Default specified in Clause 18.1.1(a), no notice or opportunity to cure shall be required from the Owner; and
- (ii) in the case of a Contractor Event of Default specified in Clause 18.1.1(e), the Owner shall have provided at least ten (10) Days' prior written notice, and Contractor shall have failed to remedy such breach entirely by the end of such ten (10) Day period;
- (iii) in the case of any other Contractor Event of Default, the Owner shall have provided at least forty-five (45) Days' prior written notice, and Contractor shall have failed to remedy such breach entirely by the end of such forty-five (45) Day period.

18.1.3. If the Owner rightfully terminates this Contract under Clause 18.1.2 or Clause 18.6 (in circumstances where the Contractor is the "Defaulting Party"), the Owner may return all or any portion of the Work received by the Owner and which the Owner does not intend to keep; in which case Contractor shall, within fifteen (15) Work Days after such return, refund to the Owner the entire amount of the Contract Price paid to Contractor corresponding to such Work;

██████████ If the Owner terminates this Contract (including pursuant to Clause 18.6 (in circumstances where the Contractor is the "Defaulting Party")), the Owner may do one (1) or more of the following, subject to the terms and conditions of ██████████

- (a) take possession of all engineering and design data, whether any of the same are in a partial state of completion or completed condition, however only to the extent Contractor has been paid in full for such engineering and design data (collectively, the "**Relevant Data**");

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- (b) take possession of all Relevant Data, Technical Information and work-in-process, whether partially completed or fully completed, with the right to enter any other sites where Contractor or any of its Subcontractors is prosecuting any portion of the Work for the purpose of taking possession of any of the foregoing, all as subject to applicable safety and confidentiality requirements, however only to the extent Contractor has been paid in full for such Relevant Data, Technical Information and work-in-process; and
- (c) require Contractor to deliver to the Owner all Relevant Data, Technical Information and work-in-process, whether partially completed or fully completed, however only to the extent Contractor has been paid in full for such Relevant Data, Technical Information and work-in-process;

provided that, in the case of a termination of this Contract pursuant to Clauses 18.2, 18.3 or 18.6 (in circumstances where the Owner is the “Defaulting Party”) the Owner shall have paid the Termination Payment.

██████████ If the Owner terminates this Contract pursuant to this Clause 18.1 or Clause 18.6 (in circumstances where the Contractor is the “Defaulting Party”), the Owner may do one (1) or more of the following, subject to the terms and conditions of the ██████████

- (a) direct that Contractor assign its direct Subcontracts and Applicable Permits to the Owner or the Owner’s designee without any change of price or conditions therein (it being understood that the terms of any such Subcontract may provide that it may not be assigned without the consent of the relevant Subcontractor); and/or
- (b) take over the Work (however only to the extent Contractor has been paid in full for such Work) and finish the Work by whatever reasonable method the Owner may deem expedient.

18.1.6. Upon termination of this Contract as contemplated in Clause 18.1.5, Contractor shall immediately discontinue all of the Work (unless the notice directs otherwise), and deliver to the Owner copies of all Relevant Data, drawings, specifications, reports, estimates, summaries and such other information as more fully set forth in Clause 18.1.4, however only to the extent Contractor has been paid in full for such Relevant Data, drawings, specifications, reports, estimates, summaries and such other information.

18.1.7. Except as expressly provided in Clause 18.1.4, if the Owner terminates this Contract pursuant to this Clause 18.1 or Clause 18.6 (in circumstances where the Contractor is the “Defaulting Party”), Contractor shall not be entitled to receive any further payment.

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- 18.1.8. The Owner's engagement of another contractor to perform any of the Work shall not constitute a waiver of, or election among, any other rights or remedies that the Owner may have against Contractor under this Contract.
- 18.1.9. The foregoing obligations shall survive termination of this Contract and are subject to the limitations of liability set forth in this Contract.

18.2. Owner Events of Default and Remedies

- 18.2.1. The occurrence of any of the following shall constitute an "**Owner Event of Default**":
- (a) a Bankruptcy Event occurs with respect to the Owner; or
 - (b) the Owner fails to pay to Contractor:
 - (i) the first Milestone Payment within two hundred ten (210) Days after the date hereof for reasons not attributable to Contractor or a Force Majeure Event; or
 - (ii) any Undisputed amount due thereto within forty-five (45) Days after the due date required for such payment under this Contract; or
 - (c) Contractor believes, in good faith, that the Owner has violated any Anti-Bribery Law.
- 18.2.2. If any Owner Event of Default exists, without prejudice to any other right or remedy of Contractor hereunder or at law or in equity, Contractor may terminate this Contract, in the case of an Owner Event of Default specified in:
- (a) Clause 18.2.1(a) immediately; and
 - (b) Clause 18.2.1(b) or 18.2.1(c), Contractor shall have given the Owner at least thirty (30) Days' prior written notice and the Owner's failure to cure such Owner Event of Default within such thirty (30)-Day period.

Notwithstanding the foregoing, if the Owner is in default pursuant to Clause 18.2.1(b), Contractor shall have the right, upon prior written notice to the Owner, to suspend the performance of its obligations hereunder until the delinquent payment is made or Contractor terminates this Contract pursuant to the preceding sentence.

- 18.2.3. Upon termination of this Contract pursuant to Clause 18.2.2 or Clause 18.6 (in circumstances where the Owner is the "Defaulting Party"), Contractor shall be entitled to be paid by the Owner the Termination Payment.
- 18.2.4. Subject to payment by the Owner to Contractor of the Termination Payment, the Owner, at its option and solely at its own expense, may also take such actions as set forth in Clause 18.1.4.

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18.2.5. If Contractor terminates this Contract unjustifiably, then the Owner shall have all of the rights and remedies, as applicable, permitted under Clauses 18.1.2, 18.1.4 and 18.1.5.

18.3. Termination for the Owner's Convenience

The Owner may terminate this Contract upon written notice thereof to Contractor at any time for any reason whatsoever. If the Owner so terminates this Contract:

- (a) Contractor shall be entitled to be paid by the Owner the Termination Payment; and
- (b) the Owner, at its option and solely at its own expense, may also take such actions as set forth in Clause 18.1.4.

18.4. Suspension

18.4.1. The Owner's Right to Suspend Work. The Owner may at any time order Contractor, in writing, to suspend all or any portion of the Work for such period of time as the Owner may determine to be appropriate for its convenience. No adjustment shall be made to the Contract Price, the Completion Guarantee Event Deadline or the Project Schedule to the extent that performance is suspended, delayed or interrupted for any other cause due to Contractor's fault.

18.4.2. The Contractor's Right to Suspend Work. If the Owner fails to pay to Contractor the first Milestone Payment within one hundred fifty (150) Days after the date hereof for reasons not attributable to Contractor, Contractor may suspend all or any portion of the Work until such Milestone Payment is paid.

18.4.3. Mitigation of Costs. Contractor shall mitigate its costs during any period of suspension; provided that the Owner may request Contractor to retain specified personnel at the Owner's cost during such period.

18.5. Termination for Prolonged Force Majeure Event

If a Force Majeure Event continues for a period of at least six (6) months, either Party may terminate this Contract upon written notice thereof to the other Party.

18.6. Termination for Breach of Confidentiality Provisions

If either Party is in material default of its obligations under Clause 13 (the "**Defaulting Party**"), the other Party (the "**Other Party**") may give a written termination notice to the Defaulting Party, calling attention to the details of the default and specifying a termination date not earlier than 2 (two) months after the date of such notice. Unless the Defaulting Party, prior to the termination date specified in the notice, shall have remedied the default or made dispositions to the satisfaction of the Other Party, this Contract shall

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automatically terminate on the specified termination date. Any indulgence on the part of the Other Party in respect of a default by the Defaulting Party shall not be construed as a waiver with respect to such default or to any similar subsequent default.

18.7. Obligations Upon Termination

18.7.1. Upon termination of this Contract, Contractor shall:

- (a) cease all of the Work promptly;
- (b) protect all property in the possession of Contractor in which the Owner has or may acquire an interest, if any; and
- (c) use reasonable efforts to mitigate all liability, damages, costs and expenses constituting part of the Termination Payment, including by cancelling (to the extent cancellable) all Subcontracts that are not assigned to the Owner, in which case the Owner's liability to reimburse Contractor for costs incurred in connection with such cancellation shall be limited to any cancellation or other early termination penalties actually paid by Contractor in cancelling such Subcontracts.

18.7.2. Upon termination of this Contract by (i) the Contractor pursuant to Clauses 18.2 or 18.6 (in circumstances where the Owner is the "Defaulting Party") or (ii) the Owner pursuant to 18.3, provided that Contractor has complied with its obligations under Clause 18.7.1, the Owner shall be obligated to pay the following (the "**Termination Payment**"):

- (a) Contractor's Actual Costs incurred in demobilisation;
- (b) Contractor's Actual Costs incurred by Contractor in terminating contracts with its Subcontractors; and
- (c) to the extent that Contractor has done work in respect of a Milestone but has not submitted an Application for Payment in respect thereof, the aggregate price of such work.

As conditions to Contractor's entitlement to the foregoing amount, Contractor shall have supplied to the Owner (i) the documents described in Clause 7.2, (ii) a Release of Claims and (iii) such other documents in respect of the amount described in sub-clause (c) above.

18.7.3. Within sixty (60) Days after the Owner's receipt of Contractor's invoice setting forth a calculation of the Termination Payment with appropriate supporting documentation, the Owner shall pay Contractor an amount equal to the amount so determined except for any amount that the Owner requires to be audited. In such event, such audit shall be performed by an independent certified accounting firm of international reputation

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selected by the Owner. Such audit shall be completed within ninety (90) Days after Contractor's submission of an invoice for such amounts, and the amount determined as payable in the auditors' report shall be paid within such ninety (90) Day period. If Contractor disputes any portion of the amount so audited, the Owner shall pay all amounts that are not in dispute, and such Dispute shall be resolved in accordance with the provisions of Clause 14. Any underpayment or overpayment made by the Owner shall accrue interest at the Delayed Payment Rate from the date such payment was due until the date such payment is made.

- 18.7.4. Except as specifically provided in Clauses 7.5.2 and 18.8, payment of the Termination Payment shall be the sole and exclusive liability of the Owner, and the sole and exclusive remedy of Contractor, with respect to termination of this Contract pursuant to Clause 18.2 or 18.3.

18.8. Surviving Obligations

Termination of this Contract:

- (a) shall not relieve either Party of its obligations with respect to the confidentiality, indemnification or dispute resolution obligations as set forth in this Contract;
- (b) shall not relieve either Party of any obligation that expressly or by implication survives termination hereof; and
- (c) except as otherwise provided in any provision of this Contract expressly limiting the liability of either Party, shall not relieve either Party of any obligation or liability for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination (including the breach of any confidentiality obligation) or arising out of its obligations as to portions of the Work already performed or of obligations assumed by Contractor prior to the Termination Date.

18.9. Termination Date; Effect of Termination

This Contract shall be terminated on the date (the "**Termination Date**") that a Party delivers a notice of termination to the other Party pursuant to the express terms of this Contract.

19. Representations and Warranties

19.1. Representations and Warranties of Contractor

Contractor hereby represents and warrants to the Owner, as of the date hereof and at such other times as expressly stated, as follows:

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- (a) It is a company duly organised, validly existing and in good standing under the Laws of the jurisdiction in which it is organized and has all requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted, and is duly qualified to do business in such jurisdiction and is qualified (or will be so qualified to the extent necessary) in Brazil and in any other jurisdiction in which the transaction of its business makes such qualification necessary.
- (b) It has full power and authority to execute and deliver this Contract and to perform its obligations hereunder, and the execution, delivery and performance of this Contract by it have been duly authorised by all necessary action on its part; this Contract has been duly executed and delivered by it and constitutes its valid and binding obligation enforceable in accordance with its terms.
- (c) The execution, delivery and performance of this Contract by it and the consummation of the transactions contemplated hereby do not and will not contravene its charter, by-laws or limited liability company agreement and do not and will not conflict with or result in a breach of or default under any indenture, mortgage, lease, agreement, instrument, judgment, decree, order or ruling to which it is a party or by which it or any of its properties is bound or affected.
- (d) All Permits and other authorisations, approvals, orders or consents required in connection with the execution, delivery and performance of this Contract by it have been obtained or will be obtained in due course. It is the holder of, or shall obtain in a timely manner, all Applicable Permits required to allow it to operate or conduct its business now and as contemplated by this Contract, including all licenses required for the performance of design services.
- (e) Contractor or its Affiliates have the right to use or is the proprietor of the patents and other Intellectual Property contained or required for implementation and exploitation of the Work.
- (f) Contractor and its Subcontractors are, and shall be at all times, fully qualified and capable of performing every phase of the Work in accordance with the terms of this Contract and the Applicable Permits.
- (g) Contractor has full experience and proper qualifications to perform the Work.
- (h) Except with respect to Rely-Upon Information, it has:
 - (i) examined this Contract and each Applicable Permit thoroughly and has become familiar with its terms; and
 - (ii) ascertained the nature and location of execution of the Work, the existence of obstacles to construction, the availability of facilities and

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utilities and other general and local conditions, including labour, safety and environmental, that might affect its performance of the Work or the Contract Price.

- (i) There is no action, suit or proceeding now pending or (to its best knowledge) threatened against it before any court or administrative body or arbitral tribunal that might materially adversely affect its ability to perform its obligations under this Contract.

19.2. Representations and Warranties of the Owner

The Owner hereby represents and warrants to Contractor, as of the date hereof, as follows:

- (a) The Owner is duly organised, validly existing and in good standing under the Laws of its jurisdiction of organisation and has all requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted.
- (b) The Owner has full power and authority to execute and deliver this Contract and to perform its obligations hereunder, and the execution, delivery and performance of this Contract by the Owner have been duly authorised by all necessary action on the part of the Owner; this Contract has been duly executed and delivered by the Owner and is the valid and binding obligation of the Owner enforceable in accordance with its terms.
- (c) The execution, delivery and performance of this Contract by the Owner and the consummation of the transactions contemplated hereby do not and will not conflict with or result in a breach of or default under any indenture, mortgage, lease, agreement, instrument, judgment, decree, order or ruling to which the Owner is a party or by which it or any of its properties is bound or affected.
- (d) There is no action, suit or proceeding now pending or (to its best knowledge) threatened against it before any court or administrative body or arbitral tribunal that might materially adversely affect its ability to perform its obligations under this Contract.

20. Ethical Business Considerations

20.1. No Violation of Applicable Laws

Each Party agrees that in connection with this Contract and the activities contemplated herein, neither it nor any of its directors, officers, employees, agents, contractors or Affiliates shall (a) take action, or omit to take any action that would violate any Applicable Laws related to the business practices of such Party, (b) make, promise to make, or authorise the making of any payment, gift or transfer of anything of value,

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directly or indirectly, to any official or employee of any government or instrumentality of any government or to any political party or official thereof or any candidate of any political party for the purpose of influencing the action or inaction of such official, employee, political party or candidate, or (c) otherwise take any action, or omit to take any action that would cause the other Party to be in violation of any Applicable Laws related to the business practices of the other Party, including Brazilian anti-bribery Laws, the principles described in the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions signed on 17 December 1997 (such Laws, collectively, “**Anti-Bribery Laws**”).

20.2. Commercial Acts

Each Party agrees and undertakes, on behalf of itself, its directors, officers, employees, agents, contractors or Affiliates, not to pay any fees, commissions or rebates to any employee, officer or agent of the other Party or its Affiliates or shareholders nor provide or cause to be provided to any of them any gifts or entertainment of significant cost or value in connection with this Contract in order to influence or induce any actions or inactions in connection with the commercial activities of the Parties hereunder.

20.3. Records and Indemnification

Each Party shall keep all records necessary to confirm compliance with Clauses 20.1 and 20.2. If either Party asserts that the other Party is not in compliance with Clause 20.1 or 20.2, the Party asserting non-compliance shall send a notice to the other Party specifying the alleged non-compliance. The Party asserting non-compliance may cause an independent auditor to audit the records of the other Party in respect of the asserted non-compliance upon reasonable prior notice at any time within the period of two (2) years following the year for which such records apply. Each Party shall indemnify and hold the other Party harmless from and against any and all Claims and Losses brought by any Person that arise out of, are incident to, or result from any breach by such Party of Clause 20.1 or 20.2. Any independent auditor engaged by either Party for purposes of this Clause 20.3 shall be subject to confidentiality undertakings with respect to information acquired in a review contemplated by this Clause 20.3.

20.4. Representation and Warranty

Each Party represents and warrants to the other that it has not taken any action that would, if such action were undertaken after the date hereof, conflict with such Party’s obligations under Clauses 20.1 and 20.2.

20.5. Subcontractors

- 20.5.1. Contractor shall require, and shall require all Subcontractors ([REDACTED]) [REDACTED] to require, in all agreements in connection with the Work, their agreement to the provisions of this Clause 20, including:

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- (a) that such Subcontractor and its employees and agents shall comply with the provisions of Clauses 20.1, 20.2 and 20.3 in relation to themselves;
- (b) an express obligation to notify Contractor immediately of any such violation or of such Subcontractor's having reasonable grounds for suspecting that such violation has occurred; and
- (c) if such violation has occurred, an express right in favour of Contractor to terminate the relevant Subcontract with immediate effect and pay no compensation or reimbursement to such Subcontractor whatsoever for any service performed after the date of termination.

20.5.2. Contractor shall notify the Owner immediately on receipt of notification or otherwise becoming aware of any such violation.

20.5.3. If any Subcontractor or any of such Subcontractor's employees or agents violates any provision of Clause 20.1, 20.2 or 20.3, as it applies to such Subcontractor and its employees and agents pursuant to Clause 20.5.1, Contractor shall, if so required by the Owner, terminate the relevant Subcontract with immediate effect and pay no compensation or reimbursement to such Subcontractor whatsoever for any service performed after the date of termination.

20.6. Annual Certification

Within thirty (30) Days prior to each anniversary of the date hereof, Contractor shall submit to the Owner a certification as to its compliance with the provisions of this Clause 20.

20.7. Audit

Upon providing Contractor with at least five (5) Work Days' notice, any representative authorised by the Owner may audit any and all records of Contractor and any of its Subcontractors related to the Work and all transactions or matters related to this Contract or any Subcontract for the sole purpose of determining whether there has been compliance with this Clause 20. The cost of any audit under this Clause 20.7 shall be at the sole cost of the Party initiating such audit and shall not be part of the Contract Price.

21. Intellectual Property Matters

21.1. Delivery of Technical Information

Subject to Owner (a) complying with its obligations under Clause 7.1, (b) making any payment under Clause 18.1.4 (where required) and (c) making any Termination Payment (where required), as the case may be, within five (05) work days after completion of the related Work or at any time, and from time to time, upon request of the Owner,

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Contractor shall deliver to the Owner all Technical Information identified and organised as required by the Owner.

21.2. Non Assertion of Rights

Contractor shall:

- (a) so long as the Owner's rights under Clause 2.1 of the [REDACTED] [REDACTED] remain in effect, not assert any Intellectual Property rights granted under the Technology Supply Agreement, or participate in the assertion of any such Intellectual Property rights, and shall assure that the [REDACTED] [REDACTED], to prevent the Owner, or third parties authorised directly or indirectly by or on behalf of the Owner, including all permitted recipients under Clause 13.3 and any purchasers, exporters or importers of the PRODUCTS, from exercising and exploiting the Work to the full extent provided under Clause 2.1 of the [REDACTED]; and
- (b) to the extent possible, cause each Contractor Person to comply with this Clause 21.2.
- (c) All documents and other information or property (tangible or intangible) issued or otherwise provided to Contractor by the Owner, or otherwise obtained or learned by Contractor from the Owner, in connection with this Contract, shall be and remain the property of the Owner.

22. Miscellaneous

22.1. Jurisdictional Matters

- 22.1.1. This Contract shall be governed, construed, interpreted and enforced, and the relations between the Parties shall be determined, in accordance with English Laws (the "**Governing Law**").
- 22.1.2. Each Party, as to itself and its assets, hereby irrevocably, unconditionally, knowingly and intentionally waives any right of immunity (sovereign or otherwise) and agrees not to claim or assert any immunity with respect to the matters covered by this Contract in any arbitration, Expert proceeding, or other action with respect to this Contract, whether arising by statute or otherwise, that it may have or may subsequently acquire, including rights under the doctrines of sovereign immunity and act of state, immunity from legal process (including service of process or notice, pre-judgment or pre-award attachment, attachment in aid of execution, or otherwise), immunity from jurisdiction or judgment of any court, arbitrator, Expert or tribunal (including any objection or claim on the basis of inconvenient forum), and immunity from enforcement or execution of any award or judgment or any other remedy.

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22.1.3. Each Party irrevocably, unconditionally, knowingly and intentionally:

- (a) agrees that the execution, delivery and performance by it of this Contract constitute private and commercial acts rather than public or governmental acts;
- (b) consents in respect of the enforcement of any judgment against it in any such proceedings in any jurisdiction and to the giving of any relief or the issue of any process in connection with such proceedings (including the making, enforcement or execution of any such judgment or any order arising out of any such judgment against or in respect of any property whatsoever irrespective of its use or intended use).

22.2. Notices and Communications

22.2.1. Any notice, invoice or other communication from one Party to the other Party that is required or permitted to be made by the provisions of this Contract shall (unless otherwise expressly stated in this Contract) be:

- (a) made in the English language;
- (b) made in writing;
- (c) delivered by hand or sent by courier, registered mail, facsimile transmission or e-mail to the address of the other Party that is shown below or to such other address as the other Party shall by notice require or be sent by facsimile to the facsimile of the other Party that is shown below or to such other facsimile as the other Party shall by notice require; and
- (d) marked for the attention of the Person(s) there referred to or such other Person(s) as the other Party shall by notice require.

22.2.2. The addresses of the Parties for service of notices are as follows (or such other address as the receiving Party may have notified the other Parties):

(a) The Owner:

Petróleo Brasileiro S.A. - Petrobras
Av. Almirante Barroso, 81 - 36th Floor
20031-004 Rio de Janeiro, Brazil

Attention: _____
Facsimile: _____
Email: _____

(b) Contractor:

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Address _____

Attention: _____

Facsimile: _____

Email: _____

22.2.3. Any notice, invoice or other communication given by one Party to the other Party in accordance with the foregoing provisions of this Clause 22.2 shall be deemed to be received by the other Party only:

- (a) in the case of a letter, whether delivered in course of the post or by hand or by courier, at the date and time of its actual delivery if within normal business hours on a working Day at the place of receipt; otherwise at the commencement of normal business on the next such working Day; and
- (b) in the case of a facsimile or e-mail, at the time of transmission recorded on the message if such time is within normal business hours (09:00 - 17:00) in the country of receipt; otherwise at the commencement of normal business hours on the next working Day at the place of receipt.

22.2.4. Without limiting the meaning of the word “received”, for the purpose of Clause 22.2.3, a notice that is delivered by hand or by courier shall be deemed to have been received at a Party’s address if it is placed in any receptacle normally used for the delivery of post to the address of such Party.

22.3. Assignment

22.3.1. This Contract shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns. Any reference to any Person includes its permitted successors and assigns.

22.3.2. Except as otherwise provided in paragraphs (a) and (b) below, neither Party may assign or transfer any or all of its rights or obligations under this Contract without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

- (a) The Owner may, without Contractor’s consent, assign, novate or transfer its rights and obligations under this Contract to a special purpose corporate entity or an unincorporated joint venture or consortium owned or controlled, as the case may be, in part by the Owner that has been organised for such purpose.
- (b) The Owner may, without Contractor’s consent, assign, novate or transfer its rights and obligations under this Contract to an Affiliate of the Owner;

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provided that, in the case of any such:

- (i) assignment or transfer pursuant to paragraph (a) or (b) above, the Owner shall not be released from any of its obligations under the Contract; and
- (ii) novation pursuant to paragraph (a) or (b) above, the Owner either:
 - (A) executes and delivers a guarantee of the assignee's obligations under this Contract, which guarantee shall be in form and substance satisfactory to Contractor; or
 - (B) provides alternative security satisfactory to Contractor.

22.4. Relationship of the Parties

22.4.1. This Contract does not constitute either Party as the agent, partner or legal representative of the other for any purposes whatsoever, and neither Party shall have any express or implied right or authority to assume or to create any obligation or responsibility on behalf of or in the name of the other Party. Contractor is and shall remain an independent contractor in the performance of this Contract, maintaining complete control of its personnel, workers, Subcontractors and operations required for performance of the Work. This Contract shall not be construed to create any relationship, contractual or otherwise, between the Owner and any Subcontractor.

22.4.2. None of the provisions of this Contract shall be deemed to constitute a partnership or an unincorporated consortium or a joint venture between the Parties, and neither Party shall have any authority to bind the other Party in any way.

22.5. Waiver

A Party shall not be deemed to have waived any right or remedy under this Contract by reason of such Party's delay or failure to enforce such right or remedy. If any representation, warranty or covenant contained in this Contract is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and not be deemed to waive any other breach under this Contract.

22.6. Effect of Approvals, Etc.

22.6.1. Except as expressly provided in this Contract, no inspection, approval or payment (including the Final Milestone Payment) under this Contract shall:

- (a) be construed to be an acceptance of any portion of the Work containing a Defect;

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- (b) be an admission of Contractor's satisfactory performance of any of the Work;
or
- (c) relieve Contractor of any of its obligations under this Contract.

22.6.2. Nothing in this Contract shall in any way modify or alter Contractor's obligations under Clause 11.

22.7. Records and Communications

Promptly after the Work begins, procedures for keeping and distributing orderly and complete records of the Work and its progress shall be established. The procedure so established shall be followed throughout the course of the Work unless the Parties mutually agree in advance in writing to revise the procedure. Furthermore, immediately after the date hereof, complete procedures for communications between the Parties shall be established. The procedure so established shall be followed throughout the course of the Work unless the Parties mutually agree in advance in writing to revise the procedure.

22.8. Interest

If a Party fails to make any payment when due, excluding all amounts allowed to be withheld pursuant to the terms hereof, such Party shall be liable for interest on the unpaid amount from the Day the amount was due at a rate equal to the Delayed Payment Rate.

22.9. Publicity

22.9.1. The Owner will be responsible for all contact with the media and inquiries from the public relating to the Project. Without the Owner's prior written consent, Contractor shall not issue any public statement, press release, publicity handout, announcement, photograph or other material about the scope, extent or value of the Work, any details as to materials and equipment to be used or installed, the activities of Contractor or participation with respect to this Contract or any other matter relating to this Contract.

22.9.2. Contractor shall require all Subcontractors to comply with the requirements set forth in this Clause 22.9.

22.10. Counterparts

This Contract may be executed in one (1) or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one (1) and the same instrument.

22.11. Integration Clause

This Contract, including the Schedules, constitutes the entire agreement between the Parties and includes all promises and representations, express or implied, and supersedes

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all other prior agreements and representations, written or oral, between the Parties relating to the subject matter hereof. Anything that is not contained or expressly incorporated by reference in this instrument shall not be part of this Contract.

22.12. Amendments, Etc.

No provision of this Contract may be supplemented, amended, modified, changed, altered, revoked or waived (other than pursuant to a Change Order) except by an instrument in writing signed by the Parties and expressed to be a supplement, amendment, modification, change, alteration or waiver to this Contract.

22.13. Non-Recourse

No past, present or future equity investor in the Owner, no Affiliate of the Owner, and no officer, employee, servant, executive, director, agent or authorized representative of any of them (each, an “**Operative**”) shall be personally liable by virtue of the direct or indirect ownership interest of such Operative in the Owner for (a) any payment due under this Contract, (b) the performance of any obligation hereunder or (c) any breach of any representation or warranty made by the Owner hereunder. The sole recourse of Contractor for satisfaction of the obligations of the Owner under this Contract shall be against the Owner and the Owner’s assets, and not against any Operative or any assets or property of any Operative. If a default occurs in connection with such obligations, no action shall be brought against any Operative by virtue of its direct or indirect ownership interest in the Owner.

22.14. Payments Due on Non-Business Days

If any amount payable hereunder is due on a Day that is not a Business Day, such payment shall be due on the next succeeding Business Day.

22.15. Jointly Prepared

Preparation of this Contract has been a joint effort of the Parties and the resulting document should not be construed more severely against one Party than the other.

22.16. Invalidity

The invalidity or unenforceability of any portion or provision of this Contract shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Contract and the balance of this Contract shall be construed and enforced as if this Contract did not contain such invalid or unenforceable portion or provision.

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22.17. Rights and Remedies Cumulative

Except as expressly provided herein, all rights and remedies of either Party against the other Party and any permitted assignee of the other Party provided in this Contract shall be deemed cumulative, and not in lieu of or exclusive of, each other or of any other right or remedy available to either Party at law or in equity, and the exercise of any right or remedy, or the existence herein of other rights or remedies, shall not prevent the exercise of any other right or remedy.

22.18. Negotiation and Preparation Costs

Each Party shall bear the costs and expenses incurred by it in connection with the negotiation, preparation and completion of this Contract and other documents referred to herein, which shall not be part of the Contract Price.

22.19. English Language

This Contract, together with the Schedules, shall be made, and the originals to be executed shall be in, the English language and the Portuguese language, with the English language prevailing for all legal purposes.

22.20. Contracts (Rights of Third Parties) Act 1999

22.20.1. Pursuant to the CRTPA, the Parties agree that, except as otherwise provided in Clause 22.20.2, none of the terms of this Contract shall be enforceable by any Person other than a Party (for the purposes of this Clause 22.20 only, a “**third party**”).

22.20.2. The Parties agree that, in accordance with the CRTPA, any third party may in its own right enforce any exclusion, limitation of liability or indemnity expressed in this Contract to be in its favour; provided that:

- (a) in the event of a breach of a third party’s rights in respect of such exclusion, limitation of liability or indemnity, the remedies of such third party shall be limited to a claim for damages; and
- (b) notwithstanding any other provision of this Contract, no such third party shall be entitled to assign any benefit conferred on it pursuant to this Contract.

22.20.3. No right of either Party to agree to any amendment, variation, waiver or settlement under or arising from or in respect of this Contract, or to rescind or terminate this Contract, shall be subject to the consent of any third party that has rights to enforce a term of this Contract by virtue of this Clause 22.20, even if, as a result, such third party’s right to enforce a term of this Contract will be varied or extinguished.



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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Design and Engineering Services Contract on the Day and year first set forth above.

PETRÓLEO BRASILEIRO S.A.

By: _____

Name: _____

Title: _____

HALDOR TOPSØE A/S

By: _____

Name: _____

Title: _____