

Conditions of Contract

Table of Contents

		Page
1.	DEFINITIONS AND INTERPRETATION	1
1.1	Definitions	1
1.2	Language.....	15
1.3	Interpretation.....	16
2.	CONTRACT DOCUMENTS	16
2.1	Contract Documents Mutually Explanatory	16
2.2	Order of Precedence.....	17
3.	SCOPE OF WORKS	17
3.1	General.....	17
3.2	The Works	17
4.	TABREED'S RESPONSIBILITIES	18
4.1	Payment of the Contract Price	18
4.2	Site and Temporary Areas	18
4.3	Tabreed Licences	19
4.4	Tabreed Items	19
4.5	Tabreed's Scope of Supply.....	20
5.	THE CONTRACTOR'S RESPONSIBILITIES.....	20
5.1	Contractor's General Obligations.....	20
5.2	Project Documents.....	21
5.3	Standards of Execution	22
5.4	Full Acquaintance	23
5.5	Sufficiency of the Contract Price.....	25
5.6	Contractor Licences	26
5.7	Importing, Exporting and Customs Duties	26
5.8	Prohibited Practices	27
5.9	National Participation	27
5.10	Setting Out	28
5.11	Transportation.....	28
5.12	Safety and Site Regulations	29
5.13	Nuisance, Trespass etc.....	30
5.14	Construction Equipment	30
5.15	Facilities of Third Parties.....	31
5.16	Co-ordination with Associated Works Contractors	32
5.17	Site Clearance	33
5.18	Security and Lighting.....	33
5.19	Royalties	33
5.20	Prohibited Materials, Hazardous Materials and Pollution Control.....	34
5.21	Antiquities.....	35
5.22	Consumables.....	35
5.23	Training.....	36
5.24	Emergency Work	36
5.25	Access and Site	37
6.	TABREED'S REPRESENTATIVES	38
6.1	Designation	38
6.2	Authority.....	38

6.3	Owner's Engineer.....	38
6.4	No Relief.....	39
6.5	Limit on Authority	39
7.	THE CONTRACTOR'S REPRESENTATIVES AND SUPERVISORY STAFF	39
7.1	The Contractor's Representative	39
7.2	Project Manager.....	40
7.3	Key Personnel	41
7.4	Fluent in English.....	41
7.5	Labour.....	41
7.6	Withdrawal of Approval	42
7.7	Objection to Personnel.....	42
7.8	No Relief.....	43
8.	PROGRAMME, PROGRESS REPORTS, QA SCHEME	43
8.1	Programme.....	43
8.2	Progress Reports	44
8.3	Meetings	45
8.4	Material Incidents	45
8.5	Rate of Progress.....	46
8.6	Quality Assurance.....	47
9.	SUBCONTRACTING	47
9.1	Status of Contractor	47
9.2	Permitted Subcontracting.....	47
9.3	Requirements relating to Subcontractors	48
9.4	Data from Subcontractors	49
9.5	Environmental Compliance Record.....	49
9.6	Technical Documentation	50
10.	DESIGN.....	50
10.1	General Design Obligations.....	50
10.2	Contractor's Documents and Design Development	51
10.3	No Variation	52
10.4	Works to comply with design information	53
10.5	As-Built Documents	53
10.6	Manuals.....	53
10.7	Design Error.....	54
10.8	Provision of Tabreed Documents.....	54
10.9	Further Drawings	54
10.10	Return of Drawings and Contract Documents	54
11.	ACCESS TO THE WORKS IN PROGRESS	54
12.	TRANSFER OF TITLE.....	55
12.1	Ownership.....	55
12.2	Mechanics' Liens	55
12.3	Satisfaction and Release of Other Liens	57
12.4	Tabreed's Remedies	58
13.	CARE OF THE WORKS	58
13.1	Duration of Responsibility.....	58
13.2	Excluded Events	58
13.3	Construction Equipment	59
14.	SPARE PARTS AND SPECIAL TOOLS	59
14.1	Recommended List	59
14.2	Use before Acceptance	60
14.3	Use after Acceptance	60

15.	INSPECTION AND TESTS GENERALLY	60
15.1	Application	60
15.2	The Contractor to Conduct	60
15.3	Inspection During Manufacturing.....	60
15.4	Testing Schedule.....	61
15.5	Test Procedures.....	61
15.6	Notice and Reporting.....	61
15.7	Covering up	61
15.8	Test Failures.....	61
15.9	Uncovered Work.....	62
16.	ACCEPTANCE TESTS	62
16.1	Development of Detailed Acceptance Test Procedures.....	62
16.2	Acceptance Tests	63
16.3	Procedures for Carrying Out the Acceptance Tests.....	63
16.4	Attendances.....	64
16.5	Failure of Acceptance Tests.....	64
17.	KEY MILESTONES, MECHANICAL COMPLETION, PROVISIONAL ACCEPTANCE, ACCEPTANCE	65
17.1	Key Milestones	65
17.2	Mechanical Completion.....	65
17.3	Not Used	66
17.4	Not Used	66
17.5	Provisional Acceptance.....	66
17.6	Provisional Acceptance Certificate.....	66
17.7	Acceptance Certificate	67
18.	FINAL COMPLETION.....	67
18.1	Final Completion Certificate	67
18.2	Non-Release.....	68
19.	DEFECTS CORRECTION PERIOD	68
19.1	Remedial Obligation	68
19.2	Extension	68
19.3	Failure to Remedy.....	69
19.4	Repetition of Tests.....	69
19.5	Search for Cause of Defects.....	69
19.6	Up-dated documents for Defects	69
19.7	Subcontractor Warranties	70
19.8	Latent Defects	70
20.	CONTRACT PRICE.....	70
21.	PAYMENT	71
21.1	Payment Mechanics	71
21.2	Advance Payment	71
21.3	Retention.....	71
21.4	Application for Payments other than the Final Payment	71
21.5	Approval of an Interim Payment Certificate.....	71
21.6	Corrections to Certificates of Payment	73
21.7	Earliest date to apply for a Milestone Payment	73
21.8	Invoices.....	73
21.9	Interim Payment.....	73
21.10	Payments.....	73
21.11	Funders Requirements	74
21.12	Method of Payment.....	74
21.13	Set-off	74

21.14	Repayment of Excess.....	74
21.15	Final Payment Certificate	74
21.16	Withholding	75
22.	TAXES.....	76
23.	SECURITY	76
23.1	Advance Payment Bond.....	76
23.2	Performance Bond	76
23.3	Defects Correction Bond	77
23.4	Bond Requirements.....	77
23.5	Bond Expenses.....	78
23.6	Direct Agreement.....	78
23.7	Non-Payment of Liquidated Damages.....	78
24.	SUPPLY OF DOCUMENTS AND LICENCE FOR USE.....	78
24.1	Access to Documents.....	78
24.2	IPR Licence	78
24.3	No Infringement.....	79
25.	CONFIDENTIAL INFORMATION	79
25.1	Confidentiality	79
25.2	Required Disclosure.....	80
25.3	Restrictions on Use	80
26.	DELAY DAMAGES	80
26.1	Contracted Dates for Key Milestones, Provisional Acceptance and Acceptance.....	80
26.2	Delay Liquidated Damages.....	81
26.3	Effect of Delay Liquidated Damages.....	82
26.4	Expiry of Delay Liquidated Damages.....	82
27.	GUARANTEED PERFORMANCE LEVELS AND PERFORMANCE LIQUIDATED DAMAGES	82
27.1	Guaranteed Performance Levels	82
27.2	Liquidated Damages for Performance	83
27.3	Effect of Performance Liquidated Damages.....	84
27.4	Failure to Attain Minimum Performance Levels	84
27.5	Consequences of Rejection.....	84
28.	LIMITATIONS ON LIABILITY	85
28.1	Aggregate Liability	85
28.2	Exclusion of Consequential Loss.....	85
28.3	Caps on Liquidated Damages	86
28.4	Extent of Liability.....	86
28.5	Indemnification.....	86
28.6	Indemnification Procedures	88
28.7	Payment of Claim	88
28.8	Procedures.....	88
29.	INSURANCE.....	89
29.1	Tabreed Insurances	89
29.2	The Contractor Insurances	89
29.3	Endorsements.....	90
29.4	Insurance Certificates	91
29.5	Disclosure Requirements	91
29.6	Alteration to Insurances	92
29.7	Claims Assistance.....	92
29.8	Continuance of underlying responsibilities	92

29.9	Failure to Insure.....	92
29.10	Language.....	93
29.11	Approval of Insurers.....	93
29.12	Requirements of the Funders.....	93
30.	CHANGES.....	93
30.1	Tabreed right to instruct Changes.....	93
30.2	Tabreed Change Procedure.....	93
30.3	Implementation.....	95
30.4	The Contractor's Default.....	95
30.5	The Contractor - Proposed Changes.....	95
30.6	Tabreed to Authorise Change Order.....	95
30.7	Other Provisions Unaffected.....	95
30.8	Payment for Change Orders.....	96
30.9	Contractor's Records of Costs.....	96
30.10	Contractor Assistance.....	96
31.	CHANGE IN APPLICABLE LAWS.....	96
31.1	Notice of Statutory Modification.....	96
31.2	Statutory Modification Procedure.....	97
31.3	Implementation.....	98
31.4	Responsibilities of the Parties During a Change in Applicable Laws.....	98
31.5	Works Affected.....	98
32.	EXTENSION OF TIME.....	99
32.1	Extension of Time Grounds.....	99
32.2	Extension of Time Procedures.....	99
32.3	Award of Extensions.....	100
32.4	Acceleration.....	102
32.5	Mitigation of Delay.....	103
32.6	Adjustment for Purchase Contract.....	103
33.	CLAIMS FOR ADDITIONAL PAYMENTS.....	103
33.1	Additional Payment Grounds.....	103
33.2	Additional Payment Procedures.....	104
34.	FORCE MAJEURE.....	105
34.1	Force Majeure Events.....	105
34.2	Responsibilities of the Parties.....	106
34.3	Effect of Event of Force Majeure.....	106
34.4	Payment Not Excused.....	107
34.5	Certain Events not Force Majeure.....	107
34.6	Termination of Purchase Contract for Prolonged Force Majeure.....	107
34.7	Abandonment.....	107
35.	SUSPENSION.....	108
35.1	Tabreed's Right to Suspend.....	108
35.2	Prolonged Suspension.....	108
35.3	No Removal.....	108
35.4	Resumption.....	108
35.5	Contractor's Right to Suspend.....	109
36.	TERMINATION FOR TABREED CONVENIENCE.....	109
37.	TERMINATION FOR CONTRACTOR DEFAULT.....	109
37.1	Contractor Events of Default.....	109
37.2	Termination.....	110
37.3	Consequences of Termination.....	111

38.	TERMINATION FOR TABREED DEFAULT	115
38.1	Tabreed's Default	115
38.2	Consequences of Termination – Tabreed Default or Tabreed Convenience	115
39.	DISPUTE RESOLUTION	117
39.1	Negotiations	117
39.2	Technical Disputes	117
39.3	Arbitration	119
40.	ASSIGNMENT AND NOVATION	120
41.	NOTICES	121
42.	REMEDIES	121
42.1	Preservation of Remedies	121
42.2	No Relief from Liability	122
42.3	Waiver	122
42.4	Cumulative rights	122
42.5	Duty to Mitigate	123
42.6	No Winding Up	123
42.7	Failure of Liquidated Damages	123
43.	REPRESENTATIONS AND WARRANTIES	123
43.1	Contractor Representations and Warranties	123
43.2	Tabreed Representations and Warranties	124
43.3	Continuing Warranties	125
43.4	No Breach	125
44.	MISCELLANEOUS	125
44.1	Tabreed Assistance	125
44.2	Entire Agreement	125
44.3	Amendment	125
44.4	Invalidity	126
44.5	Counterparts	126
44.6	Business Days	126
44.7	Further Assurances	126
44.8	Language	126
44.9	Binding Effect	126
44.10	Publicity	126
44.11	Relationship of the Parties	126
44.12	Survival	127
44.13	Expenses	127

- EXHIBIT 1: Project Specific Terms
- EXHIBIT 2: Tabreed Items
- EXHIBIT 3: Land Lease Requirements and Site Plan
- EXHIBIT 4: Schedule
- EXHIBIT 5: Contractor's Key Personnel and Project Organizational Chart
- EXHIBIT 6: Insurances
- EXHIBIT 7: Approved Subcontractor List
- EXHIBIT 8: List of Documents for Approval
- EXHIBIT 9: Project Management Programme
- EXHIBIT 10: Manuals and Training
- EXHIBIT 11: Inspection, Commissioning and Operational Testing
- EXHIBIT 12: Notice to Proceed
- EXHIBIT 13: Form of Bonds and Guarantees
- EXHIBIT 14: Payment Certificates
 - Part I: Final Payment Certificate
 - Part II: Interim Payment Certificate
- EXHIBIT 15: Completion Certificates
- EXHIBIT 16: Release of Liens Certificate
- EXHIBIT 17: Form of Direct Agreement
- EXHIBIT 18: Form of Novation Agreement

Specification

- Part I: Agreed Clarification List
- Part II: Tabreed's Requirements
- Part III: Contractor's Proposal

CONDITIONS OF CONTRACT

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Contract the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

"**Acceptance**" means that the following has occurred:

- (a) the Contractor has carried out all Acceptance Tests on the Plant and has provided the Acceptance Test Report and all other data supporting all results for such tests to Tabreed;
- (b) Tabreed has certified that:
 - (i) the Plant has passed all Acceptance Tests and has attained the Guaranteed Performance Levels; or
 - (ii) the Plant has passed all Acceptance Tests and has attained all the Guaranteed Performance Levels other than the Guaranteed Performance Levels for those specific matters listed in section [Ex-1.12] of Exhibit 1 (*Project Specific Terms*) and Exhibit 11 (*Inspection, Commissioning and Operational Testing*) but has attained the Minimum Performance Levels for the Plant and the Contractor has paid (if established as payable) the applicable amount of Performance Liquidated Damages;
- (c) the Contractor has obtained all Licences that are required by Exhibit 1 (*Project Specific Terms*) to be obtained by the Contractor;
- (d) the draft Punch List has been updated to include additional Punch List Items identified during the Acceptance Tests and mutually agreed and finalized by the Parties and:
 - (i) the Parties have agreed that the Punch List Items are not material to the operation of the Plant and do not impair the performance, operability, safety or mechanical or electrical integrity of the Plant or increase the outage schedule of the Plant;
 - (ii) the Contractor has provided a schedule of dates for the completion of the Punch List Items; and
 - (iii) Tabreed, acting reasonably, has determined that the cost to remedy the outstanding Punch List Items does not exceed the unused Retention amounts held by Tabreed;
- (e) the Contractor has provided a Release of Liens Certificate, signed by a duly authorized signatory of the Contractor;

- (f) the Contractor has complied with its obligation to achieve National Participation;
- (g) the Plant has achieved Provisional Acceptance;
- (h) the Contractor has provided the red-lined marked up drafts of as-built drawings; and
- (i) the Contractor has returned all unused Tabreed Items and delivered or replaced the spare parts and special tools in accordance with Clause 14.

"**Acceptance Certificate**" means the certificate to be issued on the occurrence of Acceptance by Tabreed to the Contractor pursuant to Clause 17.7 in the form set out in Exhibit 15 (*Completion Certificates*).

"**Acceptance Date**" means the date on which Acceptance is stated to have occurred in the Acceptance Certificate.

"**Acceptance Tests**" means all the tests specified in Exhibit 11 (*Inspection, Commissioning and Operational Testing*), including the Performance Tests and any other tests performed in accordance with Clause 16 and Exhibit 1 (*Project Specific Terms*).

"**Acceptance Test Report**" means the reports which the Contractor is obliged to submit to Tabreed as a condition to Acceptance and in accordance with Exhibit 11 (*Inspection, Commissioning, and Operational Testing*).

"**Additional Payment**" means any sum paid or payable by Tabreed to the Contractor arising from an Additional Payment Ground, having any connection with the Works, the Project, this Contract or the activities of the Parties in connection with the foregoing, except for the Contract Price.

"**Additional Payment Grounds**" has the meaning given in Clause 33.1.

"**Advance Payment**", if applicable, means the interest-free loan in the amount as set-out in Exhibit 1 (*Project Specific Terms*) to be paid by Tabreed to the Contractor, and which is to be repaid by the Contractor to Tabreed, in accordance with Clause 23.1.

"**Advance Payment Bond**" means the bond to be provided to Tabreed by the Contractor in accordance with Clause 23.1 in substantially the form set out in Exhibit 13 (*Form of Bonds and Guarantees*).

"**Affiliate**" means, with respect to any person, any other person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such person. For purposes of this definition, "control" means direct or indirect ownership of more than 50% of the outstanding capital stock or other equity interests having ordinary voting power.

"**Agreed Clarification List**" means any list of agreed clarifications to Tabreed's Requirements or the Contractor's Proposal as set out in Part I of the Specification.

"**Applicable Laws**" means any Law including authorizations, licenses, consents, decrees, permits, waivers, privileges, approvals from the filings with all Public Sector Entities necessary for the realization and operation of the Works, and other licenses, permits, approvals and agreements, and any injunction of final non-appealable

judgment directly applicable to the relevant Party, of any Public Sector Entity having jurisdiction over the matter in question.

"**Approved Subcontractor**" means a Subcontractor listed in Exhibit 7 (*Approved Subcontractor List*) as approved for certain designated Major Subcontracts.

"**Associated Works**" means any works in connection with the Project being or to be carried out by or on behalf of an Associated Works Contractor.

"**Associated Works Contractors**" means any Public Sector Entity, and any contractors, consultants or service providers engaged by or on behalf of them, the Purchaser or Tabreed to carry out Associated Works.

"**Basic Parameters**" means the parameters as set-out in Exhibit 1 (*Project Specific Terms*) in each case as specified in Tabreed's Requirements and Agreed Clarification List.

"**Bond Replacement Event**" means in respect of any of the Bonds, an Insolvency Event occurring in respect of the issuing bank or such bank suffering a drop in its long-term rating to less than BBB+ (Standard & Poor's), or the Bond becoming invalid or unenforceable.

"**Bonds**" means, where applicable, each and any of the Advance Payment Bond, the Performance Bond and the Defects Correction Bond.

"**Business Day**" means any day between 8.30 am and 4.30 pm other than Friday, Saturday or a public holiday in Abu Dhabi.

"**Certificate of Payment**" means either an Interim Payment Certificate or a Final Payment Certificate.

"**Change**" has the meaning given in Clause 30.1.

"**Change in Applicable Laws**" has the meaning given in Clause 31.1.

"**Change Order**" has the meaning given in Clause 30.2.4.

"**Claims**" means with respect to any person, any and all suits, sanctions, legal proceedings, claims, assessments, judgments, damages, penalties, fines, liabilities, demands, reasonable out-of-pocket expenses of whatever kind (including reasonable legal fees and expenses) and losses incurred or sustained by or against such person.

"**Commencement Date**" means the date for commencement of the Works which shall be the date set out in the Notice to Proceed.

"**Conditions of Contract**" means these conditions of contract which form part of this Contract and any amendments or variations thereto made pursuant to this Contract.

"**Connection Point(s)**" means points of Interface works to be performed as a requirement of the Plant as set-out in the Specification and as highlighted in Exhibit 1 (*Specific Project Terms*).

"**Construction Equipment**" means all plant, facilities, temporary structures and accommodation equipment, machinery, tools, apparatus, temporary works, materials, supplies, appliances or things of every kind used in connection with the Contractor's performance of the Works but which are not intended to become a part of the Plant (and does not include, for avoidance of doubt, Equipment and Materials).

"**Contract**" means this Contract entered into between Tabreed and the Contractor, comprised of the Contract Documents.

"**Contract Documents**" means the documents listed in Article 2 of the Form of Agreement.

"**Contract Liability Limit**" has the meaning given in Clause 28.1.

"**Contract Price**" means the sum specified in Article 4 of the Form of Agreement subject only to such adjustments as may be made pursuant to this Contract.

"**Contracted Date for Acceptance**" means the date as set-out in Exhibit 1 (Project Specific Terms) subject to any extensions of time to which the Contractor may have become entitled under Clause 32.

"**Contracted Date for Provisional Acceptance**" means the date as set-out in Exhibit 1 (*Project Specific Terms*) subject to any extensions of time to which the Contractor may have become entitled under Clause 32.

"**Contracted Dates for Key Milestones**" means the dates as set-out in Exhibit 1 (*Project Specific Terms*), where each of these dates relates to a Key Milestone as set out in Exhibit 1 (*Project Specific Terms*), subject to any extensions of time to which the Contractor may have become entitled under Clause 32.

"**Contractor Event of Default**" has the meaning given in Clause 37.1.

"**Contractor Works Schedule**" means the schedule for the Works set out in Exhibit 4 (*Schedule*), as amended from time to time in accordance with the terms of this Contract.

"**Contractor Parties**" means the Contractor's Affiliates, agents, Subcontractors, servants, employees and licensees.

"**Contractor Indemnitee**" has the meaning given in Clause 28.5.4.

"**Contractor's Documents**" means the Documents as described in Clause 10.2.

"**Contractor's Proposal**" means the documents prepared by the Contractor as set out in Part III of the Specification.

"**Contractor's Representative**" means the person approved by Tabreed pursuant to Clause 7.1.

"**Cost**" means all direct expenditure reasonably and properly incurred by the Contractor including reasonable overheads but does not include profit.

"**Credit Period**" means the period as set-out in Exhibit 1 (*Project Specific Terms*).

"**Default Date for Acceptance**" means the date as set-out in Exhibit 1 (*Project Specific Terms*).

"Default Rate" means the rate as set-out in Exhibit 1 (*Project Specific Terms*).

"Defect" means any error, defect or damage in the Works (or part thereof) or any spare parts and special tools which arises from any:

- (a) design, engineering, tools, Materials, Equipment, supplies or workmanship not in accordance with this Contract;
- (b) failure by the Contractor to comply with any obligation expressed or implied on the Contractor's part under this Contract; or
- (c) act or omission of the Contractor,

but does not include defects or damage arising:

- (d) as a result of the operation or maintenance of the Plant by or on behalf of Tabreed (other than by the Contractor) that is not in accordance with operation and maintenance Manuals provided by the Contractor (save where the Contractor has not complied with its obligations under this Contract in respect of such Manuals);
- (e) due to operation of the Plant by or on behalf of Tabreed (other than by the Contractor) that is outside of the specifications and tolerances provided for in this Contract (as may have been adjusted by Changes); or
- (f) from normal wear and tear in the operation of the Plant.

"Defects Correction Bond" means the bond referred to in Clause 23.3 in substantially the form set out in Exhibit 13 (*Form of Bonds and Guarantees*).

"Defects Correction Period" means in respect of completed elements of the Works, the period as set-out in Exhibit 1 (*Project Specific Terms*).

"Delay Liquidated Damages" has the meaning given in Clause 26.2.

"Detailed Acceptance Test Procedures" means the test procedures, testing programme and other requirements for the construction, inspection, start-up, performance and reliability testing and capacity demonstration of the Plant that are approved and accepted in accordance with Clause 16.1 and Exhibit 11 (*Inspection, Commissioning, and Operational Testing*).

"Dirhams" or **"Dhs"** or **"AED"** means the lawful currency of the UAE.

"Dispute" has the meaning given in Clause 39.1.1.

"Documents" means written documents, designs, calculations, computer programs and other software, drawings, manuals, specifications, graphical materials, photographs, models (including three-dimensional physical models) and all other information (including that stored by electronic means).

"Easement Facilities" means all pipes, valves, conduits, pumps, lines, processors, transformers, works, facilities, equipment, devices, buildings and improvements of every kind and nature located within the area of any Land Easements.

"Effective Date" means the date as set-out in Article 5.1 of the Form of Agreement.

"Environmental Law" means any law governing or relating to:

- (a) the environment;
- (b) releases or threatened releases of Prohibited Materials or Hazardous Materials including investigations, monitoring and abatement of such releases; and
- (c) the manufacture, handling, transport, use, treatment, storage or disposal of Prohibited Materials or Hazardous Materials or materials containing Prohibited Materials or Hazardous Materials.

"Equator Principles" means those principles set out in the paper titled "An industry approach for financial institutions in determining, assessing and managing environmental and social risk in project financing" dated 4 June 2003 and developed and adopted by the International Finance Corporation and other banks and financial institutions, as applicable at the Effective Date.

"Equipment" means all equipment, supplies, apparatus, devices, instruments, machinery, parts, tools, components, appliances and appurtenances thereto, including lifting frames and other special tools required for the maintenance of any mechanical equipment, to be provided, incorporated and installed into the Plant by the Contractor pursuant to this Contract, other than Materials.

"Event of Force Majeure" has the meaning given in Clause 34.1.

"Excluded Event" has the meaning given in Clause 13.2.1.

"Exhibits" means the exhibits appended to these Conditions of Contract and forming part of this Contract and any amendments or variations thereto made pursuant to this Contract.

"Extension of Time Grounds" has the meaning given in Clause 32.1.

"Final Completion" means the time when all the events below shall have occurred:

- (a) the Works as a whole have been completed (other than any works relating to making good any Latent Defects, Defects or damage pursuant to Clause 19.8 which may arise after Final Completion);
- (b) all Punch List Items have been completed;
- (c) Acceptance has been achieved;
- (d) any other Liquidated Damages and other amounts due from the Contractor (if any) have been paid or allowed to Tabreed;
- (e) the Contractor has delivered to Tabreed all final Documents, including final Manuals and as-built drawings, required to be delivered under this Contract;
- (f) all of the Contractor's Construction Equipment, supplies (including residual materials) and wastes, have been removed from the Site and properly disposed of;
- (g) Tabreed has received from the Contractor a final Release of Liens Certificate, signed by a duly authorised signatory of the Contractor;

- (h) the final account has been agreed between Tabreed and the Contractor, save for those items of dispute referred formally to arbitration in accordance with Clause 39;
- (i) the Contractor has delivered a list of, and replaced, the spare parts and special tools in accordance with Clause 14;
- (j) the warranties given by the Major Subcontractors extending beyond Final Completion have been assigned by the Contractor to Tabreed;
- (k) all tests have been completed pursuant to Exhibit 11 (*Inspection, Commissioning, and Operational Testing*); and
- (l) the Defects Correction Period has expired.

"Final Completion Certificate" means the certificate to be issued by Tabreed to the Contractor pursuant to Clause 18 confirming the date on which Final Completion of the Works took place in the form set out in Exhibit 15 (*Completion Certificates*).

"Final Determination" has the meaning given in Clause 28.6.

"Final Payment Certificate" means the certificate to be issued by Tabreed to the Contractor pursuant to Clause 21.15 and in the form set out in Exhibit 14 (*Payment Certificates*).

"Final Termination Account" has the meaning given in Clause 37.3.7.

"Form of Agreement" means the form of agreement to which these Conditions of Contract are attached and forming part of this Contract and executed on behalf of the Parties and any amendments or variations thereto made pursuant to this Contract.

"Finance Documents" means any and all loan agreements, security agreements and other agreements entered into by Tabreed and the Funders relating to, among other things, the financing of the Project including any modifications, supplements, extensions, renewals and replacements of any such financing or refinancing.

"Funders" means any person or persons or prospective person or persons providing debt, bond or capital market financing or refinancing under the Finance Documents to Tabreed, and their permitted successors and assigns, including any agent or trustee for such person or persons to indebtedness.

"Funders' Representative" means the persons, if any, notified by Tabreed to the Contractor from time to time as being the representative(s) of all the Funders (and the identity of such persons may change from time to time as notified to the Contractor by Tabreed), including an offshore trustee, an onshore agent and technical adviser.

"Good Utility Practice" means, at a particular time, those practices, methods, acts, techniques and standards as are in accordance with good standards of prudence applicable to the international district cooling industry or the international engineering and construction industry, as applicable, which would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition including the World Bank Standards and the Equator Principles.

"Guaranteed Performance Levels" means each of the performance guarantees specified in Exhibit 1 (*Project Specific Terms*) to be attained in accordance with Clause 27.

"Hazardous Materials" means any chemicals, materials or substances which are permitted by Applicable Laws to be used or handled in connection with the Works but which are now or hereafter become defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "toxic substances" or "toxic pollutants" under, or are regulated or become regulated as such by, Environmental Laws or in the regulations promulgated pursuant to such laws, but excluding Prohibited Materials.

"ICC" has the meaning given in Clause 39.3.3.

"ICC Centre" has the meaning given in Clause 39.2.1.

"ICC Rules" has the meaning given in Clause 39.3.2.

"Insolvency Event" means any of the following events in relation to any person:

- (a) any meeting of creditors generally of the person being held or any arrangement or composition with or for the benefit of its creditors being entered into by or in relation to the person in question;
- (b) a supervisor, trustee, liquidator, receiver, interim receiver, receiver and manager, custodian, administrator, administrative receiver (or other person with similar powers) taking possession of or being appointed over or any distress, execution, garnishment, attachment, or other process being levied or enforced (and not being discharged within 21 days) upon the whole or any material part of the assets of the person;
- (c) the person ceasing to carry on business or being or becoming insolvent or unable to pay its debts under applicable law;
- (d) a petition being presented (and not being discharged or adjourned for later hearing within 21 days or not being discharged on the first adjourned hearing) or a resolution being passed or an order being made for the administration or the receivership, winding-up, bankruptcy, insolvency, liquidation, or dissolution of, or other similar proceeding relating to, the person;
- (e) any order or judgment is made by a tribunal or court of competent jurisdiction restraining the person's ability to deal with all or a substantial portion of its assets and property or winding up or otherwise confirming the bankruptcy or insolvency of such person, which order has not been set aside or stayed within 21 days; or
- (f) the person suffering any similar event or act with similar effect under the law of any competent jurisdiction.

"Intellectual Property Rights" means any and all rights, title and interests in registered or unregistered trademarks, service-marks, patents, registered designs, utility marks, applications for any of the foregoing, copyrights, database rights, unregistered designs, inventions, confidential information, know-how or other intellectual property and any such rights that form pending applications (whether in written form, or generated by or maintained on a computer or similar system or

otherwise) subsisting in or relating to Documents prepared at any time relating to the Works or subsisting in or relating to the Works themselves or their design, construction, commissioning, completion, operation and maintenance.

"**Interfaces**" means the construction connections and physical tie-ins as described in the Specifications and Exhibit 1 (*Project Specific Terms*), which connections and tie-ins will be engineered, designed, procured, constructed, installed, tested and commissioned by the Contractor as part of the Works.

"**Interim Payment Certificate**" means a certificate issued by Tabreed to the Contractor pursuant to Clause 21.5.1 substantially in the form set out in Part II (*Interim Payment Certificate*) of Exhibit 14 (*Payment Certificates*) and including the information set out in Clause 21.5.3.

"**Interim Termination Account**" has the meaning given in Clause 37.3.5.

"**Key Personnel**" has the meaning given in Clause 7.3.

"**Key Milestone**" means the key milestone(s) as set-out in Exhibit 1 (*Specific Project Terms*)

"**Key Milestone Certificate**" means, for the particular Key Milestone being referred to, the certificate issued by Tabreed to the Contractor on the achievement of the Key Milestone in accordance with Clause 17.1 which shall be substantially in the form set out in Exhibit 15 (*Completion Certificates*).

"**Key Milestone Date**" means, for the particular Key Milestone being referred to, the date on which the Key Milestone is stated to have occurred in the Key Milestone Certificate.

"**Land Easement**" means any easement or other similar rights given to Tabreed under the Land Lease Agreement.

"**Land Lease Agreement**" means the land lease agreement for the Site to be entered into by Tabreed, or in the absence of such land lease agreement, the relevant NOC granted during the design stage by the relevant authorities, which shall include but not be limited to Public Sector Entities, to Tabreed to install the Plant on the proposed Site.

"**Land Lease Requirements**" means the requirements set out in Exhibit 3 (*Land Lease Requirements and Site Plan*) which is expected to form part of the Land Lease Agreement.

"**Latent Defect**" means a material defect in the Works, whether due to a defect in design, manufacturing, workmanship, Equipment, Materials or otherwise, that was present during the Defects Correction Period, but which would not have been disclosed by reasonable examination during such period.

"**Latent Defect Period**" means a period of 10 years after the Acceptance Date.

"**Law**" means any treaty, legislation, statute, directive, regulation, rule, judgment, decision, decree, order, regulation, instrument, by-law or any other law of, or having effect in, any jurisdiction.

"**Licence**" means any consent, approval, non-objection certificate or other authorisation, that is required including under the laws of the Emirate of Abu Dhabi, the Emirate of Dubai, the Emirate of Sharjah, the Emirate of Ras Al Khaimah or the Emirate of Fujairah or the UAE necessary to carry out the Works, and any decrees, permits, waivers, privileges, approvals from and filings with any Public Sector Entities necessary to carry out the Works.

"**Lien**" means any mortgage, lien, levy, pledge, claim, charge, usufruct, easement, security interest, option agreement, or encumbrance of any kind whatsoever or any conditional sale contract, title retention contract or other contract giving effect to any of the foregoing.

"**Liquidated Damages**" means Delay Liquidated Damages and Performance Liquidated Damages.

"**Major Subcontract**" means those subcontracts related to this Contract and entered into by the Contractor with Subcontractors

- (a) that amount to a contract value of not less than AED1,000,000 in aggregate per Subcontractor; or
- (b) that Tabreed has specifically defined as Major Subcontracts in Exhibit 1 (*Project Specific Terms*).

"**Major Subcontractor**" means a contractor party to a Major Subcontract.

"**Manuals**" means all operating and maintenance manuals, training materials, spares lists, records and as-built drawings which are to be provided to Tabreed by the Contractor pursuant to Clauses 10.5 and 10.6 and Exhibit 10 (*Manuals and Training*).

"**Material Incident**" has the meaning given in Clause 8.4.

"**Materials**" means substances, materials and components used in the construction of the Plant to be provided and incorporated in the Plant by the Contractor under this Contract and which become a part of the Plant, other than Equipment.

"**Maximum Electricity Amount**" means the amount of electricity as set-out in Exhibit 1 (*Project Specific Terms*)

"**Maximum Water Amount**" means the amount of water as set-out in Exhibit 1 (*Project Specific Terms*)

"**Mechanical Completion**" means that the following has occurred:

- (a) the Works have been completed to the extent described in the Specification as being required for mechanical completion of the Plant, including all inspection, certification and pre-commissioning of the Works;
- (b) the Contractor has completed that portion of its training for Tabreed's and the Operator's personnel as is required by Exhibit 10 (*Manuals and Training*) to be completed by Mechanical Completion; and
- (c) the Contractor has obtained all Licences required by Exhibit 1 (*Project Specific Terms*) to be obtained by the Contractor by Mechanical Completion.

"**Mechanical Completion Certificate**" means the certificate to be issued on Mechanical Completion by the Contractor pursuant to Clause 17 based on the form set out in Exhibit 15 (*Completion Certificates*).

"**Milestone**" means each event set out in the section on Milestone Payment Schedule in Exhibit 1 (*Project Specific Terms*)

"**Milestone Payment Schedule**" means the Milestone Payment Schedule for payment of the Contract Price as set out in Exhibit 1 (*Project Specific Terms*).

"**Minimum Performance Levels**" means the minimum levels to be achieved by the Plant during the Performance Tests in order for it to attain Acceptance as specified in Exhibit 1 (*Project Specific Terms*).

"**National Participation**" has the meaning given in Clause 5.9.

"**Notice to Proceed**" means the notice instructing the Contractor to proceed with the Works on and from the Commencement Date as set-out in Exhibit 1 (*Project Specific Terms*), or in the absence of such instruction as set-out in Exhibit 1 (*Project Specific Terms*), means the notice in writing from Tabreed to the Contractor substantially in the form set out in Exhibit 12 (*Notice to Proceed*) instructing the Contractor to proceed with the Works on and from the Commencement Date.

"**Offsite Facilities**" means all of the offsite facilities connected to the Plant as more specifically described in the Specification to be built off-Site as part of the Works.

"**Onsite Facilities**" means all of the onsite facilities connected to the Plant as more specifically described in the Specification to be built on the Site as part of the Works.

"**Operator**" means any person notified to Contractor as being the operator of the Plant after the Plant has attained Acceptance.

"**Owner's Engineer**" means any consulting engineer, independent from the interests of the Contractor and employed by Tabreed, for the design review and supervision of the construction, testing, commissioning and acceptance of the Works.

"**Performance Bond**" means the bond to be provided to Tabreed by the Contractor in accordance with Clause 23.2 in substantially the form set out in Exhibit 13 (*Form of Bonds and Guarantees*).

"**Performance Liquidated Damages**" has the meaning given in Clause 27.2.2.

"**Performance Tests**" means the tests required by Clause 16, relevant section in Exhibit 11 (*Inspection, Commissioning, and Operational Testing*) and Exhibit 1 (*Project Specific Terms*) to demonstrate the ability of the Plant to achieve the required level of performance and reliability as per Contract, including the Guaranteed Performance Levels.

"**Plant**" means, collectively the facilities as more specifically described in the Specification, to be constructed on the Site by the Contractor in accordance with this Contract in the course of the Works including interfaces, connections and associated equipment and facilities, all ancillary plant, Equipment, Materials, buildings, civil engineering works and infrastructure forming part of the Works.

"**Position Notice**" has the meaning given in Clause 39.2.1.

"Programme" means the schedule of activities for the execution of the Works to be prepared and updated from time to time by the Contractor pursuant to Clause 8.1.

"Progress Report" has the meaning given in Clause 8.2.

"Prohibited Materials" means any construction chemicals, materials or substances which are generally known in the international construction industry at the time of use as being detrimental to:

- (a) health and safety following their installation as part of the Works; or
- (b) the durability of the Works in the particular circumstances in which they are used.

"Prohibited Practice" means any of the acts prohibited pursuant to Clause 5.8.

"Project" means the ownership, development, design, financing, insuring, construction, operation and maintenance of the Plant.

"Project Documents" means this Contract and the Land Lease Requirements.

"Project Management Programme" means the programme for project management during the Works as set out in Exhibit 9 (*Project Management Programme*) as amended by Tabreed.

"Project Manager" has the meaning given in Clause 7.2.

"Proprietary Information" means information rightfully in the possession of such person, which information derives economic value from not being generally known to and not being readily ascertainable by proper means by another person who can obtain economic value from its disclosure and use, and which is the subject of reasonable efforts to maintain its secrecy.

"Provisional Acceptance" means that the following has occurred:

- (a) the Contractor has issued the Mechanical Completion Certificate;
- (b) all Key Milestones that are required to be achieved prior to the Provisional Acceptance are achieved;
- (c) the Works have been completed (except for any requirement of Acceptance listed in paragraphs (a), (b), (f) and (h) of the definition of Acceptance) so as to allow the safe start up and operation of the Plant;
- (d) the Works comply with Applicable Laws;
- (e) the draft Punch List as at that date has been mutually agreed upon by the Parties and the Punch List Items stipulated therein to have been completed before Provisional Acceptance for the safe operation of the Plant, have been completed;
- (f) the Contractor's training for Tabreed's and the Operator's personnel has been completed in accordance with Exhibit 10 (*Manuals and Training*); and
- (g) the Contractor has supplied the draft operation and maintenance Manuals in accordance with Exhibit 10 (*Manuals and Training*) which have each had one

round of comments from Tabreed, the Operator and the Owner's Engineer incorporated and is sufficiently detailed to allow operation and maintenance of the Plant in a safe and reliable manner.

"Provisional Acceptance Certificate" means the certificate issued by Tabreed to the Contractor on the occurrence of Provisional Acceptance in accordance with Clause 17.6.2 which shall be substantially in the form set out in Exhibit 15 (*Completion Certificates*).

"Provisional Acceptance Date" means the date on which Provisional Acceptance is stated to have occurred in the Provisional Acceptance Certificate.

"Public Sector Entity" means the federal government of the UAE, the local government of the Emirate of Abu Dhabi, of the Emirate of Dubai, of the Emirate of Fujairah, of the Emirate of Ras Al Khaimah, of the Emirate of Ajman or of the Emirate of Sharjah or any ministry department or political subdivision thereof, and any person under the direct or indirect control of any such government exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any other governmental entity, instrumentality, agency, authority, corporation, committee or commission, or any independent regulatory authority, in each case within the Emirate of Abu Dhabi, the Emirate of Dubai, the Emirate of Fujairah, the Emirate of Ras Al Khaimah, the Emirate of Ajman, the Emirate of Sharjah or the UAE, and any successor to or any assignee of any of the foregoing.¹

"Punch List" means the list of Punch List Items.

"Punch List Items" means items of the Works identified by either or both Parties as requiring completion or correction before Provisional Acceptance, Acceptance or Final Completion (as the case may be) and:

- (a) that are not material to the operation of the Plant; and
- (b) do not impair the performance, operability, safety or mechanical or electrical integrity of the Plant or increase the outage schedule of the Plant.

"Purchase Contract" means any contract or proposed contract between Tabreed and a Purchaser that is disclosed to the Contractor at the time of award of this Contract.

"Purchaser" means any purchaser of cooling services generated by the Plant and as may be defined in the Form of Agreement.

"QA Scheme" has the meaning given in Clause 8.6.

"Reasonable and Prudent Contractor" means, in respect of the Contractor, it acting in good faith to perform its contractual obligations under this Contract and, in so doing and in the general conduct of its undertaking hereunder, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and internationally experienced person, engaged in the same or a similar type of undertaking, in the same or similar circumstances and conditions complying with Good Utility Practice and Applicable Law, and any references herein

to the standard of a Reasonable and Prudent Contractor shall be construed accordingly.

"**Reference Site Conditions**" means the reference site conditions set out in Exhibit 1 (*Project Specific Terms*).

"**Release of Liens Certificate**" has the meaning given in Clause 12.2.9.

"**Remedial Work**" means all works to redesign, repair, reconstruct, rectify, replace or otherwise make good a Defect or a Latent Defect as well as any damage to the Plant caused by a Defect or a Latent Defect.

"**Retention**" has the meaning given in Clause 21.3.1.

"**Review Period**" has the meaning given in Clause 10.2.4 and in Exhibit 1 (*Specific Project Terms*).

"**Site**" means the area of land shown and marked in the plan as set out in Exhibit 3 (*Land Lease Requirements and Site Plan*).

"**Spare Parts and Special Tools**" means the recommended 2 years supply of spare parts and special tools as set-out in Exhibit 1 (*Project Specific Terms*).

"**Specification**" means the document set out in Annex 1 comprising:

- (a) Part I - Agreed Clarification List;
- (b) Part II - Tabreed's Requirements; and
- (c) Part III - Contractor's Proposal.

"**Start-up and Operational Tests**" has the meaning given in Exhibit 11 (*Inspection, Commissioning, and Operational Testing*).

"**Statutory Modification**" has the meaning given in Clause 31.1.

"**Subcontract**" means any contract between the Contractor and a Subcontractor including Major Subcontracts.

"**Subcontractor**" means any or all suppliers and/or subcontractors or vendors of Materials or Equipment or services of the Contractor, or any of the permitted successors or assigns, engaged by the Contractor or by any other person who falls within this definition, in connection with the undertaking of the Work including Major Subcontractors.

"**Tabreed Indemnatee**" has the meaning given in Clause 28.5.1.

"**Tabreed Items**" means the items of equipment and materials to be supplied by Tabreed to the Contractor for inclusion in the Works or the Plant as listed in Exhibit 2 (*Tabreed Items*).

"**Tabreed's Representative**" means the person notified by Tabreed to the Contractor pursuant to Clause 6.1.

"**Tabreed's Requirements**" means the scope of work, technical specifications documents and drawings, tender bulletins and written clarifications set out in Part II of the Specification.

"**Taxes**" means any tax, charge, impost, tariff, duty or fee of any kind charged, imposed or levied, directly or indirectly, by any Public Sector Entity, including any value-added tax, sales tax, stamp duty, import duty, customs duty, withholding tax (whether on income, dividends, interest payments, fees, equipment rentals or otherwise), tax on foreign currency loans or foreign exchange transactions, excise tax, property tax, registration fee or license, water tax or environmental, energy or fuel tax including any interest, penalties or other additions thereon.

"**Temporary Areas**" means any areas outside of the Site for temporary erection of a construction camp and equipment laydown area or otherwise acquired by the Contractor for the performance of the Works.

"**Third Party Engineer**" has the meaning given in Clause 39.2.1.

"**Tribunal**" has the meaning given in Clause 39.3.3.

"**UAE**" means the United Arab Emirates.

"**UAE Customs Duties**" means any Taxes payable to or imposed by any customs authority within the UAE or any other Public Sector Entity in connection with the import into the Emirate of Abu Dhabi, Emirate of Dubai, the Emirate of Fujairah, the Emirate of Sharjah, the Emirate of Ras al Khaimah, or the Emirate of Ajman or UAE of materials, equipment, machinery or goods in connection with the Works, together with any costs and expenses payable or incurred in connection therewith.

"**Works**" has the meaning given in Clause 3.2.

"**World Bank Standards**" means the environmental guidelines and occupational health and safety standards of the World Bank as in effect on the Effective Date.

1.2 Language

- 1.2.1 All Contract Documents and all correspondence and communications to be given and all other documentation to be prepared and supplied under this Contract shall be in the English language.
- 1.2.2 If any of the Contract Documents are prepared in any language in addition to English, the version of the Contract Documents in the English language shall prevail in case of inconsistency.
- 1.2.3 The Parties agree to use the English language for all communications between them and all meetings shall be conducted in (and the meeting minutes recorded in) English.
- 1.2.4 The Manuals shall be prepared by the Contractor in English according to the requirements of Exhibit 10 (*Manuals and Training*).
- 1.2.5 Unless otherwise specified by Tabreed, all signs and notices (whether for the attention of staff or the public generally) erected by the Contractor as part of or in the course of performing the Works shall be displayed in English,

Arabic and in any other language which may be required to be used by any Applicable Laws.

1.2.6 Oral communications at Site shall be conducted in English.

1.3 Interpretation

Unless expressly stated otherwise or the context does not permit:

- 1.3.1 headings are for convenience only and do not affect interpretation;
- 1.3.2 references to the singular include the plural and vice versa;
- 1.3.3 a word indicating a gender includes every other gender;
- 1.3.4 references to any Law shall be construed also as references to all other Laws made under such Law and to all such Laws as amended, re-enacted, consolidated or replaced, or as their application is modified whether before or after the date of this Contract;
- 1.3.5 "includes" is not a word of limitation;
- 1.3.6 all reference to dates are to dates in the Gregorian calendar;
- 1.3.7 all reference to Articles are references to articles of the Form of Agreement;
- 1.3.8 all reference to Clauses are references to clauses of the Conditions of Contract;
- 1.3.9 a reference to a document (including this Contract) is to that document as varied, novated, ratified or replaced;
- 1.3.10 if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 1.3.11 reference to an Exhibit is a reference to an Exhibit to this Contract and each Exhibit is part of this Contract;
- 1.3.12 "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- 1.3.13 a reference to a Party includes its executors, administrators, successors and permitted assigns, including persons taking by way of novation; and
- 1.3.14 unless inconsistent with any other provision of this Contract, the meaning of any term or abbreviation used in this Contract relating to the sale and carriage of goods is defined by the 2000 edition of the "Incoterms". International rules for the interpretation of trade terms published by the International Chamber of Commerce shall be as so defined and the rights and obligations of the Parties in respect of the relevant matter, shall be as so ascribed.

2. CONTRACT DOCUMENTS

2.1 Contract Documents Mutually Explanatory

Subject to Clause 2.2, all Contract Documents are intended to be read and construed together as a composite whole and each shall be treated as complementary to and mutually explanatory of the others.

2.2 Order of Precedence

Unless expressly stated otherwise, if there is any ambiguity or conflict between any of the Contract Documents, for the purposes of interpreting this Contract, the order of precedence shall be as follows:

2.2.1 the Form of Agreement;

2.2.2 this Conditions of Contract;

2.2.3 the Exhibits; and

2.2.4 the Specification, which if there is any ambiguity or conflict between any part of the Specification, for the purposes of interpreting the Specification, the order of the precedence shall be as follows:

(a) Part I - Agreed Clarification List;

(b) Part II - Tabreed's Requirements; and

(c) Part III - Contractor's Proposal.

2.3 The Contractor shall promptly notify Tabreed's Representative in writing of any conflict, ambiguity, error, omission, discrepancy or inconsistency between or within the Contract Documents as soon as it comes to its attention. Any conflicts, ambiguities, errors or discrepancies shall be resolved in writing by Tabreed's Representative without undue delay after such notification by the Contractor and shall be final and binding unless contested in writing within 7 days from the receipt by the Contractor. The Contractor shall bear the cost of any rectification work required as a result of the resolution provided by Tabreed's Representative, except in respect of the Basic Parameters. Any disputes shall be settled pursuant to the provisions of Clause 39.

3. SCOPE OF WORKS

3.1 General

The Contractor shall execute and complete the Works in accordance with this Contract.

3.2 The Works

Unless expressly stated otherwise in the Exhibits, Agreed Clarification List or Tabreed's Requirement subject to Clause 2.2, the Works shall include:

3.2.1 design, engineering and procurement services;

3.2.2 provision of all Materials, Equipment, Construction Equipment, labour and the performance of all works and services on a date certain, turnkey basis for the Works (except the Tabreed Items);

3.2.3 construction planning and construction management services;

- 3.2.4 construction of the Works including prefabrication, Site preparation and the installation of all parts of the Plant together with all pre-commissioning;
- 3.2.5 all interfaces, tie-ins and interconnections as defined in Exhibit 1 (*Project Specific Terms*) and the Specification;
- 3.2.6 commissioning services, start-up planning and management, commissioning, testing, start-up, interim operations and test runs;
- 3.2.7 supply of:
 - (a) all replacement parts and special tools required under this Contract until the Works achieve Acceptance;
 - (b) replacement parts used by the Contractor in accordance with Clauses 14.2 and 14.3;
 - (c) special tools required for the operation of the Plant after Acceptance; and
 - (d) a vendor-recommended list (as obtained from such vendors, complete with pricing) for spare parts and special tools in accordance with Clause 14;
- 3.2.8 the bringing to the Site for the Works (from the agreed tie-in point) for construction and operation purposes of electricity, water and telecommunication links and the maintenance of supply or service through the same;
- 3.2.9 subject to Clause 5.22, supply of all utilities and consumables including chemicals, lubricants, resins and first fills and refills and top ups and expressly including all water and electricity required until Acceptance;
- 3.2.10 supply of waste disposal services for all construction activities and purposes related to the Works, until Acceptance;
- 3.2.11 supply of Manuals and the provision of training of Tabreed's and the Operator's personnel;
- 3.2.12 repairs and remedial works during the Defects Correction Period and the Latent Defects Period;
- 3.2.13 all works set out in the Specification; and
- 3.2.14 all other work, material and equipment as referred to in Clause 5.1.4.

4. TABREED'S RESPONSIBILITIES

4.1 Payment of the Contract Price

Tabreed shall pay the Contract Price to the Contractor in accordance with Article 4 of the Form of Agreement and Clause 21.

4.2 Site and Temporary Areas

4.2.1 Subject to and in accordance with Clause 5.25, Tabreed shall provide the Contractor with:

- (a) non-exclusive access to and possession of the Site; and
- (b) the right to use the Land Easements,

to the extent necessary for the Contractor to carry out the Works in accordance with this Contract provided that any such access, possession and use of the Site and the Land Easements shall not exceed the rights granted to Tabreed under this Contract or the Land Lease Agreement.

4.2.2 The Contractor shall be responsible for obtaining, at its own cost and risk, any Temporary Areas and any other easements or land approvals and Licences as may be necessary for the timely performance of the Works.

4.3 **Tabreed Licences**

4.3.1 Tabreed shall obtain those Licences expressly identified in Exhibit 1 (*Project Specific Terms*) as being Tabreed's responsibility.

4.3.2 Tabreed shall, at the Contractor's cost, provide full support to the Contractor in obtaining those Licences which are the Contractor's responsibility to obtain pursuant to Clause 5.6. Such assistance and support shall not relieve the Contractor of its responsibilities under this Contract.

4.3.3 Tabreed shall provide personnel employed by it or the Operator for training by the Contractor pursuant to Clause 5.23 and Exhibit 10 (*Manuals and Training*) and to assist in the Acceptance Tests. Such personnel shall be under the control, supervision and direction and responsibility of the Contractor. At all times, such personnel shall be required to observe established Site regulations in accordance with Clause 5.12.

4.4 **Tabreed Items**

4.4.1 Tabreed shall provide the Contractor with the Tabreed Items which shall be stored at the Site or a Temporary Area approved by Tabreed.

4.4.2 Upon receipt by the Contractor, responsibility for the Tabreed Items shall pass to the Contractor and the Contractor shall provide to Tabreed written receipt of delivery of the Tabreed Items. If the Contractor fails to provide the written receipt of delivery of the Tabreed Items, the Contractor is deemed to have responsibility for the same as if it had provided such receipt.

4.4.3 Unless expressly stated otherwise in the Exhibits, Agreed Clarification List or Tabreed's Requirement subject to Clause 2.2, the Contractor shall, at its own cost and risk, unload the Tabreed Items and shall verify (and Tabreed shall also verify the Tabreed Items), mark, tag, inventorise, store, care and account for, load and transport to points of use the Tabreed Items until the later of:

- (a) disposition;
- (b) return to Tabreed; and
- (c) use or incorporation within the Works.

- 4.4.4 If at any time between delivery of the Tabreed Items and Acceptance, any Tabreed Items are damaged, lost, stolen or destroyed, such Tabreed Items shall be required to be replaced at the expense of the Contractor. Tabreed Items required to be replaced may, at Tabreed's option, be furnished by Tabreed and charged to the Contractor.
- 4.4.5 At Acceptance, the Contractor shall, at its expense, account for, record, document and return all surplus and unused Tabreed Items to Tabreed's designated warehouse or Site storage area and following their return, the responsibility for those Tabreed Items will pass to Tabreed.
- 4.4.6 Tabreed's obligations in regards to performance, warranty and additional services of Tabreed Items shall be restricted to those expressly stated in the Exhibits, Tabreed's Requirements and Agreed Clarification List.
- 4.4.7 For avoidance of doubt, save for the express provisions of this clause 4.4 and the Specification, factory inspections and tests of Tabreed Items, and any tests and inspections before the free-issuing of Tabreed Items, other than external visual inspections, are not part of the Works.

4.5 Tabreed's Scope of Supply

- 4.5.1 Tabreed's responsibilities in this Clause 4 constitute, subject to the express provisions of this Contract, an exhaustive description of Tabreed's responsibilities and scope of supply in connection with the execution of the Works.
- 4.5.2 Unless caused by the Contractor's act, omission, neglect or default or otherwise stated in this Contract, all costs and expenses involved in the performance of Tabreed's obligations under this Clause 4 shall be the responsibility of Tabreed.

5. THE CONTRACTOR'S RESPONSIBILITIES

5.1 Contractor's General Obligations

- 5.1.1 In consideration of the payments to be made by Tabreed to the Contractor under this Contract, the Contractor covenants with Tabreed to design, execute and complete the Works in accordance with this Contract and in a manner consistent with the requirements of the Project Documents so as to ensure:
- (a) each Key Milestone is achieved on or before the associated Contracted Date for such Key Milestone;
 - (b) Provisional Acceptance is achieved on or before the Contracted Date for Provisional Acceptance; and
 - (c) Acceptance is achieved on or before the Contracted Date for Acceptance,

and shall remedy any Defects in the Works.

- 5.1.2 When the Works are completed, the Works shall be suitable and fit for the purposes for which the Works are intended as defined in this Contract and contemplated by the Project Documents.
- 5.1.3 The Contractor shall provide the Equipment and Contractor's Documents specified in this Contract, and all the Contractor's personnel, Materials, utilities, consumables and other things and services, whether of a temporary or permanent nature, required in and for the design, execution, completion and remedying of Defects.
- 5.1.4 The Works shall include all work, material and equipment not explicitly set out or described in this Contract but which is necessary to satisfy the Specification, is implied by this Contract, and which can be reasonably inferred by a Reasonable and Prudent Contractor acting in accordance with Good Utility Practice as being required for the proper carrying out and completion of the Works and all works which (although not mentioned in this Contract) are necessary for stability or for the completion, or safe and proper operation, of the Works and the Plant.
- 5.1.5 The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works.
- 5.1.6 The Contractor shall, whenever required by Tabreed, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to and approved by Tabreed.
- 5.1.7 The Contractor shall notify Tabreed if it becomes aware that any obligation in this Contract is not in accordance with Good Utility Practice and the standards of a Reasonable and Prudent Contractor.

5.2 Project Documents

- 5.2.1 The Contractor confirms that it has received a copy of the Land Lease Requirements and confirms that the terms of this Contract are consistent with the terms of the Land Lease Requirements.
- 5.2.2 The Contractor covenants that it shall:
 - (a) observe, perform and comply with all requirements of the Land Lease Requirements so far as they relate or apply to the Works (or any part thereof);
 - (b) ensure that no act or omission by the Contractor or the Contractor Parties shall cause or contribute to any breach by Tabreed of any of Tabreed's obligations under or pursuant to any of the Land Lease Requirements; and
 - (c) without restricting the right of Tabreed to claim damages or any other relief on any basis available to it, indemnify, defend and hold harmless Tabreed from and against all Claims suffered or incurred by or brought against Tabreed arising out of any breach by the Contractor or the Contractor Parties of this Clause 5.2.

5.3 Standards of Execution

5.3.1 The Contractor warrants to Tabreed that:

- (a) the Works shall be designed, engineered, procured, constructed, erected, commissioned and tested by the Contractor in accordance with this Contract and where not addressed specifically by this Contract, in accordance with Good Utility Practice and the standards of a Reasonable and Prudent Contractor;
- (b) the Works shall comply with the requirements of this Contract including the design and equipment parameters set out in the Specification, and be fit for the purposes for which they are intended as evidenced by or reasonably to be inferred by this Contract and the Project Documents;
- (c) the Works and the Plant shall meet the requirements of this Contract and the required performance (inclusive of the Guaranteed Performance Level) and reliability level during the Acceptance Tests and shall function accordingly;
- (d) the Works shall be carried out so as not to contravene any Applicable Laws or Licences and the Plant shall, upon Acceptance, be in compliance with and be operable in compliance with all Applicable Laws and Licences;
- (e) the Works shall incorporate only new, good quality Equipment and Materials from approved Subcontractors and vendors as set out in the Specification and which are suitable for use as part of the Works;
- (f) it shall, in relation to the carrying out of the Works, comply with all requirements of the guarantees and warranties provided by Subcontractors and vendors until Final Completion in order to maintain such guarantees and warranties; and
- (g) the Works shall incorporate system design, major Equipment components and Materials which utilize proven technology, being a design and technology that has been utilized commercially at other district cooling plants similar in size and complexity to the Plant.

5.3.2 The Contractor shall comply with the requirements of National Participation applicable to the Works.

5.3.3 The Contractor warrants that it has complied and shall comply with all Applicable Laws in the course of performing its obligations under this Contract and has procured and shall procure that the Contractor Parties are likewise in compliance. The Contractor shall not breach any provision of this Contract which will cause Tabreed to be in breach of any Applicable Laws, Licence or the Project Documents.

5.3.4 The Contractor specifically acknowledges that Applicable Laws prohibit the import of goods or services from any country with which the UAE does not maintain diplomatic relations or goods produced or services provided by any person organised under the laws of any country with which the UAE does not maintain diplomatic relations or by a person who is a national or resident of

any country with which the UAE does not maintain diplomatic relations. Tabreed shall have the right in its sole and absolute discretion to reject any such goods or services that are imported in violation of such Applicable Laws.

- 5.3.5 Subject to Clause 31, if there is any conflict between Applicable Laws requirements and the Specification or any other provision of this Contract, the Party discovering it shall notify the other Party promptly following its discovery. The Contractor shall promptly upon such discovery or notification of such discovery by Tabreed, inform Tabreed of its proposed amendment to remove such conflict, which, following approval of Tabreed, the Contractor will implement at its own cost. Tabreed is entitled to reject such proposed amendments, in which case the Contractor must provide alternative proposed amendments for the approval of Tabreed. This procedure shall be repeated until Tabreed notifies the Contractor of its approval to the proposed amendments.
- 5.3.6 Where the Contractor has effected any design, services or works in furtherance of the Works prior to the Effective Date, the Contractor warrants to Tabreed that such activities have been carried out in accordance with the requirements of this Contract and confirms that the warranties and undertakings set out in this Contract apply to such activities (without prejudice to the generality of such warranties and undertakings).

5.4 Full Acquaintance

- 5.4.1 Unless otherwise expressly stated in this Contract, the Agreed Clarification List or Tabreed's Requirements, the Contractor shall bear the risk of all events, actions and circumstances, whether natural or caused by man, which may affect the performance by it of its obligations under this Contract, subject only to those express provisions of this Contract which relieve the Contractor of any such risk, and warrants that it has made all enquiries as it considered necessary to assess the risks to be assumed by it. The risks which shall be borne by the Contractor include those which may arise from:
- (a) the nature and location of the Site, any Temporary Areas required by the Contractor, and their surroundings and any other working areas and their surroundings, whether on land or at sea including the presence of existing and foreseeable future presence of buildings, structures or obstructions, geological characteristics, hydrological and subsurface conditions and the Contractor has further, by careful investigation, satisfied itself and agrees to bear the risk as to the difficulties in execution of the Works, the general and local labour conditions, Site and Temporary Area regulations, character, quality and quantity of surface and sub surface materials or obstacles to be encountered, climate conditions and all other matters including:
 - (i) transportation, material handling and disposal requirements;
 - (ii) water and electricity requirements;
 - (iii) roads and site access requirements inclusive of the consideration on the need to perform traffic diversion;

- (iv) the character of equipment and facilities needed preliminary to and during performance of the Works;
 - (v) the specification, existing and external condition (both determinable only by external visual inspection), location and delivery times of the Tabreed Items; and
 - (vi) the removal, shifting and where required, subsequent reinstatement of any existing and foreseeable future structures or obstructions;
- (b) the characteristics and behaviour of any sea, ocean, lake or river, and the beds thereof, in, under or near which the Works may be situated, or of any water table;
 - (c) weather conditions affecting any part of Contractor's activities including the transportation of Equipment and Materials;
 - (d) the suitability and adequacy (including load capacity) of the access routes and all means of transportation and access to the Site set out in Exhibit 3 (*Land Lease Requirements and Site Plan*);
 - (e) the terms of the Land Lease Requirements;
 - (f) the Construction Equipment and other facilities and resources (including transportation and accommodation) which will be necessary to be provided by the Contractor for the performance of the Contractor's obligations under this Contract;
 - (g) the availability of labour, Equipment, Materials, parts, consumables, procurement items, water, electricity and other utilities and the like;
 - (h) Applicable Laws and the need for any Licences required for the Works (subject to Clause 5.6.1); and
 - (i) local customs and practices, including fiscal practices and customs and the customs and practices of the local labour force and Subcontractors and of any Public Sector Entity.
- 5.4.2 Except to the extent that relief is available to the Contractor under Clauses 31, 32 and 33, the occurrence or effects of any risk borne by the Contractor pursuant to this Contract shall not relieve it of any obligation or liability under this Contract and the Contractor shall not by reason thereof become entitled to any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief (including relief based in contract or tort) and any such entitlement is hereby excluded.
- 5.4.3 The Contractor acknowledges that any further Site investigations that the Contractor requires to be carried out shall be at the Contractor's cost and risk.
- 5.4.4 Subject to Clause 5.4.5, in relation to all information which has been provided or may be provided by or on behalf of Tabreed to the Contractor at any time, the Contractor shall notify Tabreed promptly of any error which it discovers in such information following such discovery. It is agreed that:

- (a) the Contractor shall be responsible for performing its own investigation, as to the correctness, accuracy, sufficiency, fitness for purpose and completeness of all information provided by Tabreed and the Tabreed Items including information on Connection Points and for verifying and interpreting all such information;
- (b) Tabreed shall have no liability whatsoever to the Contractor arising from the provision of such information, or from any error, inaccuracy, unfitness for purpose, insufficiency or incompleteness in such information, and the Contractor shall not thereby be relieved of any obligation or liability under this Contract;
- (c) Tabreed makes no representation or warranty as to the correctness, accuracy, fitness for purpose, sufficiency or completeness of such information or such Tabreed Items;
- (d) the Contractor shall not, by reason of the provision of such information, or any error, inaccuracy, unfitness for purpose, insufficiency, or incompleteness in such information, nor on the ground that it did not or could not foresee any matter which may in fact affect or have affected the execution of the Works, become entitled to any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief (including relief based in contract or tort) and any such entitlement is hereby excluded; and
- (e) subject to Clause 5.4.5, the Contractor has reviewed, and taken into account the requirements of, the Project Documents and acknowledges the provisions and requirements of the Project Documents including the time periods contemplated under the Project Documents:
 - (i) within which the counterparties are required to comply with their obligations and/or respond to notices and requests; and
 - (ii) before the expiry of which, no claim for any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief is permitted.

All such provisions, requirements and time-periods shall be deemed reasonably foreseeable by the Contractor and no claim for any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief shall be permitted in respect thereof.

- 5.4.5 The Contractor is entitled to rely on the Basic Parameters and has no liability to Tabreed in relation to the accuracy or appropriateness of the Basic Parameters.

5.5 Sufficiency of the Contract Price

- 5.5.1 The Contractor shall be deemed to have satisfied itself before entering into this Contract as to all of the conditions and circumstances which may affect the Contract Price and as to the correctness and sufficiency of the Contract Price to cover all of its obligations under this Contract.

- 5.5.2 Subject to Clause 31, the Contractor shall be responsible for obtaining all information necessary for the Works and shall be deemed to have included in the Contract Price all risks, contingencies, local and national conditions, Applicable Laws, Licences, customs policies and practices and other conditions and other circumstances affecting the Works.
- 5.5.3 No failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance, whether or not the same ought reasonably to have been discovered or foreseen by a Reasonable and Prudent Contractor, shall entitle the Contractor to a Change, an adjustment to the Contract Price, Additional Payment, extension of time or any other relief. The Contractor shall be responsible for any misunderstanding or incorrect information however obtained.

5.6 Contractor Licences

- 5.6.1 The Contractor shall make due and proper application in a timely manner for those Licences expressly identified in Exhibit 1 (*Project Specific Terms*) as being the Contractor's responsibility on or before the dates stated in relation to each such Licence and all other Licences necessary in order for it to perform its obligations under this Contract in relation to the design, engineering, procuring, construction, completion, testing, commissioning and start up of the Works and shall maintain in full force and effect all such Licences up to and including the Acceptance Date. If the Contractor has no standing to apply for the relevant Licence under any Applicable Law, Tabreed shall, at the Contractor's risk and cost, take the necessary steps to apply for such Licence and the Contractor shall provide its full support in relation to such application.
- 5.6.2 Where a Licence is to be obtained by the Contractor but issued in the name of Tabreed, then unless approved criteria for the relevant Licence are stated in Exhibit 1 (*Project Specific Terms*), the Contractor shall obtain the prior written approval of Tabreed before applying for any such Licence and Tabreed's written approval of the terms of the Licence shall be required before the Contractor will be treated as having discharged its obligation to obtain the Licence (in each case, such approval not to be unreasonably withheld or delayed).
- 5.6.3 The Contractor shall provide full support (including the prompt provision of necessary supporting Documents) to Tabreed in obtaining those Licences which are Tabreed's responsibility to obtain.
- 5.6.4 The Contractor shall, before Acceptance, deliver to Tabreed copies of all Licences that have been issued to the Contractor prior to such date and not previously delivered to Tabreed.

5.7 Importing, Exporting and Customs Duties

- 5.7.1 The Contractor shall at all times be responsible for the export, import, re-import, customs clearance and carriage of all goods, Materials, Equipment and Construction Equipment required for the performance of its obligations under this Contract, including obtaining all relevant Licences and the payment of all Taxes (including UAE Customs Duties) payable in connection with the same.

- 5.7.2 The Contractor shall indemnify, defend and hold harmless Tabreed from and against and all Claims in respect of any Taxes (including UAE Customs Duties) for which the Contractor is liable pursuant to this Clause 5.7 to the extent any Public Sector Entity requires Tabreed to satisfy the liabilities of the Contractor set out in Clause 5.7.1.
- 5.7.3 Notwithstanding Clause 5.7.1, the Contractor shall not be responsible for Taxes related to the export, import, re-import and custom clearance of Tabreed Items.

5.8 Prohibited Practices

The Contractor shall not by itself, or in conjunction with any other person:

- 5.8.1 offer or give or agree to give to any person, or accept from any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do any act in relation to the obtaining or execution of this Contract, or for showing or forbearing to show favour or disfavour to any person in relation to this Contract; or
- 5.8.2 enter into this Contract or any other contract with Tabreed where in connection with the same any gift, consideration or commission of any kind has been paid or agreed to be paid by it or on its behalf or to its knowledge, unless before this Contract or that other contract is made, particulars of any such gift, consideration or commission and the terms and conditions of any agreement for the payment thereof have been disclosed to Tabreed in writing, and approved by Tabreed.

5.9 National Participation

The Contractor shall and shall procure that its Subcontractors shall:

- 5.9.1 give preference to the use of Construction Equipment, Equipment, Materials and other equipment, materials and products produced and manufactured in the UAE;
- 5.9.2 give preference to the use in the performance of its obligations under this Contract to UAE labour (both skilled and unskilled), UAE supervisory, professional and other personnel, UAE services and UAE contractors;
- 5.9.3 use, in respect of any insurance policies obtained in connection with this Contract, insurance companies, brokers and agents registered in the UAE; and
- 5.9.4 give preference to the use of UAE freight forwarders,

("National Participation") provided in the case of 5.9.1, 5.9.2 and 5.9.4, that such Construction Equipment, Equipment, Materials, products, personnel, service providers and contractors are at least as reasonably favourable to the Contractor (or its Subcontractors, as applicable) as others available taking into account price, quality, reliability and schedule.

5.10 Setting Out

- 5.10.1 The Contractor shall be responsible for the true and proper setting out of the Works in relation to bench marks, reference marks, lines and levels specified in the Specification for that purpose, and for the accuracy of the positions, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith.
- 5.10.2 If at any time during the progress of the Works, any error shall appear or arise in the positions, levels, dimensions or alignment of any part of the Works, the Contractor shall rectify such error.
- 5.10.3 The checking of any setting out or of any line or level by Tabreed or the Owner's Engineer shall not in any way relieve the Contractor of its responsibility of the accuracy thereof and the Contractor shall carefully protect and preserve all bench-marks, sight rails, pegs and other things used in setting out the Works.

5.11 Transportation

- 5.11.1 The Contractor shall at its own risk and cost transport all the Materials, Equipment and Construction Equipment to the Site.
- 5.11.2 Upon dispatch of each shipment of the Materials, Equipment and the Construction Equipment, the Contractor shall notify Tabreed of the description of the Materials and the Equipment, the point and means of dispatch and the estimated time and point of arrival in the UAE, if applicable, and at the Site.
- 5.11.3 The Contractor shall be responsible for the shipment of Materials, Equipment and the Construction Equipment and shall furnish Tabreed with customarily required shipping documents. If Tabreed requests non-customary shipping documents, then the Contractor shall use all reasonable endeavours to obtain such documents.
- 5.11.4 The Contractor shall handle all imported Materials, Equipment and Construction Equipment at the point(s) of import and any formalities for customs clearance, including payment of UAE Customs Duties.
- 5.11.5 The Contractor shall be responsible for obtaining, where necessary, all Licences for the transportation of the Materials, Equipment and the Construction Equipment to the Site. Tabreed shall, at the Contractor's risk and cost, use all reasonable endeavours to assist the Contractor in obtaining such Licences, if requested by the Contractor.
- 5.11.6 The Contractor shall procure that its and its Subcontractors' arrangements for the transportation of Materials, Equipment and Construction Equipment do not interfere with traffic or communications on or in the vicinity of the Site. Where such interference is unavoidable, the Contractor shall, subject to obtaining the prior approval of Tabreed, make such special arrangements as may reasonably be required to provide alternative routes for the Site, local traffic and communications and shall otherwise minimise the effect of such interference.

- 5.11.7 The Contractor shall indemnify, defend and hold harmless Tabreed from and against:
- (a) any Claim in relation to any such interference caused by the Contractor or its Subcontractors; and
 - (b) any failure by the Contractor to maintain adequate access and communication with the Site in accordance with Clause 5.11.6.
- 5.11.8 The Contractor shall use all reasonable efforts to minimise damage to roads in the vicinity of the Site and any Temporary Areas by the Contractor or the Contractor Parties, and the Contractor shall rectify at its cost all such damage and shall strengthen any bridges or roads to the Site and any Temporary Areas to facilitate the movement of Materials, Equipment and Construction Equipment.
- 5.11.9 The Contractor shall use all reasonable efforts to prevent any bridges or roads to the Site and any Temporary Areas from being damaged or injured by any traffic of the Contractor or the Contractor Parties and shall rectify at its own cost any such damage. These efforts shall include the proper use of routes, appropriate vehicles and restricting and distributing loads appropriately.
- 5.11.10 The Contractor shall indemnify, defend and hold harmless Tabreed from and against all Claims arising out of any breach of this Clause 5.11.
- 5.11.11 The Contractor shall (as between the Parties) be responsible for any maintenance which may be required for its use of access routes.
- 5.11.12 The Contractor shall provide all necessary signs or directions along access routes, and shall obtain any Licences which may be required for its use of routes, signs and directions.
- 5.11.13 Tabreed shall provide the Contractor with possession of the Site as may be necessary to carry out the Work in accordance with, and subject to Clause 5.25. If undue delays to movement of the Contractor's personnel or equipment arise from the conditions of such access, Tabreed shall provide the Contractor with reasonable assistance, at the Contractor's cost in relation to any external costs and expenses incurred by Tabreed, to minimise such delay.

5.12 Safety and Site Regulations

- 5.12.1 The Contractor shall be responsible for the health and safety of all persons entitled to be on the Site and shall be solely responsible for the adequacy, stability and safety of its operations and the operations of its Subcontractors on the Site and any Temporary Areas, including the methods of construction and all Construction Equipment and temporary works and structures.
- 5.12.2 The Contractor shall employ in and at the Works all safety devices and safety practices required by Applicable Laws, Licences, the requirements of all insurance policies and Good Utility Practice and issue any required notices to the relevant Public Sector Entities or other persons. To the extent consistent with such requirements, the Contractor shall keep accurate records of any accident or other occurrence at the Site or any Temporary Areas that results in injury to persons or damage to property. The Contractor shall provide Tabreed with reasonable access to these records.

- 5.12.3 The Contractor shall establish and enforce Site and any Temporary Areas safety rules and regulations including those pertaining to security, gate control, health and safety, sanitation, medical care and fire prevention at the Site and any Temporary Areas.
- 5.12.4 The Contractor shall observe and comply with Tabreed's health and safety regulations and policies, site interface protocol and environmental compliance programme that are notified to it from time to time, including work permit systems for construction and integration activities applicable with respect to facilities of third parties and other existing facilities.
- 5.12.5 The Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Works at the Site and any Temporary Areas. The Contractor shall comply and shall procure that the Contractor Parties shall comply with such regulations. The Contractor shall ensure that each person entering upon the Site and any Temporary Areas shall be given notice and/or made aware of such regulations.
- 5.12.6 When entering the Site and Temporary Areas, Tabreed's personnel, representatives and agents are required to observe the Site regulations established, to the extent these have been provided by the Contractor.
- 5.12.7 In parts of the Site where the Associated Works Contractor is responsible for the overall control, safety and security of the Site, the Contractor shall, at its own cost, observe and comply with the Associated Works Contractor's health and safety regulations and policies, site interface protocol, environmental compliance programme and other instructions that are notified to it from time to time, including work permit systems for construction and integration activities applicable with respect to facilities of third parties and other existing facilities.

5.13 **Nuisance, Trespass etc**

- 5.13.1 The Contractor shall conduct its operations and ensure that those of its Subcontractors are so conducted in a manner so as not to obstruct or interfere with the convenience or lawful activities of, or cause any public nuisance or trespass to Tabreed or any third parties.
- 5.13.2 The Contractor shall not interfere unnecessarily with the convenience of the public or the access to and use or occupation of all public or private roads, footpaths and car parking areas, irrespective of whether they are in the possession of Tabreed or others.
- 5.13.3 The Contractor shall confine its operations to the Site and any Temporary Areas and to any additional working areas, use of which may be arranged by the Contractor at the Contractor's cost and which Tabreed has agreed in writing may be used as additional working areas.
- 5.13.4 The Contractor shall indemnify, defend and hold Tabreed harmless from and against all Claims arising from a breach of this Clause 5.13.

5.14 **Construction Equipment**

All Construction Equipment brought onto Site and any Temporary Areas by the Contractor or Subcontractors shall be deemed to be intended for use exclusively for

the execution of the Works and the Contractor shall not remove or permit the removal of the same from the Site or the Temporary Areas without Tabreed's consent, which shall not be unreasonably withheld or delayed, until such Construction Equipment is no longer required for the execution of the Works. Such consent shall not be required for vehicles engaged in transporting any personnel, Construction Equipment, Materials or Equipment to or from the Site.

5.15 Facilities of Third Parties

- 5.15.1 The Contractor acknowledges that, as the Works and the Contractor's related activities are performed adjacent to or in the vicinity of the facilities of third parties and involve tapping into or connecting with the facilities of third parties, the safety of the facilities of third parties, their uninterrupted operation and safe and unhindered access thereto by Tabreed, its Affiliates and third parties, shall be of paramount importance in relation to the Contractor's performance of the Works.
- 5.15.2 The Contractor shall exercise utmost care and shall not in any way (without Tabreed's approval at its sole discretion) interrupt the normal activities and operation of any third party facilities.
- 5.15.3 With regard to any part of the Works requiring inter-ties or interfaces with the facilities of third parties, including the Connection Points and Interfaces, to the extent that it affects the facilities of third parties, or requires access to the facilities of third parties, determination of the sequence of performance of the Works, working practices, number of the Contractor's personnel admitted to the facilities of third parties and issuance of work permits therefor, the Contractor shall:
- (a) mutually agree on the terms thereof with Tabreed; and
 - (b) be responsible for working out and reaching agreement on the terms thereof with third parties and the relevant Public Sector Entity (as applicable).
- 5.15.4 The Contractor's safety personnel shall assist Tabreed and third parties to determine safety levels/requirements for any such activities but the final decision will rest with Tabreed, the third party or Public Sector Entity, as applicable.
- 5.15.5 The Contractor shall not, by complying with this Clause 5.15, become entitled to any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief.
- 5.15.6 Tabreed shall have no liability whatsoever to the Contractor or any third party for any damage or loss caused to the Contractor or any third party as a result of the actions of the Contractor or any Contractor Parties, including the Contractor's compliance with this Contract or any approval, agreement or decision by Tabreed in accordance with this Clause 5.15 and the Contractor shall indemnify, defend and hold harmless Tabreed from and against any such damage or loss suffered by a third party.

5.16 Co-ordination with Associated Works Contractors

- 5.16.1 The Contractor, throughout the term of this Contract, shall provide such reasonable assistance as is required by Tabreed in dealing with the requests of Funders, Purchasers, any Public Sector Entity and/or any other third party in any and all matters relating to the Works and the Project.
- 5.16.2 The Contractor shall accommodate all Associated Works to be performed by Associated Works Contractors as Tabreed may reasonably request or as may be reasonably required under the circumstances, as long it does not materially affect the Contractor's Work or materially impact the Schedule or materially increase the Contractor's costs.
- 5.16.3 The Contractor shall not, by complying with this Clause 5.16, become entitled to any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief unless it materially increases the Contractor's Work or materially impacts the Contractor Works Schedule or materially increases the Contractor's costs and the Contractor has given prior notice to Tabreed in accordance with, and subject to, Clauses 32 and 33.
- 5.16.4 The Associated Works Contractors may enter the Site at their own risk and shall be subject to any reasonable requirements of the Contractor regarding health and safety and security at the Site.
- 5.16.5 The Contractor shall protect from possible damage resulting from the Contractor's operations any existing facilities, equipment, materials (whether stored or installed), and/or any other items on the Site belonging to Tabreed, Associated Works Contractors and/or third parties.
- 5.16.6 The Contractor shall be responsible for the liaison, programming and co-ordination of the Works with Associated Works Contractors, and the provision of Documents and assistance, as may be reasonably requested, including meeting with the Associated Works Contractors for the purpose of clarification of any interfaces between the Works and the Associated Works and co-ordinating with Associated Works Contractors to ensure prompt and safe interconnections between the Works and Associated Works.
- 5.16.7 The Contractor shall supply promptly such further accurate information and Documents as Tabreed may reasonably require in connection with the Contractor's obligations under this Clause 5.16.
- 5.16.8 Where it subsequently becomes necessary to undertake additional work or any alterations or remedial work to the Works as a result and to the extent of the Contractor's failure to comply with its obligations under this Clause 5.16, the Contractor shall not become entitled to any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief and the additional cost, if any, shall be the responsibility of the Contractor.
- 5.16.9 The Contractor shall be fully responsible for all physical tie-ins and interfaces, including the Interfaces and Connection Points with the Associated Works and all other plant, facilities, services and utilities necessary for the completion of the Works in accordance with this Contract, so that the Plant is capable of being integrated and all risk in relation thereto shall lie with the Contractor.

5.16.10 The Contractor shall consult with and obtain the prior approval of Tabreed with respect to Connection Points and Interfaces.

5.17 **Site Clearance**

5.17.1 During the execution of the Works, the Contractor shall at all times and consistent with Good Utility Practice, keep the Site and any Temporary Areas in a clean, safe and workmanlike condition and free from all unnecessary obstruction, and shall store or dispose of any surplus Materials.

5.17.2 The Contractor shall clear away and remove from the Site any wreckage, rubbish, debris or temporary works, and remove any Construction Equipment no longer required for the execution of the Works in accordance with this Contract and Good Utility Practice.

5.17.3 Upon the issue of an Acceptance Certificate or termination of this Contract, if earlier, and subject to Clause 37.3.2(c), the Contractor shall clear away and remove from the Site all Construction Equipment, surplus Materials and Equipment, wreckage, rubbish, debris or temporary works of any kind, and leave the Site and the Works in a clean, safe and workmanlike condition.

5.17.4 If the Contractor fails to comply with its obligations under this Clause 5.17 after receiving written notice from Tabreed requiring it to do so, Tabreed may undertake the same at the Contractor's risk and cost.

5.17.5 Subject to the terms of the Land Easement, the Contractor shall be entitled to retain on the Site until the end of the Defects Correction Period such facilities, Materials, Equipment and Construction Equipment as are reasonably required by it for the purpose of fulfilling its obligations under this Contract and which do not interfere with the operation of the Plant and the facilities in the vicinity.

5.17.6 The Contractor shall be responsible for ensuring that all items removed for disposal are done so properly and in accordance with Applicable Laws. Only government approved locations are to be used for disposal of waste, Prohibited Materials and Hazardous Materials.

5.18 **Security and Lighting**

Where required, the Contractor shall provide and maintain at its own expense all proper lighting, fencing, guarding, warning signs, surveillance, protection and security of the Plant and all Works on the Site, and shall be responsible for keeping unauthorised persons off the Site. The Contractor shall also be responsible for the security and protection of all Equipment and Materials located on the Site or stored or warehoused off the Site or any Temporary Areas.

5.19 **Royalties**

Unless otherwise stated in this Contract, the Contractor shall pay all royalties, rents, Taxes, duties and other payments required in relation to Equipment, the design of the Works and any Materials obtained from outside the Site and the disposal of wreckage, rubbish, debris or other material from demolitions and excavations and of any surplus Materials or Equipment.

5.20 Prohibited Materials, Hazardous Materials and Pollution Control

- 5.20.1 The Contractor shall comply with, and shall cause the Contractor Parties to comply with, all Environmental Laws which directly or indirectly affect the Project or the use of the Site or any Temporary Areas by the Contractor, any Contractor Parties, or anyone claiming by, through or under the Contractor.
- 5.20.2 The Contractor shall not use, nor shall the Contractor permit any Contractor Parties to use, the Site, any Temporary Areas, the Land Easements or the Easement Facilities:
- (a) to treat, store or dispose of Prohibited Materials or Hazardous Materials, or cause Prohibited Materials or Hazardous Materials to be treated, stored or disposed of, except for Prohibited Materials or Hazardous Materials existing on the Site, any Temporary Areas, the Land Easements or the Easement Facilities on the Effective Date and in compliance with Applicable Law; or
 - (b) to store or otherwise use or handle any Hazardous Material except:
 - (i) where stored in containers and in quantities normally associated with the Works;
 - (ii) as normally and customarily used or required to be used in connection with the Works; or
 - (iii) for routine office maintenance and cleaning.
- 5.20.3 In all such instances where the Contractor is permitted to store or otherwise use or handle Hazardous Materials pursuant to this Clause 5.20, each Hazardous Material shall be handled, stored, treated, used or disposed of in compliance with all Applicable Laws.
- 5.20.4 The Contractor's obligations under this Clause 5.20 shall include:
- (a) the completion and timely filing of all Licence applications (if any such Licences are required to be solely in the name of the Contractor), reports and statements required pursuant to any Applicable Laws and the payment of all charges, fees and costs that may be assessed or imposed from time to time in connection therewith;
 - (b) the timely disclosure to Tabreed of any information required pursuant to any Applicable Laws; and
 - (c) the prompt and proper remediation and disposal of all Hazardous Material, residues of or materials contaminated by any Hazardous Material, used, generated, stored or released in the performance of the Works, all such Hazardous Materials to be removed from the Site prior to Acceptance.
- 5.20.5 The Contractor shall be responsible for rectifying and remedying at its own cost any contamination of the Works, the Site and any Temporary Areas and any neighbouring areas of land caused by the Works or the generation, use,

storage or release of any Hazardous Materials by the Contractor or any of the Contractor Parties.

5.20.6 If the presence of any Hazardous Materials (other than those brought onto the Site by the Contractor) or Prohibited Materials is discovered by the Contractor at the Site, the Contractor shall promptly give written notice to Tabreed identifying the nature of, and its good faith best estimate of, the extent of the Hazardous Materials or Prohibited Materials.

5.20.7 The Contractor shall execute the Works in accordance with the environmental standards set out in the Contract and all other Applicable Laws relating to pollution control and environmental standards.

5.21 Antiquities

5.21.1 As between Tabreed, the Contractor and the Subcontractors, all historical archaeological artefacts discovered on the Site shall be the absolute property of Tabreed.

5.21.2 On discovery of any historical archaeological artefacts (and before removal) the Contractor shall:

- (a) promptly inform Tabreed of such discovery;
- (b) comply with all requirements of Applicable Laws pertaining to the same; and
- (c) comply with the reasonable instructions of Tabreed for dealing with the same.

5.21.3 The Contractor shall take all reasonable precautions to prevent the Contractor Parties or other persons from removing or damaging any such historical archaeological artefacts.

5.21.4 The Contractor shall not, by complying with this Clause 5.21, become entitled to any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief.

5.22 Consumables

5.22.1 The Contractor shall, unless otherwise agreed in writing, by a date not later than 2 months before the Contract Date for Acceptance, provide to Tabreed a list of all consumables (together with their specifications) and their estimated rate of consumption on a weekly basis that is required to operate and maintain the Plant at full load in accordance with the Manuals and the Specification. Such list shall include, where applicable, chemicals, lubricants, resins, fills, refills and top-ups.

5.22.2 Prior to Acceptance, the Contractor shall procure and provide all consumables (including electricity, water, chemicals, lubricants, resins and first fills and refills and top ups), sewage, waste disposal services and other utilities and services that are required for the execution of the Works until the Acceptance Date. Subject to Clause 5.22.3, the supply of such consumables is included in the Contract Price.

5.22.3 Tabreed shall provide "free issue" to the Contractor the supply of electricity and water to the relevant permanent connection points for use by the Contractor to:

- (a) commission the Works and the Plant in accordance with the requirements contained in this Contract;
- (b) carry out the Start-up and Operational Tests; and
- (c) where applicable, carry out the Performance Tests,

provided that the Contractor shall be responsible for providing and meeting the costs of its:

- (a) electricity and water consumption for flushing, hydrotesting and chemical cleaning;
- (b) the electricity consumption above Maximum Electricity Amount provided that such amount is defined in Exhibit 1 (*Specific Project Terms*); and
- (c) the water consumption above the Maximum Water Amount provided that such amount is defined in Exhibit 1 (*Specific Project Terms*),

unless the consumption of electricity or water above those amounts is solely caused by a default by Tabreed.

5.23 Training

The Contractor shall provide training to Tabreed and any Operator personnel by the times and in accordance with Exhibit 10 (*Manuals and Training*) to ensure that they are fully and efficiently able to operate the Plant and inspect, maintain and adjust the Plant with the minimum interference to its commercial operation following Acceptance.

5.24 Emergency Work

5.24.1 If, by reason of an emergency endangering life or property, any protective or remedial work shall be reasonable and necessary as a matter of urgency to prevent, avoid or mitigate injury, damage, loss or danger to persons or the Works, the Contractor shall immediately carry out such work and shall, as soon as possible, report any such incidents, including the Contractor's response thereto, to Tabreed.

5.24.2 If the Contractor is unable or unwilling to do such protective or remedial work immediately, Tabreed may carry out or procure the carrying out of such work but the carrying out of such action by Tabreed or Tabreed's failure to do so shall not limit the Contractor's liability.

5.24.3 If Tabreed does carry out or procure the carrying out of such work, it shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work carried out and the reasons therefor. Such work carried out or procured by Tabreed shall be at the Contractor's cost. An amount equal to the cost incurred by Tabreed in

connection therewith shall be deducted from the Contract Price or at Tabreed's option, reimbursed by the Contractor on Tabreed's written demand.

5.25 Access and Site

5.25.1 The Contractor shall arrange its own access routes for the purpose of the movement of Construction Equipment, Materials, Equipment and the Contractor's Personnel to and from the Site.

5.25.2 The Contractor's use of the Site and the Land Easements is subject to the following additional terms and conditions:

- (a) the Contractor shall comply at all times with the provisions of the Land Lease Requirements set out in Exhibit 3 (*Land Lease Requirements and Site Plan*) that relate to the Contractor's use of the Site;
- (b) in no event shall the rights of the Contractor to use the Land Easements be exercised in any manner which would materially interfere with the operations, property or improvements of other persons located within the Land Easements;
- (c) the Contractor shall at all times use its best efforts to keep the Land Easements free and clear from obstructions and impediments placed there by the Contractor, and the Contractor shall not use any of the Land Easements nor allow any Land Easements to be used for the purpose of parking vehicles (except on a temporary basis), storing equipment, material or products, or for any other purpose that would materially interfere with the activities conducted by Tabreed, a Purchaser or any third party on the Land Easements;
- (d) to the extent that the Contractor's use of the Land Easements results in any additional cost or liability to Tabreed, the Contractor shall reimburse Tabreed promptly for all such additional costs or liabilities and shall defend, indemnify and hold harmless Tabreed from and against all such costs and liabilities;
- (e) all maintenance work, if any, performed by or on behalf of the Contractor within the Land Easements shall be done in a good and workmanlike manner in accordance with all Applicable Laws and free and clear of all Liens and shall be done in accordance with plans and specifications previously approved by Tabreed, which approval will not be unreasonably withheld or delayed, in writing;
- (f) the Contractor shall use the Site and any Temporary Areas solely for the purpose of the Works and for no other purpose;
- (g) the Contractor shall keep the Site and any Temporary Areas in a condition conforming to all Applicable Laws;
- (h) the Contractor shall not make or permit any use of the Site, any Temporary Areas or the Land Easements that violates any Applicable Laws or Licences or that renders void or voidable any insurances referred to in Clause 29; and

- (i) all work performed by the Contractor shall be done at such times and in such manner so as to minimise the disruption of the use of the roadways located in the area of the Land Easement. If it is necessary for the Contractor to excavate in or otherwise disturb the surface of any such Land Easement in connection with the construction, installation, maintenance, repair, replacement or removal of Easement Facilities or the use of any such Land Easement, the Contractor shall repair and restore such surface as soon as practicable after the completion of such activities to a condition substantially the same as existed prior to such excavation or disturbance and with the pre-existing surface water drainage pattern unchanged.

5.26 **Decennial Liability**

In addition to the Contractor's other obligations under this Contract, if any Defect or deficiency results in partial or total collapse of the civil works (as "civil works" are defined in Article 880 of the United Arab Emirates Civil Code of 1985) or any portion thereof or affects the integrity or stability of the civil works, the structure of any part of the Works, or safety thereof, then the Contractor's obligations under this Contract to remedy Defects shall, to the extent mandated by Article 880 of the United Arab Emirates Civil Code of 1985, continue for the period ending ten (10) Years after the issuance of the Acceptance Certificate or such longer period as may be mandated by the United Arab Emirates Civil Code of 1985.

6. **TABREED'S REPRESENTATIVES**

6.1 **Designation**

Tabreed shall appoint Tabreed's Representative to act on its behalf under this Contract and shall notify the Contractor in writing of such person. Tabreed may, at its sole discretion, appoint some other person as Tabreed's Representative in place of the person previously appointed and shall give prior written notice of the name of such other person to the Contractor.

6.2 **Authority**

6.2.1 Unless otherwise expressly stated in this Contract or unless otherwise notified to the Contractor by Tabreed, Tabreed's Representative shall have authority to represent and act for Tabreed at all times during the performance of this Contract.

6.2.2 All notices, instructions, orders, certificates, approvals and all other communications given by Tabreed to the Contractor or by the Contractor to Tabreed under this Contract shall be given by or to Tabreed's Representative, except as otherwise provided in this Contract.

6.3 **Owner's Engineer**

6.3.1 Tabreed shall appoint the Owner's Engineer and shall notify the Contractor in writing of such appointment.

6.3.2 The Contractor acknowledges that the Owner's Engineer has the right on behalf of Tabreed to review, comment on and supervise the execution of the Works including the right to:

- (a) review this Contract;

- (b) review the design of the Works;
- (c) review the Programme, the Contractor Works Schedule and the Progress Reports;
- (d) attend progress and design meetings with the Contractor;
- (e) approve Certificates of Payment;
- (f) attend workshop inspections;
- (g) supervise the operations at the Site;
- (h) approve the results of the Acceptance Tests; and
- (i) access the Site and any Temporary Areas from the Effective Date up to the expiry of the last Defects Correction Period.

6.3.3 The list of documents to be submitted by the Contractor for information, review, comment and/or approval by Tabreed's Representative or the Owner's Engineer, is set out in Exhibit 8 (*List of Documents for Approval*).

6.3.4 The Owner's Engineer shall not have the authority to release the Contractor from any of its obligations under this Contract, unless specifically so authorised by Tabreed.

6.3.5 The Contractor undertakes to provide to the Owner's Engineer all information relating to the Works and grant the Owner's Engineer access to the Contractor's home office, the Site, any Temporary Areas or any other place where Works are being performed to the same extent as it is providing to Tabreed under this Contract. The Contractor also undertakes to liaise with the Owner's Engineer for the proper and timely inspection of any part of the Works.

6.4 **No Relief**

No act or omission by Tabreed's Representative or the Owner's Engineer in the performance of any of their duties under or in connection with this Contract shall in any way operate to relieve the Contractor of any of its obligations or liabilities under this Contract or otherwise.

6.5 **Limit on Authority**

Neither Tabreed's Representative nor the Owner's Engineer shall have the authority to amend this Contract. Any waiver or release made or given by Tabreed's Representative shall be in accordance with Clause 42.3.

7. **THE CONTRACTOR'S REPRESENTATIVES AND SUPERVISORY STAFF**

7.1 **The Contractor's Representative**

7.1.1 The Contractor shall by or on the Effective Date notify Tabreed in writing of the person it intends to appoint as its Contractor's Representative, and shall submit the curriculum vitae of such person with such notification, and shall request Tabreed to approve the nomination. If Tabreed does not approve the

nomination, the Contractor shall submit the name and curriculum vitae of another suitable person for such appointment.

- 7.1.2 The Contractor's Representative shall not without Tabreed's approval be engaged in respect of any project other than the Works until the Acceptance Date.
- 7.1.3 The Contractor shall not replace or remove the person appointed as the Contractor's Representative, without Tabreed's prior written approval.
- 7.1.4 The Contractor's Representative shall have the authority to represent and act for the Contractor at all times during the performance of this Contract. All notices, instructions, information and all other communications given by the Contractor to Tabreed under this Contract shall be given by the Contractor's Representative.

7.2 **Project Manager**

- 7.2.1 From the commencement of the Works at the Site until Final Completion, the Contractor's Representative shall appoint a suitable person as the project manager ("**Project Manager**").
- 7.2.2 The Contractor shall submit the curriculum vitae of the person it intends to appoint as the Project Manager to Tabreed for approval prior to his appointment. If Tabreed does not approve the nomination, the Contractor shall submit the name and curriculum vitae of another suitable person for such appointment.
- 7.2.3 The Project Manager shall be employed at the Site to supervise all work done at the Site and any Temporary Areas and to receive all instructions related to Site activities given by or on behalf of Tabreed. The Project Manager shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Works. Whenever the Project Manager is absent from the Site, the Contractor shall nominate a suitable person to act as his deputy.
- 7.2.4 The Contractor shall not replace or remove the person appointed as Project Manager without Tabreed's prior written approval which approval shall not be unreasonably withheld.
- 7.2.5 Tabreed shall give all notices, instructions, information and other communications related to the execution of the Works at the Site to the Project Manager or, in his absence, his deputy.
- 7.2.6 If any communication described in Clause 7.1.4 is in good faith erroneously given by Tabreed to the Project Manager or if any communication described in Clause 7.2.5 is in good faith erroneously given by Tabreed or Tabreed's Representative to the Contractor's Representative, it shall be the responsibility of the Project Manager to copy such communication to the Contractor's Representative or, as the case may be, of the Contractor's Representative to copy such communication to the Project Manager and Tabreed shall not be liable for any communication so misdirected.

7.3 **Key Personnel**

- 7.3.1 The Contractor shall ensure that there are at all times sufficient suitably qualified and experienced persons to supervise and perform the Works at the Site.
- 7.3.2 The Contractor shall, promptly following the Effective Date, appoint suitably qualified and experienced persons acceptable to Tabreed to fill the posts listed in Exhibit 5 (*Contractor's Key Personnel and Project Organizational Chart*) ("**Key Personnel**"). The Contractor shall submit the curriculum vitae of the personnel it nominates as Key Personnel to Tabreed for approval prior to their appointment. If Tabreed does not approve any nomination, the Contractor shall submit the name and curriculum vitae of another suitable person for such appointment.
- 7.3.3 The Contractor shall keep the Key Personnel employed in connection with the Works as long as reasonably necessary to fulfil the Contractor's obligations under this Contract and the Key Personnel shall, for so long as they are engaged in connection with the Works, give substantially the whole of their working time to the supervision of the Works and shall not be removed from their posts without Tabreed's prior written approval (not to be unreasonably withheld or delayed).

7.4 **Fluent in English**

Tabreed's Representative, the Contractor's Representative, the Project Manager and all Key Personnel shall be fluent in the English language.

7.5 **Labour**

- 7.5.1 The Contractor shall employ, and shall procure that its Subcontractors employ, persons who are properly skilled, trained and experienced in the tasks to which they are assigned and in sufficient numbers to execute the Works. The Contractor shall procure the provision of Project-specific training as required. The Contractor shall provide all necessary supervision of its personnel (including those of Subcontractors and Tabreed's personnel assigned to it).
- 7.5.2 The Contractor shall, in all dealings with its personnel and the personnel of its Subcontractors for the time being employed on or in connection with the Works, pay due regard to all recognised festivals, official holidays, religious days and religious or other customs of the UAE.
- 7.5.3 The Contractor shall be responsible for providing all transportation, accommodation, catering, medical care and welfare facilities for the Contractors' and Subcontractors' personnel. The Contractor shall not permit any of its personnel or those of its Subcontractors to maintain any temporary or permanent living quarters on the Site or within the structures forming part of the Works.
- 7.5.4 The Contractor shall at all times take all reasonable precautions to prevent any unlawful or disorderly conduct by or amongst its employees and/or agents and for the preservation of peace and protection of person and property in the vicinity of the Site and any Temporary Areas against such conduct.

- 7.5.5 Upon the outbreak of any strike or other disruption or delay in performance of the Works involving any of the Contractor's or any of the Subcontractor's personnel or agents engaged in the Works, the Contractor shall promptly give details thereof to Tabreed.
- 7.5.6 The Contractor shall at all times conform in all respects with and carry out all obligations imposed on it relating to personnel and the employment of personnel by Applicable Law.
- 7.5.7 The Contractor shall be responsible for the due and proper application for, the diligent effort to obtain, and the receipt of, all visas, work permits, employment permits, dependents' permits, licenses and other permits required for all individuals involved in the Works on behalf of, or pursuant to, contracts with the Contractor.
- 7.5.8 The Contractor and its Subcontractors shall only employ in the UAE such persons who are nationals of the UAE or hold valid UAE residency permits and, where necessary, are in possession of a valid no objection certificate entitling them to work in the UAE for the Contractor or its Subcontractors.
- 7.5.9 The Contractor shall not give, barter or otherwise dispose of to any person, any arms or ammunition of any kind or permit or offer the same.
- 7.5.10 In the event of an outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by Public Sector Entities or the local medical or sanitary authorities for the purpose of dealing with or overcoming the same.
- 7.5.11 The Contractor shall, without delay, inform Tabreed of any accident at or about the Site or in connection with the execution of the Works or any injury, loss or damage to any personnel and/or property of the Contractor, Tabreed or of any third party and report such occurrences to the relevant Public Sector Entities whenever such a report is required by Applicable Law.

7.6 **Withdrawal of Approval**

If approval of the Contractor's Representative, Project Manager or any Key Personnel shall be withdrawn by Tabreed acting reasonably and justifiably, the Contractor shall, after receiving notice of such withdrawal, remove such person from the Site and shall not thereafter employ such person again on the Site in any capacity. The Contractor shall, as soon as possible, replace such person with another person approved by Tabreed.

7.7 **Objection to Personnel**

- 7.7.1 Tabreed may require the Contractor or any Subcontractor to remove from the Works any representative or person employed by either of them in the execution of or otherwise in connection with the Works who shall, in the reasonable opinion of Tabreed, misconduct himself or is incompetent or negligent or commits a serious breach of the Site regulations established in accordance with Clause 5.12 or whose employment is otherwise considered by Tabreed to be undesirable and such person shall not again be employed upon the Works.

7.7.2 Upon receipt of such notice, the Contractor shall remove such person from the Works and appoint a suitable replacement in accordance with this Contract, or ensure that the relevant Subcontractor does so.

7.8 No Relief

Neither Tabreed's:

7.8.1 approval or withdrawal of its approval of the Contractor's Representative, Project Manager or Key Personnel; nor

7.8.2 objection to any personnel in accordance with Clause 7.7,

shall entitle the Contractor to any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief.

8. PROGRAMME, PROGRESS REPORTS, QA SCHEME

8.1 Programme

8.1.1 During execution of the Works, the Contractor shall implement and adhere to that part of the Project Management Programme which relates to the Plant.

8.1.2 Within 30 days before the Commencement Date, the Contractor shall prepare and submit to Tabreed for its approval a detailed Programme for the Works. The Programme shall be consistent with the Project Management Programme and the Contractor Works Schedule, and shall stipulate completion of the Works on a timely basis by the Contracted Date for Acceptance.

8.1.3 The Programme shall be complete in all respects including:

- (a) activities at the Site and any Temporary Areas;
- (b) off-Site activities such as engineering, procurement and delivery to the Site of the Tabreed Items, the Equipment and the Materials;
- (c) the timing and sequencing (in detail) of individual activities by which the Contractor proposes to carry out the Works;
- (d) an estimate of the percentage of completion of the Works completed each month; and
- (e) taking into account co-ordination with the Associated Works.

8.1.4 The Programme shall be provided in electronic format (Primavera v3) showing no less detail of activities as would be used by a Reasonable and Prudent Contractor for works similar to the Works. In addition, the Contractor shall submit a narrative description of its plan for performing the Works to meet the Contractor Works Schedule.

8.1.5 If the Programme does not meet the requirements of this Clause 8.1, Tabreed may require the Contractor to revise it accordingly.

8.1.6 The Contractor shall achieve the timely implementation of the Works in accordance with the Contractor Works Schedule. The Contractor shall

promptly inform Tabreed of any material deviations from any dates stipulated in the Contractor Works Schedule.

- 8.1.7 The Contractor shall continuously monitor the progress of all activities specified in the Programme and shall promptly inform Tabreed of any proposed material change in the Programme, and shall furnish Tabreed with a revised Programme and narrative for Tabreed's approval.
- 8.1.8 The Programme is intended for use as a management and reporting tool and the Programme and narrative shall, subject to Clause 8.1.7, be kept up-to-date so that it depicts a realistic projection for the future progress of the Works, taking into account the actual progress of the Works. The updated Programme and narrative shall be sufficient to meet the requirements for completion of the separable parts of the Works in accordance with the Project Management Programme and the Contractor Works Schedule, and to achieve completion of all the Works by the Contracted Date for Acceptance.
- 8.1.9 Nothing stated in the Programme, and no approval by Tabreed of the Programme, shall:
- (a) relieve the Contractor from any of its obligations or liabilities under this Contract including its obligations to proceed with the Works and attain achievement of each Key Milestone, Mechanical Completion, Provisional Acceptance and Acceptance; or
 - (b) entitle the Contractor to any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief.

8.2 Progress Reports

- 8.2.1 By the 5th day of each month, the Contractor shall deliver to Tabreed a written report showing the progress of the Works during the immediately preceding month in the form and on such media as may be approved by Tabreed and including such other contents as Tabreed may reasonably specify (each a "**Progress Report**").
- 8.2.2 Each Progress Report shall include:
- (a) details of the construction activities undertaken;
 - (b) details of the progress of any activity that is delayed relative to the dates indicated in the latest Programme and the corrective action that is being taken to remedy the delay;
 - (c) details of the extent to, and manner in, which such construction activities have complied with Clause 5.9;
 - (d) details of the construction activities to be undertaken during the month in which the report is delivered;
 - (e) either a statement that, in the reasonable opinion of the Contractor acting as a Reasonable and Prudent Contractor, the Works:
 - (i) are being progressed in accordance with the Programme; or

(ii) are not being progressed in accordance with the Programme and that a notice has been or is likely to be or will be served pursuant to Clause 8.4; and

(f) the Programme (as updated pursuant to Clause 8.1.8).

8.2.3 The Contractor shall prepare, to the extent possible, and deliver to Tabreed, any reports relating to the construction of the Plant or the execution of the Works which Tabreed notifies to the Contractor it is obliged to provide to the Funders or a Purchaser, in such format and within such time periods as notified to it by Tabreed.

8.3 Meetings

8.3.1 The Contractor agrees to attend and participate at meetings set up by Tabreed (which may include meetings with the Owner's Engineer and the Funders' Representative) to discuss the progress of the Works, coordination or other matters relating to the Works.

8.3.2 Progress meetings shall be held at Tabreed's office or the Site on a weekly and monthly basis, or as otherwise requested by Tabreed.

8.3.3 The Contractor shall have in attendance at all such Site meetings the Contractor's Representative and the Project Manager.

8.4 Material Incidents

8.4.1 Should:

(a) any material problem, emergency, strike, security event, injury, work stoppage or legal problem be anticipated, or any unanticipated event occur which might adversely affect the Contractor's ability to perform its obligations hereunder in a timely manner;

(b) the Contractor have reason to believe that there will be a material deviation in the Programme which may result in the Contractor failing to achieve any of the Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance or which may affect the time required for Tabreed to perform any of its obligations under this Contract; or

(c) the Contractor otherwise materially fails to comply with the Programme,

(each a "**Material Incident**"), then, in addition to all other reports required under this Contract, the Contractor shall promptly notify Tabreed and deliver a report to Tabreed in sufficient detail to enable Tabreed to understand the nature of such Material Incident, identifying:

(d) the nature of the Material Incident;

(e) the reason for the Material Incident;

- (f) the impact which the Material Incident has had, or in the reasonable opinion of the Contractor (acting as a Reasonable and Prudent Contractor), is likely to have or will have, on its ability to achieve the Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance; and
- (g) the steps which the Contractor (acting as a Reasonable and Prudent Contractor) has taken, is taking and will take to mitigate the adverse consequences of the Material Incident.

8.4.2 Tabreed may at any time request in writing a report on any event or failure which Tabreed reasonably regards as significant. The Contractor shall promptly deliver a report to Tabreed in relation to that event or failure with sufficient detail to enable Tabreed to understand its nature, reason, impact and the steps the Contractor is or will take to mitigate the adverse consequences of the event or failure.

8.5 Rate of Progress

8.5.1 If for any reason which does not entitle the Contractor to an extension of time, the rate of progress of any part of the Works under this Contract is at any time, in the reasonable opinion of Tabreed, significantly too slow to ensure that:

- (a) the Key Milestones will be achieved on or before the associated Contracted Date for Key Milestones;
- (b) Provisional Acceptance will be achieved on or before the Contracted Date for Provisional Acceptance; and/or
- (c) Acceptance will be achieved on or before the Contracted Date for Acceptance,

Tabreed may so notify the Contractor in writing.

8.5.2 The Contractor shall respond to such a notice from Tabreed within 5 Business Days with its plan to achieve:

- (a) the Key Milestones no later than the associated Contracted Dates for Key Milestones;
- (b) Provisional Acceptance no later than the Contracted Date for Provisional Acceptance; and/or
- (c) Acceptance no later than the Contracted Date for Acceptance, which plan may include re-planning task sequences, increasing labour or other resources of the Contractor or of any Subcontractor employed on the Works, the addition of Subcontractors or other acceleration of the progress of the Works.

8.5.3 The Contractor shall not be entitled to any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief in connection with such notice from Tabreed or preparing or implementing such plan, unless otherwise provided in this Contract.

8.6 Quality Assurance

- 8.6.1 The Contractor undertakes to promptly after the Commencement Date develop, establish, implement and maintain throughout the performance of its obligations under this Contract a quality assurance scheme that is designed to meet the requirements and objectives set out in Exhibit 9 (*Project Management Programme*), consistent with Good Utility Practice and approved in writing by Tabreed ("**QA Scheme**").
- 8.6.2 Where the QA Scheme provides for the testing and certification of the quality of any work, Equipment or Materials, the Contractor shall before each Acceptance provide Tabreed with a quality dossier containing the test history and results and any certificates of quality issued in respect of such work Equipment and Materials.
- 8.6.3 Compliance with the QA Scheme shall not relieve the Contractor of any of its obligations or responsibilities under this Contract.

9. SUBCONTRACTING

9.1 Status of Contractor

The Contractor and its Subcontractors shall be independent contractors with respect to the Works, irrespective of whether such Subcontractors are selected or approved by Tabreed, and neither the Contractor nor its Subcontractors, nor the employees of either, shall be deemed to be the servants, employees, representatives or agents of Tabreed. The Contractor shall be solely responsible for the Works, including all construction means, methods, techniques, sequences, procedures and safety and security programmes in connection with the performance of the Works.

9.2 Permitted Subcontracting

Tabreed shall, after consultation with the Contractor, have the right to withhold approval of any proposed subcontractor or to rescind approval of any subcontractor with whom Tabreed may subsequently have reason to be dissatisfied, in which case the connection of such subcontractor with this Contract shall cease and the Contractor shall be bound to accept the withdrawal of such subcontractor from this Contract.

- 9.2.1 The Contractor shall not subcontract the whole of the Works.
- 9.2.2 Tabreed acknowledges and agrees that, subject to the provisions of this Clause 9, the Contractor intends to have certain parts of the Works accomplished by Subcontractors pursuant to Subcontracts.
- 9.2.3 Despite any review, approval or other action taken by Tabreed with regard to the selection of a Subcontractor, the Contractor shall be fully responsible to Tabreed for the acts, omissions, default or neglect of Subcontractors and of persons directly or indirectly employed by them, in the same manner as it is responsible for the acts, omissions, default or neglect of the Contractor.
- 9.2.4 In subcontracting any of its obligations under this Contract, the Contractor shall not thereby:
- (a) in any way be relieved of its obligations or liabilities under this Contract; nor

- (b) be entitled to any greater protection than it otherwise would have been had such subcontracting not been effected.

9.2.5 If the Contractor wishes to engage a subcontractor that is not an Approved Subcontractor for a major subcontract, the Contractor shall give Tabreed not less than 10 Business Days prior written notice of the proposed subcontractor at the earliest practical point in its selection process and furnish to Tabreed all information reasonably requested by Tabreed with respect to the Contractor's selection criteria (including the qualifications and experience of the proposed subcontractor) but excluding any pricing information.

9.2.6 Tabreed shall undertake in good faith to review the information provided by the Contractor and shall promptly notify the Contractor of its decision together with an appropriate justification if it decides to reject the proposed subcontractor. The Contractor shall not enter into any major subcontract with a subcontractor not approved by Tabreed.

9.3 Requirements relating to Subcontractors

9.3.1 The Contractor shall ensure that all Subcontracts are in writing.

9.3.2 All Subcontracts shall be consistent, and in no way contrary to or inconsistent, with this Contract.

9.3.3 No Subcontractor is intended to be or shall be deemed a third-party beneficiary of this Contract.

9.3.4 Except as expressly set out in Clause 9.3.6(c), nothing contained in this Contract shall:

- (a) create any contractual relationship between any Subcontractor and Tabreed; or
- (b) obligate Tabreed to pay or arrange for payments to be made to any Subcontractor.

9.3.5 The Contractor shall give Tabreed the name and address of the principal place of business of each Subcontractor.

9.3.6 The Contractor shall ensure that, prior to entering into each Major Subcontract, it obtains the approval of Tabreed to the terms of each Major Subcontract. Tabreed shall be entitled to insist on the inclusion of all such reasonable amendments as might usually be expected for a Project of this nature which is being or may be funded by local and international financial institutions and investors. Such requirements may include:

- (a) provisions enabling the Major Subcontract to be novated to Tabreed, its successors and assigns, the Funders or their designees, upon Tabreed's written request, without further consent of the Major Subcontractor, in the event of termination of this Contract;
- (b) provisions requiring assignment, delivery up of rights, title and benefit to the elements of the Works that are subcontracted;

- (c) provisions preventing assignment, transfer or further subcontracting under such Major Subcontract without Tabreed's consent, unless such further subcontracting would (if directly between the Contractor and the relevant Major Subcontractor) be permitted without such consent under Clause 9.2;
- (d) provisions enabling all warranties provided to the Contractor under the Major Subcontract to be assignable to Tabreed, the Funders or their designees and the Contractor shall assign to Tabreed, the Operator, the Funders or their designees the benefit of all unexpired warranties upon the expiration of the Defects Correction Period or otherwise immediately following any termination of this Contract;
- (e) provisions requiring the relevant Subcontractor to maintain professional indemnity insurance at a level and on the basis specified by Tabreed for a period of 10 years following Acceptance; and
- (f) provisions requiring the relevant Subcontractor to provide collateral warranties in a form to be specified by Tabreed, in favour of Tabreed, the Funders or their designees. The collateral warranties shall, where relevant, include 'step-in rights'.

9.3.7 The Contractor shall, upon Tabreed's request, provide reasonable written evidence to Tabreed that it complies with the requirements of this Clause 9.3.

9.3.8 The Contractor shall deliver to Tabreed copies of all Major Subcontracts that it enters into (with payment details deleted) within 10 Business Days of entering into such Major Subcontract.

9.3.9 The Contractor shall, within 14 days of a request from Tabreed, procure collateral warranties from the Contractor and the relevant Subcontractor in favour of any person specified by Tabreed in the form annexed to the relevant Subcontract or as otherwise approved by Tabreed.

9.3.10 The Contractor shall procure that each Subcontractor and its and their personnel carry out the Works in accordance with all Applicable Laws.

9.3.11 The Contractor shall not waive, amend or vary any significant provision of a Major Subcontract without the written approval of Tabreed.

9.4 **Data from Subcontractors**

Tabreed shall have the right, upon reasonable written request, with respect to Works performed by Subcontractors, to receive from the Contractor all available Subcontractor equipment specifications, performance guarantee data and Subcontractor warranties, as well as all available shop and field performance test reports and vendor field representative reports which are necessary for the operation and/or maintenance of the Plant.

9.5 **Environmental Compliance Record**

The Contractor shall not permit any Subcontractor (or any Affiliate of any Subcontractor) on the Site, any Temporary Areas or the Land Easements whose environmental compliance record Tabreed determines is not appropriate. If the

Contractor disagrees with Tabreed's determination, it may refer the matter for decision by the Third Party Engineer in accordance with Clause 39.2.

9.6 **Technical Documentation**

9.6.1 The Contractor shall obtain and retain at the Site:

- (a) all items of Materials and Equipment incorporated into the Works, copies of all operation and maintenance Manuals and other technical Documents (including electronic files) for such Materials and Equipment;
- (b) copies of all test results for tests performed pursuant to this Contract and on all items of Equipment and Materials incorporated into the Works and identified in the Specification, to the extent that such items are normally retained in accordance with Good Utility Practice;
- (c) as-built drawings for the Works, including the civil and architectural works; and
- (d) all detailed technical documentation (including electronic files) related to the Works, to the extent that such items are normally retained in accordance with Good Utility Practice.

9.6.2 On termination or expiry of this Contract, all of the foregoing documentation and any other technical documentation and information (including electronic files) in the possession of the Contractor pertaining to the Works or part thereof, including Proprietary Information (subject to the provisions of Clause 25), shall be delivered to Tabreed on or not later than 5 days after such termination or expiry.

10. **DESIGN**

10.1 **General Design Obligations**

10.1.1 The Contractor shall be deemed to have scrutinised, prior to the Effective Date, Tabreed's Requirements and the Project Documents (including design criteria and calculations, if any). The Contractor shall be responsible for the design of the Works and for ensuring compliance of the Works with Tabreed's Requirements (including design criteria and calculations for the incorporation of the Tabreed Items into the Works or the Plant) in accordance with this Contract except as otherwise specified in the Agreed Clarifications List.

10.1.2 For the avoidance of doubt, nothing herein shall relieve the Contractor from its responsibility for the design and execution of the Works in accordance with this Contract.

10.1.3 Any mistake, inaccuracy, discrepancy or divergence in Tabreed's Requirements shall be notified to Tabreed and, if Tabreed so instructs, corrected by the Contractor at the Contractor's own risk and cost.

10.2 Contractor's Documents and Design Development

- 10.2.1 The Contractor's Documents shall comprise the technical Documents specified in Tabreed's Requirements, all Documents describing the design of the Works, Documents required to satisfy all Licences, and the documents described in Clauses 10.5 and 10.6. The Contractor's Documents shall be written in English except where the Documents required to satisfy a Licence is required to be in Arabic, in which case the original Document shall be written in Arabic with a certified English translation to be provided by the Contractor.
- 10.2.2 The Contractor shall prepare all Contractor's Documents, and shall also prepare any other documents necessary to instruct the Contractor's personnel.
- 10.2.3 The Contractor shall provide to Tabreed for its, the Funders and the Owner's Engineers review and approval copies of the Contractor's Documents referred to (and in such number of copies as are referred to) in Exhibit 8 (*List of Documents for Approval*) and any additional Documents deemed necessary by the Parties for the implementation of the Works.
- 10.2.4 Subject to Clause 10.2.9, Tabreed shall within the Review Period, review any Contractor's Documents, calculated from the date on which Tabreed receives a Contractor's Document and a notice from the Contractor stating that the Contractor's Document is considered ready, both for review in accordance with this Clause 10.2 and for use and that the Contractor's Document complies with this Contract, or the extent to which it does not comply. Tabreed shall not unreasonably delay the process for approving the Contractor's Document such as to materially and adversely affect the Programme.
- 10.2.5 Tabreed may, within the Review Period either:
- (a) if it considers the Contractor's Document complies with this Contract, approve the same in writing; or
 - (b) inform the Contractor in writing that it considers the Contractor's Document fails (to the extent stated) to comply with this Contract and the Contractor shall at its option either:
 - (i) if the Contractor agrees with Tabreed's comments, give effect to such comments, and the Contractor's Document shall be rectified, resubmitted and reviewed in accordance with this Clause 10.2, which action shall be at the Contractor's own cost and will give rise to no Change, adjustment of the Contract Price, Additional Payment or extension of time or any other relief;
 - (ii) if the Contractor disagrees with Tabreed's comments, give notice in writing to Tabreed to that effect and that the Contractor shall continue with the Works and such continuance with the Works by the Contractor shall be without prejudice to any of its rights (including rights to payments) or obligations under this Contract, subject always to the provisions of Clause 10.2.7; or

- (iii) if the Contractor disagrees with Tabreed's comments and gives notice of its election to proceed under Clause 10.2.5(b)(ii), Tabreed shall have the right at its discretion to instruct the Contractor to comply with Tabreed's comments, subject always to the provisions of Clause 10.2.7.

10.2.6 If it is subsequently agreed or determined that any part of the Contractor's Documents are not compliant with this Contract, and the comments of Tabreed are within the Contractor's scope of works, then the Contractor shall comply with Tabreed's comments at its own cost and such compliance shall not give rise to a Change, adjustment of the Contract Price, Additional Payment, extension of time or any other relief.

10.2.7 If Tabreed instructs the Contractor to comply with its comments in accordance with Clause 10.2.5(b)(iii) and it is subsequently agreed or determined that the Contractor's Document is compliant with this Contract, the Contractor shall be entitled to claim an extension of time and/or Additional Payment, subject to Clause 32 and Clause 33, for the impact of the instruction from Tabreed.

10.2.8 Subject to Clause 10.2.9, if no approval is given nor objection made by Tabreed to a Contractor's Document within the Review Period, approval shall be deemed to have been given and, subject to Clause 42.2, the Contractor shall be at liberty to proceed with that portion of the Works which is the subject thereof.

10.2.9 The Contractor's Documents that require the approval of the Purchaser as set out in Exhibit 8 (*List of Documents for Approval*) shall not be approved or deemed approved by Tabreed unless and until the approval of the Purchaser has been obtained and Tabreed will use its reasonable endeavours to obtain such approval within the Review Period.

10.2.10 For each part of the Works, and except to the extent that the Parties otherwise agree:

- (a) execution of such part of the Works (including the purchase or manufacture of Equipment and Materials) shall not commence prior to the approval, or deemed approval, of Tabreed for all the Contractor's Documents to be provided to Tabreed by the Contractor pursuant to Clause 10.2.3; and
- (b) if the Contractor wishes to modify any design or Contractor's Document which has previously been submitted for review, the Contractor shall immediately give notice to Tabreed. Thereafter, the Contractor shall submit revised Contractor's Documents to Tabreed in accordance with the procedure set out in Clause 10.2.3.

10.3 No Variation

No approval or non-approval of any Contractor's Documents by Tabreed under this Clause 10 shall be capable of constituting a Change pursuant to Clause 30 and no adjustment to the Contract Price, Additional Payment, extension of time or any other relief shall be awarded in respect of the time taken for, or other circumstances whatsoever surrounding, approval being given or withheld in relation to any

Contractor's Documents by Tabreed, or the subsequent carrying out of the Works that are the subject thereof.

10.4 **Works to comply with design information**

The Contractor shall execute the Works strictly in accordance with the Specification and the Contractor's Documents using new and utility grade materials and workmanship of first class and sound quality. Works carried out by the Contractor other than as aforesaid shall be removed at the request of Tabreed at the Contractor's sole cost, it being understood that the Contractor may replace a defective component of the Works with a new component in order to restore such component to the condition required by the previous sentence rather than replacing the entire part of such Works.

10.5 **As-Built Documents**

10.5.1 The Contractor shall prepare, and keep up-to-date, a complete set of as-built records of the execution of the Works, showing the exact as-built locations, sizes and details of the Works as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Clause 10.5. Two copies of the red-lined marked up as-builts records shall be supplied to Tabreed prior to Acceptance.

10.5.2 In addition, the Contractor shall supply to Tabreed as-built drawings of the Works, showing all Works as executed and including the civil and architectural works, and submit them to Tabreed for review under Clause 10.2. The Contractor shall obtain the consent of Tabreed as to their size, the referencing system and other relevant details.

10.5.3 Not later than 3 months after the Acceptance Date, the Contractor shall supply to Tabreed 8 paper copies and 2 electronic copies of the final as-built drawings, signed and sealed and in accordance with the Specifications.

10.6 **Manuals**

10.6.1 The Contractor shall prepare and submit to Tabreed all Manuals (and any revision thereto) in relation to the Works in accordance with the requirements of, and the schedule set out in, Exhibit 10 (*Manuals and Training*).

10.6.2 Prior to Provisional Acceptance, the Contractor shall supply to Tabreed provisional operation and maintenance Manuals as set out in Exhibit 10 (*Manuals and Training*) in sufficient detail for Tabreed to fully and efficiently operate, inspect, maintain, dismantle, reassemble, adjust, repair and modify all parts of the Works with the minimum of interference to its commercial operation and which have had at least 1 round of comments from Tabreed, any Operator and the Owner's Engineer incorporated.

10.6.3 If there is an error in the provisional operation and maintenance Manuals provided by the Contractor pursuant to Clause 10.6.2 and Tabreed or the Operator suffers any loss, damage or cost, including damage to the Plant or loss of manufacturer's warranty cover, arises as a result of Tabreed or the Operator operating or maintaining the Plant in accordance with such error, the Contractor shall be responsible for all claims relating to or arising from such compliance and shall indemnify, defend and hold harmless Tabreed from and against all such claims.

10.6.4 Not later than 3 months after the Acceptance Date, the Contractor shall supply to Tabreed 8 paper copies and 2 electronic copies of the final operation and maintenance Manuals.

10.7 **Design Error**

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, they and the Works shall be corrected at the Contractor's risk and cost and, notwithstanding any consent or approval under this Clause.

10.8 **Provision of Tabreed Documents**

The Documents provided by Tabreed to the Contractor shall remain the sole property of Tabreed.

10.9 **Further Drawings**

The Contractor shall provide Tabreed with any additional copies of Documents (hard copy or in an electronic format) in excess of the number stated in the Specification reasonably requested by Tabreed, at no charge to Tabreed.

10.10 **Return of Drawings and Contract Documents**

Before Final Completion, the Contractor shall hand over to Tabreed the Contract Documents, drawings, specifications and designs relating to the Works and return to Tabreed all such Contract Documents, drawings, specifications and designs provided by Tabreed under this Contract, except that the Contractor may maintain a confidential file copy of such Contract Documents, drawings, specifications and designs until such time as it has discharged all its obligations under this Contract.

11. **ACCESS TO THE WORKS IN PROGRESS**

The Contractor shall afford, and shall procure that each Subcontractor shall afford, access to, and permit the inspection and monitoring of and attendance at tests of all parts of the Works, the Site and any Temporary Areas and to any other place where Materials or Equipment are being manufactured, to:

- 11.1.1 Tabreed, Tabreed's Representative, the Owner's Engineer and other representatives and employees of Tabreed;
- 11.1.2 the Funders, the Funders' Representative and other representatives of the Funders;
- 11.1.3 the Purchasers and representatives of the Purchasers;
- 11.1.4 insurers and their representatives;
- 11.1.5 any other persons coming onto the Site or any Temporary Areas pursuant to the exercise by any party to a right under a Project Document; and
- 11.1.6 officials of any Public Sector Entity carrying out their duties under any Applicable Laws,

during normal business hours and upon reasonable notice to the Contractor. The Contractor shall advise any such persons of the site safety rules and regulations referred to at Clause 5.12 upon their entry onto the Site and/or Temporary Areas.

12. TRANSFER OF TITLE

12.1 Ownership

12.1.1 Legal title to and ownership of all Works, Materials and Equipment to be supplied by the Contractor pursuant to this Contract shall, subject to Applicable Laws, be transferred to and vest in Tabreed automatically at whichever is the earlier of the following times:

- (a) when Materials and Equipment are delivered to the Site or any Temporary Areas; or
- (b) when payment has been made by Tabreed to the Contractor which comprises the value of the Works, Materials and/or Equipment.

12.1.2 The Contractor warrants that it has or will have good title to all Works, Materials and Equipment to ensure compliance with Clause 12.1.1, and the Contractor warrants that title and ownership thereto shall pass to and vest in Tabreed as described in Clause 12.1.1, free and clear of all Liens, Claims or rights of other persons arising as a result of any acts, omission, neglect or default of the Contractor, Subcontractors, or personnel or representatives of either. The Contractor shall ensure that each Subcontract and supply agreement it enters into contains a provision passing ownership to the Contractor in accordance with this Clause 12.1.2.

12.1.3 Ownership of the Construction Equipment used by the Contractor and its Subcontractors in connection with the Works shall remain with the Contractor or its Subcontractors.

12.1.4 Ownership of any Equipment or Materials in excess of the requirements for the Works shall revert to the Contractor upon issue of the Final Completion Certificate or at such earlier time as Tabreed and the Contractor agree that the Equipment or Materials in question are no longer required for the Works.

12.1.5 Ownership of the Tabreed Items shall at all times remain with Tabreed but the responsibility for care and custody thereof, together with the risk of loss or damage thereto, shall as between the Parties be as prescribed in Clause 13.

12.1.6 Notwithstanding the transfer of title and ownership of the Works, Equipment and Materials, the responsibility for care and custody thereof, together with the risk of loss or damage thereto, shall as between the Parties be as prescribed in Clause 13.

12.2 Mechanics' Liens

12.2.1 The Contractor shall not have any right, power or authority to bind Tabreed, any property of Tabreed or the Site, any Temporary Areas, the Works, the Materials, Equipment, the Tabreed Items or the Plant for the payment of any claim for labour, Equipment, Materials, for engineering or designer's fees or for any other Claim arising in connection with the Works by or on behalf of the Contractor, or to render Tabreed's estate or interest in the Site liable for

any Claim or Lien or any labour, material or service or for any charge or expense incurred in connection therewith.

- 12.2.2 The Contractor shall not, under any circumstances, be considered the agent of Tabreed for the purposes of conducting any work undertaken by or on behalf of the Contractor in connection with the Works or other work on the Site, any Temporary Areas or the Plant.
- 12.2.3 The Contractor shall not file, claim or register any Lien and shall not permit any mechanics', labourers' or materialmen's Lien to stand against any property of Tabreed, the Site, the Works, the Materials, Equipment, the Tabreed Items or the Plant for any labour or material furnished to the Contractor or claimed to have been furnished to the Contractor in connection with work of any character performed or claimed to have been performed by or at the direction or sufferance of the Contractor.
- 12.2.4 The Contractor shall indemnify, defend and hold harmless Tabreed from and against all Claims (other than by Tabreed) arising from any breach of, or non-compliance with, this Contract by the Contractor and Liens and other liabilities of whatsoever nature including related expenses and reasonable legal fees, arising out of the services, labour, equipment and materials furnished to or on behalf of the Contractor by its Subcontractors.
- 12.2.5 If, despite Clause 12.2.3, a Claim or Lien of any kind is established or is attempted to be established upon or against any property of Tabreed, the Site, the Works, the Tabreed Items or the Plant, then the Contractor, with or without notice from Tabreed, shall either:
- (a) promptly, but in no event later than 3 Business Days, after the date on which it was established or attempted to be established, have such Claim or Lien removed by the posting of a payment bond issued by a licensed bank operating in the UAE acceptable to Tabreed or provision of other security or by any other lawful means in the event a Lien is established; or
 - (b) prevent the establishment thereof in the event a Lien is attempted to be established.
- 12.2.6 If the Contractor has not removed or prevented the establishment of the Lien in accordance with Clause 12.2.5, the Contractor shall contest the validity or amount of any such Claim or Lien, but the Contractor shall give to Tabreed a payment bond issued by a licensed bank operating in the UAE acceptable to Tabreed or such other reasonable security as may be demanded by Tabreed to ensure payment thereof and to prevent any sale, foreclosure or forfeiture of any property of Tabreed, the Site or the Works by reason on non-payment thereof.
- 12.2.7 On final determination of the Claim or Lien, the Contractor shall pay immediately any judgment rendered with all proper costs and charges and shall have the Claim or Lien released or judgment satisfied at the Contractor's own expense and upon the Contractor furnishing adequate evidence to Tabreed of the release of any said Claim or Lien and satisfaction of any said judgment, Tabreed shall promptly return to the Contractor any security in Tabreed's possession with respect to the Claim or Lien or judgment involved.

- 12.2.8 If the Contractor fails to contest the validity of any Claim or Lien and give security to Tabreed to ensure payment thereof, or having commenced to contest the same, and having given such security, fails to prosecute such contest with diligence or fails in due course to have the same released and satisfy any judgment rendered thereon, then Tabreed may remove or discharge such Claim or Lien (with the right in Tabreed's discretion to settle or compromise the same) and any amounts advanced and expenses incurred by Tabreed for such purposes shall be deducted from payments to be made to the Contractor under this Contract or shall be payable by the Contractor on written demand by Tabreed.
- 12.2.9 Subject to Clause 12.2.10, on its application for any Acceptance Certificate and the Final Completion Certificate, pursuant to Clauses 17.7.1 and 18.1.1 respectively, the Contractor shall, as part of such submission or application, certify to Tabreed, by way of a certificate in the form attached as Exhibit 16 (*Release of Liens Certificate*) ("**Release of Liens Certificate**") that it has no knowledge of any outstanding Liens or Claims which may result in Liens affecting the Works, the Plant, the Materials, the Equipment, the Site or any property of Tabreed.
- 12.2.10 If any outstanding Liens or Claims exist at the time of the Contractor's application for any Acceptance Certificate or the Final Completion Certificate, the Contractor may request Tabreed in writing to waive the requirements to release such Liens or Claims as one of the conditions of Acceptance or Final Completion. Provided that the Contractor agrees to release such Liens or Claim by an agreed date, which shall not be more than 60 days after the date of Acceptance or Final Completion, and subject to Clause 12.2.8, Tabreed shall, in good faith, review such request and consider the circumstances the Contractor is subject to, before deciding whether to grant such request.
- 12.2.11 With respect to any Lien or Claim arising from the actions of the Contractor that remains outstanding at the expiry or termination of this Contract, the Contractor shall promptly on demand pay or allow to Tabreed all costs incurred or likely to be incurred by Tabreed in extinguishing such Liens or Claims, including any costs of filing and reasonable legal fees.

12.3 Satisfaction and Release of Other Liens

- 12.3.1 If any Lien (other than the Liens referred to in Clause 12.2) shall be filed against any property of Tabreed, the Site, the Works, the Equipment, the Materials, the Tabreed Items or the Plant by any person claiming by, through or under the Contractor, including Liens arising by reason of a non-payment by the Contractor or a Subcontractor of any taxes, debt or other obligation for which the Contractor or a Subcontractor is liable, or by reason of any judgment involving monetary damages against the Contractor or a Subcontractor, then the Contractor shall procure and deliver to Tabreed a full and complete cancellation and discharge thereof, or, at Tabreed's option, a payment bond issued by a licensed bank operating in the UAE acceptable to Tabreed or such other reasonable security as may be demanded by Tabreed to ensure payment thereof in an amount sufficient to secure full and complete cancellation or discharge thereof.
- 12.3.2 If the Contractor fails to procure and deliver a full and complete cancellation and discharge (or at Tabreed's option, a payment bond issued by a licensed

bank operating in the UAE acceptable to Tabreed in an amount sufficient to secure full and complete cancellation and discharge) of any such Lien to Tabreed within 25 days after notice from Tabreed requesting the same, then Tabreed may discharge or remove the same by deposit or payment. The amount so deposited or paid by Tabreed shall be deducted from payments to be made to the Contractor under this Contract or shall be payable by the Contractor on written demand by Tabreed.

12.4 **Tabreed's Remedies**

12.4.1 The remedies provided to Tabreed under this Clause 12 shall be in addition to all of the other remedies provided to Tabreed by Applicable Law or by this Contract.

12.4.2 Until any Liens contemplated by Clause 12.2 or 12.3 are fully discharged, Tabreed shall have the right to withhold 150% of the full amount thereof from any payments to be made to the Contractor, and such withholding of payment shall not affect the other rights and obligations of the Parties under this Contract.

12.4.3 If at any time the Contractor shall allow indebtedness to accrue for labour, Construction Equipment, Equipment or Materials supplied under this Contract for which Tabreed may become liable for payment or which may become a Lien on the Site, the Temporary Areas, the Works, any Materials, any Equipment, the Plant, the Tabreed Items or any property of Tabreed, Tabreed may withhold payment in an amount equal to such indebtedness from any payments to be made to the Contractor until the Contractor has delivered satisfactory evidence that the said indebtedness has been fully discharged.

13. **CARE OF THE WORKS**

13.1 **Duration of Responsibility**

13.1.1 The Contractor shall be fully responsible for the care and custody and bear the risk of loss of or damage to the Works (including the Tabreed Items) or any part thereof until the earlier of the Acceptance Date or the expiry or termination of this Contract and shall promptly make good at its own cost any loss or damage that may occur to the Works from any cause whatsoever, other than from an Excluded Event.

13.1.2 The Contractor shall further be responsible and bear the risk of loss of or damage to the Works (or any part thereof) and for the care of any outstanding work being carried out by the Contractor or its Subcontractors after such period and for making good any loss or damage to the Works (or any part thereof) caused by the Contractor or its Subcontractors in the course of any Remedial Work carried out pursuant to Clause 19.

13.2 **Excluded Events**

13.2.1 To the extent that it cannot be mitigated, avoided or overcome by the Contractor through the exercise of diligence and reasonable care that would be expected of a Reasonable and Prudent Contractor (including such acts or activities to protect the Works from an event which are reasonable given the likelihood of such event, the probable effect of such event if it should occur

and the likely efficacy of the protection measures) and Good Utility Practice, the Contractor shall not be responsible for loss of or damage occurring to the Works or any part thereof by reason of any of the events set out below:

- (a) acts of war (whether declared or not), terrorism, armed insurrection, invasion, armed conflict, civil war, act of foreign enemy or blockade in each case occurring within or involving the UAE or the Emirate of Abu Dhabi;
- (b) munitions of war, explosive materials, ionising radiation or contamination by radioactivity occurring within the Emirate of Abu Dhabi (except as may be attributable to the Contractor's use of any such munitions, explosives);
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) strikes of a political nature, riot or civil commotion, in each case occurring within the Emirate of Abu Dhabi (other than by employees of the Contractor or its Subcontractors or by employees of any direct or indirect Affiliate, parent or subsidiary of any shareholder of the Contractor or its Subcontractors or to the extent insured under this Contract); and
- (e) acts of rebellion affecting the Project occurring within the UAE or within the Emirate of Abu Dhabi,

each an "**Excluded Event**" provided that it shall not include any event to the extent it is caused by an act, omission, neglect or default of the Contractor or any Contractor Party or is a risk in respect of which the Contractor is required to take out or maintain insurance in accordance with this Contract or in accordance with Good Utility Practice.

13.2.2 In the event that Tabreed notifies the Contractor that it requires the Contractor to make good any loss or damage to the Works that occurs from an Excluded Event, such notice shall be treated as a Tabreed requested Change pursuant to Clause 30, and the Contractor agrees that it shall make good such loss or damage in accordance with Clause 30.

13.3 **Construction Equipment**

The Contractor shall be liable for any loss of or damage to any Construction Equipment or any other property of the Contractor used or intended to be used for the purposes of the Works.

14. **SPARE PARTS AND SPECIAL TOOLS**

14.1 **Recommended List**

Upon Tabreed written request, the Contractor shall provide to Tabreed within 15 days or any other such period agreed in writing by Tabreed, a list of recommended spare parts and special tools for the next two years from its Subcontractors as obtained from such Subcontractors, complete with pricing.

14.2 Use before Acceptance

The Contractor may, prior to Acceptance and subject to Tabreed's approval, use any spare parts and special tools at the Site that are owned by Tabreed, provided that the Contractor shall, as soon as reasonably practicable but in any event no later than Acceptance, replace or replenish such spare parts and special tools, except for those spare parts and special tools relating to Tabreed Items.

14.3 Use after Acceptance

The Contractor may, on and following Acceptance and subject to Tabreed's approval, use any spare parts and special tools at the Site that are owned by Tabreed, provided that the Contractor shall, as soon as reasonably practicable but in any event no later than Final Completion, replace or replenish such spare parts and special tools, except for those spare parts and special tools relating to Tabreed Items.

15. INSPECTION AND TESTS GENERALLY

15.1 Application

This Clause 15 applies to all tests specified in this Contract other than the Acceptance Tests and the tests in relation to Tabreed Items.

15.2 The Contractor to Conduct

The Contractor shall, at its own cost, carry out all tests and/or inspections of the Materials and Equipment and any part of the Works as are required by this Contract.

15.3 Inspection During Manufacturing

15.3.1 Tabreed, the Owner's Engineer, the Purchasers, the Funders, the Funders' Representative and their representatives shall be entitled at all reasonable times during manufacture to inspect, examine and test on the Contractor's premises or any Temporary Areas the Materials, Equipment, workmanship and check the progress of manufacture of any of the Works to be supplied under this Contract. If part of the Materials or Equipment is being manufactured on other premises, the Contractor shall obtain for Tabreed, the Owner's Engineer, the Purchasers, the Funders, the Funders' Representative and their representatives, permission to inspect, examine and test as if that part of the Materials or Equipment was being manufactured on the Contractor's premises.

15.3.2 Any inspection, examination or testing carried out pursuant to Clause 15.3.1 shall not:

- (a) release the Contractor from any obligation or liability under this Contract; or
- (b) entitle the Contractor to any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief.

15.4 Testing Schedule

The Contractor and Tabreed shall mutually develop a test programme and schedule for testing the Works in accordance with the requirements of Exhibit 11 (*Inspection, Commissioning, and Operational Testing*).

15.5 Test Procedures

The Contractor shall:

15.5.1 conduct all tests and inspections in accordance with the principles and procedures set out in, or agreed pursuant to, Exhibit 11 (*Inspection, Commissioning, and Operational Testing*);

15.5.2 at its own cost, provide all assistance, technical and supervisory personnel, labour, scaffolding, raw materials, consumables, power, water, utilities, equipment and necessary instruments for the carrying out of tests and inspections pursuant to this Contract;

15.5.3 take necessary measures to procure that tests and inspections are conducted in a safe and efficient manner; and

15.5.4 follow all Equipment suppliers commissioning testing and record-keeping procedures.

15.6 Notice and Reporting

15.6.1 Whenever the Contractor is ready to carry out any test and/or inspection under this Clause 15, if no other notice period is specified under this Contract or in the test procedures agreed thereunder, the Contractor shall give Tabreed reasonable advance notice of such test and/or inspection and of the place and time thereof.

15.6.2 The Contractor shall provide Tabreed with a certified report of the procedures and results of any tests and/or inspections recording relevant conditions.

15.7 Covering up

The Contractor shall give Tabreed, the Owner's Engineer, the Funders and the Funders' Representative full opportunity to test and/or inspect any Work on the Site in respect of which Tabreed or the Owner's Engineer have specifically requested an opportunity to inspect before such Work is covered up or put out of view. The Contractor shall give due notice to Tabreed whenever such Work is ready for inspection. Tabreed shall have the right to have any portion of the Works uncovered by the Contractor at the Contractor's cost for inspection, regardless of whether the Contractor performed the uncovered Works in accordance with this Contract, where the Contractor covered such Works without Tabreed's or the Owner's Engineers' inspection despite their request for inspection.

15.8 Test Failures

15.8.1 If any Materials, Equipment or any part of the Works fail to pass any test and/or inspection, has a Defect or is otherwise not in accordance with this Contract, Tabreed may, without prejudice to its other powers and remedies pursuant to this Contract:

- (a) issue instructions requiring the correction, repair or replacement of such Defects, condition or non-conforming matter, or the re-performance of such non-conforming Works, in accordance with Clause 5.3 in which case Tabreed, the Owner's Engineer, the Funders and the Funders' Representative shall be entitled to witness that such Defects or non-conforming matter has been adequately corrected, repaired or replaced;
- (b) issue instructions for the carrying out of such further uncovering of the Work, inspection and testing as is reasonable in order to ascertain the extent of any further incidence of such non-compliance; and/or
- (c) issue such instructions as are reasonably necessary in response to the discovery of non-compliant Works as aforesaid including further investigatory studies and/or any modification to the Works or the Specification.

15.8.2 The Contractor shall promptly comply at its own cost with instructions issued by Tabreed under Clause 15.8.1.

15.9 Uncovered Work

15.9.1 The Contractor shall have no entitlement to any claim for adjustment to the Contract Price, Additional Payment, extension of time or any other relief if uncovered Work is found to be defective or non-compliant with this Contract.

15.9.2 Except where the Contractor covered Works without Tabreed or the Owner's Engineers inspection despite their request for inspection (save for Tabreed's failure to attend following reasonable notice of such inspection from the Contractor), if uncovered Work is found to be correctly performed and in compliance with this Contract, then the Contractor shall be entitled to claim an extension of time and/or Additional Payment, subject to Clause 32 and Clause 33, for the impact of the instruction from Tabreed.

16. ACCEPTANCE TESTS

16.1 Development of Detailed Acceptance Test Procedures

16.1.1 The Contractor shall submit proposed Detailed Acceptance Test Procedures in accordance with Exhibit 11 (*Inspection, Commissioning, and Operational Testing*) for review and comment by Tabreed. The proposed Detailed Acceptance Test Procedures shall be consistent with Exhibit 11 (*Inspection, Commissioning, and Operational Testing*) and shall be designed to enable the Acceptance Tests to demonstrate:

- (a) compliance with Guaranteed Performance Levels;
- (b) that the Plant is free from Defects that affect the Acceptance Tests;
- (c) compliance with all Licence requirements;
- (d) compliance with all requirements and conditions for testing set out in Exhibit 1 (*Project Specific Terms*);

- (e) compliance with any test requirements set out in Exhibit 11 (*Inspection, Commissioning, and Operational Testing*); and
- (f) compliance with all Applicable Laws applicable to routine operation of the Works.

16.1.2 The Detailed Acceptance Test Procedures and the testing programme shall take into account the available capacity of the Plant to provide cooling services and any Purchaser's requirement for cooling services.

16.1.3 The Contractor shall promptly incorporate appropriate changes as a result of any reasonable comments on the proposed Detailed Acceptance Test Procedures that are provided by Tabreed and resubmit its revised proposed Detailed Acceptance Test Procedures to Tabreed in accordance with Exhibit 11 (*Inspection, Commissioning, and Operational Testing*). Following acceptance by Tabreed, the Detailed Acceptance Test Procedures shall be deemed incorporated in Exhibit 11 (*Inspection, Commissioning, and Operational Testing*).

16.2 Acceptance Tests

16.2.1 The Contractor shall, at its own cost, conduct the Acceptance Tests on the Plant in accordance with this Contract (including Exhibit 11 (*Inspection, Commissioning, and Operational Testing*)) and the Detailed Acceptance Test Procedures, and shall provide data supporting all Acceptance Test results to Tabreed.

16.2.2 Any output produced during the carrying out of the Acceptance Tests and any other operation of the Plant and all proceeds from the sale of such output shall be the property of Tabreed.

16.2.3 The Contractor shall remain in control of the Plant before Acceptance. Tabreed may request the Contractor to change the Contractor's operating regime before Acceptance, and if the Contractor, acting reasonably, considers that any such change is in addition to what is already the obligations of the Contractor to pass the Acceptance Tests and such change is reasonably likely to:

- (a) materially increase Contractor's Cost thereof; or
- (b) cause a delay which could affect the critical path schedule for the achievement of Acceptance,

Tabreed's request shall be treated as a Tabreed requested Change.

16.3 Procedures for Carrying Out the Acceptance Tests

16.3.1 Acceptance Tests shall be commenced as soon as is reasonably practicable after achievement of Provisional Acceptance.

16.3.2 The Acceptance Tests shall be performed in accordance with Exhibit 11 (*Inspection, Commissioning, and Operational Testing*) and the Detailed Acceptance Test Procedures. At all times during the Acceptance Tests, the Plant shall comply with the requirements of Exhibit 11 (*Inspection, Commissioning, and Operational Testing*), Applicable Law and the

environmental requirements set out in Exhibit 1 (*Project Specific Terms*) and the Specification.

- 16.3.3 In relation to any scheduled Acceptance Test that is required to be rescheduled, unless otherwise agreed in writing by Tabreed, the Contractor shall notify Tabreed at least 10 Business Days in advance of the commencement of the rescheduled Acceptance Test.
- 16.3.4 All actual Acceptance Test results shall be corrected back to Reference Site Conditions in accordance with Exhibit 11 (*Inspection, Commissioning and Operational Testing*).
- 16.3.5 The Contractor shall maintain an adequate number of qualified personnel at the Site to supervise and control Tabreed's and any Operator's personnel involved in the operation and maintenance of the Plant until the Acceptance Date and shall have qualified personnel available to consult, at the Contractor's cost, with and advise Tabreed's and the Operator's personnel thereafter until Final Completion.

16.4 **Attendances**

- 16.4.1 Tabreed, the Owner's Engineer, the Purchasers, the Funders, the Funders' Representatives and their representatives shall be entitled to attend the Acceptance Tests and Tabreed shall procure that such persons shall not interfere with the carrying out of the Acceptance Tests by the Contractor. If any such interference materially affects the progress of the Acceptance Tests, the Contractor shall, subject to Clauses 32 and 33, be entitled to an extension of time and/or Additional Payment.
- 16.4.2 Tabreed shall bear all travelling and lodging costs and expenses incurred in connection with such attendance.
- 16.4.3 Tabreed shall co-ordinate the attendances of all such persons.

16.5 **Failure of Acceptance Tests**

If the Acceptance Tests as specified in Exhibit 11 (*Inspection, Commissioning, and Operational Testing*) demonstrate that the Plant has not achieved the required performance and reliability as per Contract, including the Minimum Performance Levels, the Contractor shall perform corrective measures and shall repeat, at its own cost, the Acceptance Tests in accordance with Clause 16.2.1 provided that all such retests are completed before, whichever is earlier of:

- 16.5.1 the Contracted Date for Acceptance; and
- 16.5.2 provided Delay Liquidated Damages are being paid by the Contractor:
- (a) the Default Date for Acceptance; or
 - (b) the date Tabreed has become entitled to the maximum amount of Delay Liquidated Damages.

17. **KEY MILESTONES, MECHANICAL COMPLETION, PROVISIONAL ACCEPTANCE, ACCEPTANCE**

17.1 **Key Milestones**

- 17.1.1 Where Tabreed has notified the Contractor in writing of Tabreed's intention to commission, start-up and operate the part of Works associated with the Key Milestones in order to meet Tabreed's contractual obligation in relation to the Works, the Contractor, as part of achieving the Key Milestone, shall ensure that the criteria of Provisional Acceptance for such part of the Works are met to the extent to allow safe commissioning, start-up and operation of such part of the Works.
- 17.1.2 When the Contractor believes that the Plant has achieved the requirements for a Key Milestone, the Contractor shall apply to Tabreed in writing for the Key Milestone Certificate with all relevant supporting documents.
- 17.1.3 If the requirements for the Key Milestone have been achieved, Tabreed shall issue to the Contractor the Key Milestone Certificate within 7 days of receipt of the Contractor's application.
- 17.1.4 If the requirements for the Key Milestone have not been achieved, Tabreed shall notify the Contractor in writing within 7 days stating the reasons why the Key Milestone has not been achieved. Upon receipt of such notice, the Contractor shall take all necessary steps to remedy and address the reasons stated by Tabreed in its notice.
- 17.1.5 The foregoing notice procedure shall be repeated until the Key Milestone is achieved.

17.2 **Mechanical Completion**

- 17.2.1 When the Contractor believes that all Works have been completed to the degree that the Plant has achieved Mechanical Completion, the Contractor shall provide Tabreed with a Mechanical Completion Certificate, with all supporting documentation.
- 17.2.2 Certification by the Contractor that Mechanical Completion has been achieved shall not release the Contractor from any of its obligations or liabilities under this Contract or prejudice any of Tabreed's rights under this Contract.
- 17.2.3 After the Contractor has provided Tabreed with a Mechanical Completion Certificate, the Contractor shall carry out the joint inspection of the Works with Tabreed for the purpose of the Contractor compiling a draft Punch List, which the Contractor shall diligently remedy by the times (if any) stated in the Punch List.
- 17.2.4 Within 5 days of completion of any such joint inspection, the Contractor shall prepare and deliver to Tabreed for Tabreed's approval a written description of all proposed Punch List Items for inclusion in the draft Punch List which the Contractor, in its good faith judgment, believes have not been completed or require revision or correction to cause them to conform with the requirements of this Contract as at that time. The Contractor shall, and Tabreed shall have

the right to, add additional Punch List Items to the Punch List identified at any time during the period up to Acceptance.

- 17.2.5 The Contractor shall provide to Tabreed before Acceptance the final Punch List for Tabreed's approval. If Tabreed does not approve such final Punch List, then Tabreed shall within 5 days state its objections and its proposed changes in writing and the Contractor shall revise the Punch List and resubmit it for Tabreed's approval in accordance with this Clause 17.
- 17.2.6 The Contractor shall commence and thereafter diligently pursue the completion of the Punch List, as well as any portion of the Works which the Contractor, in its good faith judgment, believes have not been completed or require revision or correction, to cause them to conform with the requirements of this Contract. The Contractor shall coordinate the performance of its obligations pursuant to this Clause 17.2.6 with Tabreed so as not to adversely affect the operation and maintenance of the Plant.
- 17.2.7 Tabreed shall have the right, at its sole discretion, without additional cost to Tabreed, to suspend or delay any Punch List work if Tabreed determines that such work will affect the operation and maintenance of the Plant, in which case Tabreed and the Contractor shall liaise and coordinate with each other to schedule the timely completion of the Punch List work so as to minimise disruption to the operation and maintenance of the Plant.
- 17.2.8 If the Contractor fails to diligently pursue the completion of the Punch List and such failure continues following written notice from Tabreed to this effect, Tabreed may complete, at its sole discretion and at the Contractor's risk, any or all Punch List Items and the Contractor shall be liable to Tabreed for all reasonable costs incurred by Tabreed in relation to such completion.
- 17.2.9 Tabreed's acceptance of, or agreement on, a Punch List shall not alter or diminish either the Contractor's obligation to complete the Works or Tabreed's right to require the Contractor to complete the Works, in accordance with this Contract.
- 17.2.10 The Contractor shall not carry out the Start-up and Operational Tests unless and until all Works that may impair the performance, operability, safety or mechanical or electrical integrity of the Plant have been completed.

17.3 Not Used

17.4 Not Used

17.5 Provisional Acceptance

The Contractor shall be required to achieve Provisional Acceptance before it may commence carrying out the Acceptance Tests.

17.6 Provisional Acceptance Certificate

- 17.6.1 When the Contractor believes that the Plant has achieved the requirements for Provisional Acceptance, the Contractor shall apply to Tabreed in writing for the Provisional Acceptance Certificate with all relevant supporting documents.

- 17.6.2 If the requirements for Provisional Acceptance have been achieved, Tabreed shall issue to the Contractor the Provisional Acceptance Certificate within 7 days of receipt of the Contractor's application.
- 17.6.3 If the requirements for Provisional Acceptance have not been achieved, Tabreed shall notify the Contractor in writing within 7 days stating the reasons why Provisional Acceptance has not been achieved. Upon receipt of such notice, the Contractor shall take all necessary steps to remedy and address the reasons stated by Tabreed in its notice.
- 17.6.4 The foregoing notice procedure shall be repeated until Provisional Acceptance is achieved.

17.7 **Acceptance Certificate**

- 17.7.1 When the Contractor believes that the Plant has achieved the requirements for Acceptance, the Contractor shall apply to Tabreed in writing for the Acceptance Certificate with all relevant supporting documents.
- 17.7.2 If the requirements for Acceptance have been achieved, Tabreed shall issue to the Contractor the Acceptance Certificate within 7 days of receipt of the Contractor's application. The Acceptance Certificate shall state the date on which the Plant achieved Acceptance. For the avoidance of doubt, the Contractor shall not be entitled to any Change, adjustment to the Contract Price, Additional Payment, extension of time or any other relief or bonus on account of having achieved the requirements for Acceptance prior to the Contracted Date for Acceptance.
- 17.7.3 If the requirements for Acceptance have not been achieved, Tabreed shall notify the Contractor in writing within 7 days stating the reasons why Acceptance has not been achieved. Upon receipt of such notice, the Contractor shall (subject to any restrictions on its ability to carry out further Acceptance Tests under this Contract) take all necessary steps to remedy and address the reasons stated by Tabreed in its notice.
- 17.7.4 The foregoing notice procedure shall be repeated until Acceptance is achieved.

18. **FINAL COMPLETION**

18.1 **Final Completion Certificate**

- 18.1.1 When the Contractor believes that Final Completion has been achieved, the Contractor shall apply to Tabreed in writing for a Final Completion Certificate in respect of the Works with all relevant supporting documents and enclosing a final Release of Liens Certificate, signed by a duly authorised signatory of the Contractor.
- 18.1.2 If the requirements for Final Completion have been achieved, Tabreed shall issue to the Contractor the Final Completion Certificate within 14 days of receipt of the Contractor's application. The Final Completion Certificate shall state the date on which the Works achieved Final Completion.
- 18.1.3 If the requirements for Final Completion have not been achieved, Tabreed shall notify the Contractor in writing within 14 days of receipt of the

Contractor's application, stating the reasons why Final Completion has not been achieved. Upon receipt of such notice, the Contractor shall perform all outstanding Works and take all necessary steps to remedy and address the reasons stated by Tabreed in its notice for declining to issue the Final Completion Certificate, and the foregoing notice procedure shall be repeated until Final Completion is achieved for the Works.

18.2 **Non-Release**

The issue of any Key Milestone Certificates, Mechanical Completion Certificate, Provisional Acceptance Certificate, Acceptance Certificate or Final Completion Certificate shall not release the Contractor from any of its obligations or liabilities under this Contract.

19. **DEFECTS CORRECTION PERIOD**

19.1 **Remedial Obligation**

19.1.1 The Contractor shall be responsible for carrying out at its cost all Remedial Work in respect of any Defect which may appear or occur before or during any relevant Defects Correction Period and to rectify and make good at its own cost any and all damage to the Plant caused by any Defect which may appear or occur before or during the Defects Correction Period or caused by the Contractor in the course of the Remedial Works.

19.1.2 The Contractor shall carry out such Remedial Work promptly and expeditiously, in consultation with Tabreed. The Contractor shall liaise with Tabreed as to the times when such Remedial Work may take place having full regard to Tabreed's reasonable operational requirements, taking into account Tabreed's obligations to fulfil the requirements of the Purchasers, any Public Sector Entities or other third party having jurisdiction over the operation and maintenance of all or part of the Plant and the distribution of cooling water generated therefrom. The Contractor shall, in undertaking any Remedial Work, observe all reasonable requirements of Tabreed with regard to the safe and efficient use or operation of the Plant and shall in any event comply with Tabreed's site security, safety and operational requirements.

19.1.3 The Contractor may opt to either repair or replace defective parts, provided that such repair or replacement achieves the making good of the relevant Defect.

19.2 **Extension**

19.2.1 Each Defects Correction Period shall be extended respectively by a period equal to the period during which the Plant or the Works cannot be used by reason of a Defect (including by reason of Remedial Work being carried out). If only part of the Plant or only part of the Works is affected, a Defects Correction Period shall be extended only for that part. Notwithstanding the above, the maximum Defects Correction Period shall not exceed 24 months from the Acceptance Date.

19.2.2 The Defects Correction Period in respect of an item repaired or replaced shall, in any event and notwithstanding the provisions of Clause 19.2.1, be extended for 12 months from the date of repair or replacement, subject to a maximum of 24 months from the Acceptance Date.

19.3 Failure to Remedy

If the Contractor fails to remedy any Defect or damage within a reasonable time, Tabreed shall give a notice to the Contractor fixing a final time for carrying out the Remedial Work and remedying the Defect or damage. If the Contractor fails to remedy the Defect or damage within such final time, Tabreed may by notice to the Contractor, elect to:

- 19.3.1 carry out the Remedial Work itself or by others at the Contractor's risk and cost; or
- 19.3.2 make a reasonable deduction from the Contract Price (determined with reference to the Defect and its impact on the Plant), provided that if the Contract Price has been fully paid, the Contractor shall pay Tabreed the equivalent amount to the reasonable deduction within 28 days.

19.4 Repetition of Tests

19.4.1 After any Remedial Work required during the Defects Correction Period is completed by the Contractor, if Tabreed reasonably believes that such Remedial Works may reasonably be expected to materially affect the safety, efficiency or performance of the Plant (or the Works or any part thereof) Tabreed may require the Contractor to carry out tests on the performance of the Plant. The Contractor shall bear the risk and cost of carrying out such tests.

19.4.2 If, on such re-testing, the Plant or Works (or any part thereof) show a level of performance that is less than the performance levels prior to the Defect, the Parties shall meet and agree whether or not such impact on performance is attributable to the Defect, failing which agreement, the matter may be referred for resolution under Clause 39.

19.4.3 If there is an impact to the performance of the Plant attributable to the Defect, the Contractor shall carry out Remedial Works to make good such deficiency in performance at its cost and risk.

19.5 Search for Cause of Defects

19.5.1 The Contractor shall, if required by Tabreed in writing, search for the cause of any Defect under the direction of Tabreed at the Contractor's cost and risk.

19.5.2 Tabreed may make an inspection of the Works immediately prior to the expiration of the relevant Defects Correction Period and give notice to the Contractor in respect of any Defect that may be observed or discovered during such inspection, requiring the Contractor to carry out the Remedial Works at the Contractor's cost and risk.

19.6 Up-dated documents for Defects

The Contractor shall provide Tabreed with all updated as-built drawings, instructions, procedures and changes to the Manuals necessitated by any Remedial Works or modifications to the Works carried out during the Defects Correction Period as soon as reasonably practicable after carrying out any Remedial Works or modifications to the Works carried out during the Defects Correction Period.

19.7 Subcontractor Warranties

19.7.1 The Contractor shall, other than in respect of Tabreed Items, obtain standard vendor warranties from its Subcontractors of Equipment or Materials for the benefit of Tabreed for not less than 12 months from the Acceptance Date. The warranties shall not contain any exclusions or limitations that Tabreed reasonably determines are unduly onerous.

19.7.2 The Contractor shall transfer and assign the benefit of any warranties from any Subcontractor of any Equipment or Materials which extends beyond the Defects Correction Period to Tabreed if requested to do so by Tabreed.

19.7.3 The Contractor shall procure that all Subcontractors of Equipment or Materials will supply the Contractor with Manuals and endeavour to procure that all Subcontractors of Equipment or Materials will offer to provide to Tabreed, at competitive rates, directly (or its designees) or through authorised agents or distributors, prevention and other maintenance services for at least 2 years after Final Completion.

19.8 Latent Defects

With the exception of Clause 19.7.3, this Clause 19 shall apply in respect of Latent Defects with the following amendments:

19.8.1 replace "Defect" with "Latent Defect";

19.8.2 replace "Defects Correction Period" with "Latent Defect Period";

19.8.3 delete the last sentence of Clause 19.2.1; and

19.8.4 delete ", subject to a maximum of 24 months from the Acceptance Date" in Clause 19.2.2.

20. CONTRACT PRICE

20.1.1 The Contract Price is the complete compensation payable to the Contractor for the performance of all Works including:

- (a) all Taxes (including UAE Customs Duties) on all Equipment, Materials and labour furnished by the Contractor and its Subcontractors;
- (b) all Taxes otherwise arising out of the Contractor's performance of the Works; and
- (c) all contingencies.

20.1.2 The Contract Price shall not be adjusted to take account of any increases in the Contractor's costs of performing its obligations under this Contract of any nature whatsoever including currency fluctuations, changes in taxation, inflation or otherwise (except as otherwise provided for in Clause 33 or elsewhere in this Contract).

20.1.3 The Contract Price excludes:

- (a) the utility connection fees and charges of regulatory authorities explicitly mentioned in Exhibit 1 (*Project Specific Terms*), Agreed Clarification List or Tabreed's Requirements; and
- (b) Taxes on Tabreed Items in accordance with Clause 5.7.3.

21. PAYMENT

21.1 Payment Mechanics

The Contract Price shall be paid by Tabreed to the Contractor at the times and in the manner required by this Clause 21 and Exhibit 1 (*Project Specific Terms*).

21.2 Advance Payment

21.2.1 Following receipt of the Advance Payment Bond and an application for payment of the Advance Payment, Tabreed shall pay the Advance Payment to the Contractor as an interest-free loan.

21.2.2 The Advance Payment shall be repaid by the Contractor in the manner as set out in Exhibit 1 (*Project Specific Terms*) until such time as the Advance Payment has been repaid and its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in the Interim Payment Certificates.

21.2.3 If the Advance Payment has not been repaid prior to Provisional Acceptance or on termination of this Contract, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to Tabreed.

21.3 Retention

21.3.1 Tabreed shall be entitled to retain payment of the amounts as set-out in Exhibit 1 (*Specific Project Terms*) as further security for the performance by the Contractor of its obligations under this Contract ("**Retention**").

21.3.2 All unused Retention amounts held by Tabreed shall be paid by Tabreed to the Contractor upon the later of:

- (a) 60 days after the Acceptance Date;
- (b) the delivery of the Defects Correction Bond; and
- (c) all Liquidated Damages having been paid by the Contractor (if applicable).

21.4 Application for Payments other than the Final Payment

On the last day of each month, the Contractor shall submit to Tabreed for approval an application for payment of amounts to which the Contractor considers itself entitled using a draft Interim Payment Certificate, which shall be accompanied by all supporting documentation and additional data (such as evidence of shipment, bills of lading or other documents of title) as may reasonably be requested by Tabreed.

21.5 Approval of an Interim Payment Certificate

21.5.1 Tabreed shall, within 7 days after receiving a draft Interim Payment Certificate from the Contractor, inspect the Works and notify the Contractor in writing either:

- (a) it approves of the draft Interim Payment Certificate, in which case Tabreed shall, subject to Clause 21.5.2, deliver an Interim Payment Certificate to the Contractor; or
- (b) that the Milestone or the progress of Works as the case may be as set out in Exhibit 1 has not been achieved or that Tabreed is unable to verify that the Milestone or the progress of Works has been achieved, in which case Tabreed shall give written notice stating the reasons and if applicable that it needs further supporting documentation and data (the nature of such documentation and data to be specified to the extent practicable) to verify the application and/or particulars of the Works which remain outstanding in order for the Milestone or the progress of Works to be achieved and an Interim Payment Certificate issued.

21.5.2 The Parties agree:

- (a) that any application for payment or a Certificate of Payment that is inaccurate, incomplete or lacks the supporting documents required by this Clause 21 shall not, to the extent of that deficiency, constitute a valid application for payment or a Certificate of Payment and shall not be approved for payment or paid for by Tabreed, to the extent of such deficiency, until the same is remedied; and
- (b) that the Contractor shall only be paid in respect of Works that have been completed and approved by Tabreed or Milestones that have been achieved. In respect of agreed Milestones, no payment shall be due for partially achieved Milestones.

21.5.3 Every Interim Payment Certificate shall set out the total sum due to the Contractor from Tabreed up to the date set out in the Interim Payment Certificate in respect of:

- (a) Milestones achieved or Works completed as the case may be as set-out in Exhibit 1; and/or
- (b) claims for Additional Payment,

less:

- (c) the total of any sums previously certified in Interim Payment Certificates;
- (d) any sum payable under this Contract by the Contractor to Tabreed; and/or
- (e) any deductions from the Contract Price authorised by this Contract (including any Retention).

21.6 Corrections to Certificates of Payment

21.6.1 Tabreed may, in any Certificate of Payment, make any correction for errors that should properly be made in respect of any previous Interim Payment Certificate.

21.6.2 If any sum shall become payable to the Contractor under this Contract otherwise than for matters specified in Clause 21.2, the amount thereof shall be included in the next Interim Payment Certificate.

21.6.3 If any sums shall become payable under this Contract by the Contractor to Tabreed, whether by deduction in the Contract Price or otherwise, the amount thereof shall be deducted in the next Certificate of Payment or, if no such Certificate of Payment is due, such sum shall be recoverable as a debt from the Contractor to Tabreed within 28 days of Tabreed's written demand.

21.7 Earliest date to apply for a Milestone Payment

In respect of payment by Milestone, the earliest the Contractor shall be entitled to apply for payment in respect of any Milestone is the relevant month set out in the Milestone Payment Schedule, provided always that the Parties shall act reasonably to agree an adjustment to the Milestone Payment Schedule if the Contractor has a justifiable reason to request for such an adjustment.

21.8 Invoices

By the 10th day of each month, the Contractor shall submit to Tabreed an invoice for payment which shall reflect the approved Interim Payment Certificates issued that month. Each invoice shall be accompanied by the approved Interim Payment Certificate to which the application for interim payment relates and all other supporting documentation and additional data as Tabreed may reasonably require to substantiate the Contractor's right to payment.

21.9 Interim Payment

21.9.1 The issue of an Interim Payment Certificate shall not be deemed to be evidence that any other certificate has been or should be issued nor shall the requirement for the issue of an Interim Payment Certificate affect the requirements for the issue of any other certificate. The issue of an Interim Payment Certificate shall not be taken to mean that the relevant Works have been completed in accordance with the terms of this Contract.

21.9.2 No Interim Payment Certificate shall be relied upon as conclusive evidence of any matter stated therein, nor shall it affect or prejudice any right of Tabreed or the Contractor against each other.

21.10 Payments

21.10.1 Within the Credit Period following receipt by Tabreed of the invoice submitted in accordance with Clause 21.8, Tabreed shall, subject to Clause 23.4.3, pay to the Contractor the full undisputed amount specified therein less any permitted set-off, deduction or withholding (including in accordance with Clauses 21.2.2, 21.13 and 21.16) and any Retention.

21.10.2 Any payment which becomes payable on any day which is not a Business Day shall be effected on the immediately succeeding Business Day.

21.11 Funders Requirements

The Contractor acknowledges that the Funders' Representative may be required to approve Certificates of Payment (within the periods referenced in Clause 21) and the payment of Contractor's invoices by Tabreed.

21.12 Method of Payment

Payments of the Contract Price shall be made by telegraphic wire transfer in immediately available funds to the accounts and at the Abu Dhabi bank notified by the Contractor to Tabreed within 10 days of the Effective Date or such other accounts as may be advised by the Contractor to Tabreed by not less than 10 Business Days prior written notice.

21.13 Set-off

Tabreed shall be entitled to set-off any sum payable by the Contractor to Tabreed against any sum payable by Tabreed to the Contractor under this Contract.

21.14 Repayment of Excess

If for any reason either Party has paid the other sums in excess of those properly due under this Contract, the overpaying Party may require that such excess be repaid and the other Party shall promptly make such repayment.

21.15 Final Payment Certificate

21.15.1 The Contractor shall make an application to Tabreed for the Final Payment Certificate within 60 days after the Acceptance Date. The Contractor's application shall include a draft final account prepared by the Contractor showing:

- (a) details of all adjustments which have been made to the Contract Price and all Additional Payments which have arisen and which, in each case, have been reflected in payments already made to the Contractor;
- (b) a payment history of the Works, showing payments made (and their dates) and correlating these to the achievement of Milestones (where applicable) and the Milestone Payment Schedule (where applicable) and to the Contract Price adjustments and Additional Payments so that the payments made are explained and justified;
- (c) a complete statement of any claims for outstanding elements of the Contract Price, any adjustments to the Contract Price and any other Additional Payments to which the Contractor considers itself entitled and which have not yet been paid including return of any unused Retention (whether the same are agreed or disagreed upon by the Parties); and

- (d) a statement of that sum which the Contractor considers it will be entitled to be paid (or obliged to pay to Tabreed) following the issuing of the Final Payment Certificate.

21.15.2 Tabreed may consider the Contractor's application for the Final Payment Certificate for up to 30 days and during this period the Contractor shall provide Tabreed with such further information and supporting documents as Tabreed may reasonably request.

21.15.3 If and when the Parties agree the final account for the Works, Tabreed shall issue the Final Payment Certificate promptly thereafter. If the Parties have not agreed the final account within 60 days of the Contractor's application to Tabreed, either Party may refer the matter for resolution pursuant to Clause 39.

21.15.4 The Final Payment Certificate shall be conclusive evidence that all necessary effect has been given to those provisions of this Contract which require an adjustment to the Contract Price, or of the Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance or the Contracted Date for Acceptance, or the making of any Additional Payment by Tabreed to the Contractor and return of any unused Retention. The aforesaid conclusive effect shall not apply:

- (a) to any matter or question which is affected by fraud or dishonesty;
- (b) to any matter or question which either Party has referred for resolution pursuant to Clause 39 (or in respect of which either Party has otherwise commenced any proceedings) before or within 182 days after the date of issue of the Final Payment Certificate; and
- (c) to any of the Contractor's obligations or Tabreed's rights during the Defects Correction Period or Latent Defects Period as set out in this Contract.

21.15.5 No Certificate of Payment issued under this Contract, and no consent or approval given or payment made by Tabreed to the Contractor, shall be conclusive evidence that the Contractor has performed any of its obligations under this Contract or that any design, Works, Equipment or Materials are in accordance with this Contract.

21.15.6 For the avoidance of doubt, the issuing of the Final Payment Certificate shall not relieve the Contractor of any liability or obligation under this Contract and in particular under Clause 18.

21.16 **Withholding**

21.16.1 Tabreed may withhold amounts from Milestone payments and any other payments due to the Contractor under this Contract that are sufficient to meet any Applicable Laws to withhold Taxes payable by the Contractor in respect of the Work, provided that Tabreed has given prior notice to the Contractor giving full details of the amounts to be withheld and the reasons therefor.

21.16.2 Tabreed shall be entitled to deduct from or withhold any other amount, or part thereof, payable to the Contractor under the Contract in respect of any claim, liability, judgement, suit, proceeding, action, cost (including but

limited to legal costs on a solicitor and client basis), expense, demand of whatsoever nature which Tabreed has or may have against the Contractor for or in respect of the Contract or any other contract which the Contractor has entered, or may hereafter enter, into with the Company or in respect of any matter or in any way relating thereto.

22. TAXES

The Contractor shall bear and pay all Taxes (including UAE Customs Duties) assessed or imposed on the Contractor, its Subcontractors or their personnel, and Tabreed shall use its reasonable endeavours to support the Contractor's attempts to achieve reductions in or exemptions from Taxes.

23. SECURITY

23.1 Advance Payment Bond

23.1.1 To secure the Contractor's repayment of the Advance Payment, the Contractor shall within 7 days of the Effective Date, provide to Tabreed a duly executed Advance Payment Bond in the amount equal to the Advance Payment. The delivery of the Advance Payment Bond shall be a condition precedent to the Contractor's entitlement to any payment, including the Advance Payment, under this Contract. The Advance Payment Bond shall be valid until the Advance Payment has been repaid.

23.1.2 If the Advance Payment has not been fully repaid by the date 30 days prior to the expiry date of the Advance Payment Bond, the Contractor shall extend the validity of the Advance Payment Bond until the Advance Payment has been repaid.

23.2 Performance Bond

23.2.1 To secure the Contractor's performance of its obligations under this Contract (including the Contractor's obligation to pay for labour, Equipment and Materials and its obligation to pay Liquidated Damages and other damages and costs) the Contractor shall deliver to Tabreed **as at the Effective Date** the duly executed Performance Bond in an amount as set out in Exhibit 1 (*Project Specific Terms*). The delivery of the Performance Bond shall be a condition precedent to the Contractor's entitlement to any payment, including the Advance Payment, under this Contract. The Performance Bond shall be valid until the later of:

- (a) 60 days after the Acceptance Date;
- (b) the delivery of the Defects Correction Bond; and
- (c) all Liquidated Damages having been paid (if applicable).

23.2.2 For the avoidance of doubt, where the Contract Price is increased or decreased, the amount of the Performance Bond shall be increased or decreased in the manner as set out in Exhibit 1 (*Project Specific Terms*).

- 23.2.3 Tabreed shall be entitled to draw on the Performance Bond in respect of any outstanding obligations of the Contractor under this Contract.
- 23.2.4 For the avoidance of doubt, the delivery of the Performance Bond by the Contractor to the satisfaction of Tabreed shall be a condition precedent to the payment of any sums due to the Contractor by Tabreed under this Contract.

23.3 Defects Correction Bond

- 23.3.1 As a condition precedent to the release of the Performance Bond, the Contractor shall issue a Defects Correction Bond equal to the amount as set out in Exhibit 1 (*Project Specific Terms*) which shall remain valid until 30 days after Final Completion.
- 23.3.2 For the avoidance of doubt, where the Contract Price is increased or decreased, the amount of the Defects Correction Bond shall be increased or decreased in the manner as set out in Exhibit 1 (*Project Specific Terms*).
- 23.3.3 Tabreed shall be entitled to draw on the Defects Correction Bond in respect of any outstanding obligations of the Contractor under this Contract.

23.4 Bond Requirements

The Bonds shall be provided in substantially the form set out in Exhibit 13 (*Form of Bonds and Guarantees*), subject to the following:

- 23.4.1 if the identity of the bank issuing any Bond is not one of the banks listed in Exhibit 13 (*Form of Bonds and Guarantees*), then it is required to be issued by a first rate international bank of good standing approved by Tabreed and licenced to carry out banking business in the Emirate of Abu Dhabi, such approval not to be unreasonably withheld or delayed;
- 23.4.2 the Bonds shall be provided for amounts and for the periods of cover set out in Clauses 23.1 or 23.3. If any Bond is issued with a fixed expiry date (including where such date is provided for in the relevant form set out in Exhibit 13 (*Form of Bonds and Guarantees*)) and such expiry date may occur prior to the end of the period of cover provided for in Clauses 23.1 or 23.3, the Contractor shall ensure that the expiry date under the Bond is extended to the end of the relevant period or deliver a replacement Bond to cover such period issued by a bank meeting the requirements of Clause 23.4.1 and previously approved by Tabreed, such approval not to be unreasonably withheld and otherwise on the same terms as the replaced Bond. Such extended or replacement Bond shall be delivered duly executed to Tabreed no later than 30 days before the relevant expiry date. Any expiry date under a Bond or an extension or replacement thereof shall be without prejudice to existing claims made under the Bond; and
- 23.4.3 if the Contractor fails to provide an extension to a Bond or replacement Bond pursuant to Clause 23.4.2, Tabreed shall not be required to pay any invoices unless and until the Contractor provides the relevant extended or replacement Bond, and furthermore Tabreed has the right to draw the outstanding balance of the Bond and hold the same on security for compliance by the Contractor with its obligations and liabilities under this Contract. Tabreed shall be

entitled to make deductions against any amounts so held in respect of any claim for which it would have been entitled to draw against an extended or replacement Bond (had the Contractor provided the same pursuant to Clause 23.4.2), but shall otherwise return to the Contractor the remaining balance of such amounts (without any interest) if the Contractor provides the relevant extended or replacement Bond or, if no extended or replacement Bond is provided, following the end of the relevant period of cover for such Bond.

23.5 **Bond Expenses**

All fees, Taxes and expenses associated with procuring, preparing, completing, stamping (if applicable) and enforcing each of the Bonds shall be paid by the Contractor.

23.6 **Direct Agreement**

The Contractor shall, if required by Tabreed, execute a direct agreement with the Funders in the form as set out in Exhibit 17 (*Form of Direct Agreement*). The Contractor shall enter into such other direct agreements in the form as set out in Exhibit 17 (*Form of Direct Agreement*) with the Funders and such amendments as are reasonably requested by Tabreed or the Funders or are made necessary by the refinancing or other modifications in the financing of the Project.

23.7 **Non-Payment of Liquidated Damages**

If the Contractor fails to pay any Liquidated Damages when due and payable in accordance with this Contract, Tabreed shall be entitled to payment of such amount or amounts under the Bonds or may, at Tabreed's election, offset such Liquidated Damages in whole or in part against any amounts due or becoming due by Tabreed to the Contractor under this Contract and/or offset the same from the Retention and notify the Contractor of the same. To the extent that the Contractor's liability for Liquidated Damages exceeds the aggregate amount of the Performance Bond or such offset by Tabreed is not sufficient to cover the Liquidated Damages, Tabreed shall, without limiting any of its other rights under this Contract, be entitled to require the Contractor to make direct payments thereof to Tabreed on written demand.

24. **SUPPLY OF DOCUMENTS AND LICENCE FOR USE**

24.1 **Access to Documents**

The Contractor shall provide Tabreed, the Owner's Engineer, the Purchasers, the Funders and the Funders' Representative with access to all Documents in connection with its obligations under this Contract and these persons shall be entitled to use and copy all such Documents. The Contractor shall maintain a complete set of copies of all hard copy design and technical Documents, and material Documents of other kinds, at the Site, together with a means of access from the Site to any design Documents and material Documents of other kinds stored by electronic means.

24.2 **IPR Licence**

24.2.1 All Intellectual Property Rights shall be the sole and exclusive property of the Contractor and the Contractor hereby grants to Tabreed a non-exclusive, worldwide, transferable, irrevocable and perpetual royalty free licence to use, modify and copy all Intellectual Property Rights (other than those vested in Tabreed itself and any contractor or consultant retained directly by Tabreed

other than the Contractor), for the purpose of completing, operating and maintaining, extending, repairing, replacing, modifying and transferring the Plant and/or the Works. Such licence shall carry the right to grant sub-licences and shall be transferable to the Funders, the Purchasers and to third parties in accordance with Clause 40.

24.2.2 The Contractor shall, at its own cost, acquire for itself from all relevant third parties such rights as are necessary in order for the Contractor to be able to comply with its obligations under Clause 24.2.1.

24.2.3 The Contractor agrees to execute or procure the execution of such documents and do all such things as may be necessary or reasonably desirable to give effect to the provisions of this Clause 24.2.

24.3 **No Infringement**

24.3.1 The Contractor warrants to Tabreed that:

- (a) the Contractor and the Contractor Parties shall not infringe the Intellectual Property Rights of any person in the course of performing the Contractor's obligations under this Contract; and
- (b) the Works and the Plant will not by their nature constitute or depend for their existence upon an infringement of the Intellectual Property Rights of any person and may be operated and maintained by any person without any such infringement whether on the part of Tabreed, that person or the Contractor or the Contractor Parties.

24.3.2 The Contractor shall indemnify, defend and hold harmless Tabreed from and against all Claims which arise out of or are in relation to any breach of this Clause 24.

25. **CONFIDENTIAL INFORMATION**

25.1 **Confidentiality**

25.1.1 Each Party shall hold, and shall use its best efforts to cause its shareholders, professional advisers and Affiliates to hold, in strict confidence from any other person (other than any shareholder, professional advisers, Affiliate or Funder) all documents and information concerning the other Party or any of its shareholders or Affiliates furnished to it or its advisors, consultants, contractors or agents by the other Party in connection with this Contract or the transactions contemplated hereby ("**Confidential Information**"), unless:

- (a) required to disclose any such information by judicial or administrative process (including in connection with obtaining from Public Sector Entities the necessary Licences and approvals for this Contract and the transactions contemplated hereby) or by other requirements of Applicable Law;
- (b) disclosed to persons providing or proposing to provide financing to Tabreed or the Funders;
- (c) disclosed in or pursuant to the offering statement provided to potential investors in Tabreed;

- (d) disclosed in an action or proceeding brought by either Party in pursuit of its rights or in the exercise of its remedies hereunder; or
- (e) disclosed in accordance with the requirements of any of the Project Documents.

25.1.2 This Clause 25.1 shall not apply to such documents or information that were:

- (a) previously known by the Party receiving such documents or information;
- (b) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no fault of such receiving Party; or
- (c) later acquired by such receiving Party from another source if such receiving Party is not aware that such source is under an obligation to the other Party to keep such documents and information confidential.

25.2 Required Disclosure

Any Party required by Applicable Law or in the course of administrative or judicial proceedings, to disclose information that is otherwise required to be maintained in confidence pursuant to Clause 25.1, may make disclosure notwithstanding the provisions of such Clause; provided, however, that the Party making the disclosure shall give prior notice to the other Party of the requirement and the terms thereof and shall cooperate to the maximum extent practicable to minimise the disclosure of the information. The Party disclosing such information shall use reasonable efforts, at the other Party's cost, to obtain proprietary or confidential treatment of such information by the third party to whom the information is disclosed and to the extent such remedies are available, shall use reasonable efforts to seek protective orders limiting the dissemination and use of the information at the other Party's cost. Moreover, this Contract does not alter the rights of either Party to object to the Applicable Laws or proceedings requiring the disclosure.

25.3 Restrictions on Use

Neither Party shall use any Documents or other information received from the other Party for any purpose other than the performance of its obligations under this Contract or, in the case of Tabreed, the operation and maintenance of the Plant and/or the Works.

26. DELAY DAMAGES

26.1 Contracted Dates for Key Milestones, Provisional Acceptance and Acceptance

The Contractor warrants that it shall:

- 26.1.1 commence execution of the Works on the Commencement Date and proceed regularly and diligently with the Works in accordance with the Programme and the Contractor Works Schedule; and
- 26.1.2 design, engineer, procure, construct, erect, carry out commissioning, testing and complete the Works in accordance with this Contract to attain:

- (a) the Key Milestones on or before the Contracted Dates for Key Milestones;
- (b) Provisional Acceptance on or before the Contracted Date for Provisional Acceptance; and
- (c) Acceptance on or before the Contracted Date for Acceptance.

26.2 Delay Liquidated Damages

26.2.1 If:

- (a) any of the Key Milestones have not been attained on or before the associated Contracted Dates for Key Milestones;
- (b) Provisional Acceptance has not been attained on or before the Contracted Date for Provisional Acceptance; and/or
- (c) Acceptance has not been attained on or before the Contracted Date for Acceptance,

in each case, taking into account the Contractor's entitlement to extend the relevant contracted date in accordance with this Contract, the Contractor shall pay to Tabreed liquidated and ascertained damages ("**Delay Liquidated Damages**") at the rate as set out in Exhibit 1 (*Project Specific Terms*) (or part thereof for any part period) for the relevant periods commencing from:

- (d) the associated Contracted Dates for Key Milestones and expiring on the Key Milestone Dates;
- (e) the Contracted Date for Provisional Acceptance and expiring on the Provisional Acceptance Date; and/or
- (f) the Contracted Date for Acceptance and expiring on the Acceptance Date.

26.2.2 Any payments of Delay Liquidated Damages shall be made by the Contractor to Tabreed within 20 days of the Contractor's receipt of a notice from Tabreed which sets out the amounts of Delay Liquidated Damages which are then due and payable.

26.2.3 The Parties acknowledge and agree that because of the unique nature of the Works and the unavailability of substitute facilities, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Tabreed as a result of the Contractor's failure to achieve the Key Milestones by the associated Contracted Dates for Key Milestones, Provisional Acceptance by the Contracted Date for Provisional Acceptance and/or Acceptance by the Contracted Date for Acceptance. The Parties further agree that Tabreed shall suffer loss and damage if the Contractor fails to meet such obligations and that:

- (a) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom;

- (b) any Delay Liquidated Damages which are payable under this Contract are in the nature of liquidated damages, and not a penalty, and are fair and reasonable; and
- (c) such payments represent a genuine and reasonable estimate of fair compensation to Tabreed for the losses that may reasonably be anticipated from such failure.

26.2.4 Except for Tabreed's right to terminate this Contract in accordance with Clause 37, payment of Delay Liquidated Damages by the Contractor to Tabreed shall be Tabreed's exclusive remedy for the Contractor's failure to achieve the Key Milestones by the associated Contracted Dates for Key Milestones, Provisional Acceptance by the Contracted Date for Provisional Acceptance and/or Acceptance by the Contracted Date for Acceptance.

26.3 **Effect of Delay Liquidated Damages**

The payment or deduction of Delay Liquidated Damages shall not relieve the Contractor from its obligations to carry out and complete the Works, or from any other of its obligations or liabilities under this Contract.

26.4 **Expiry of Delay Liquidated Damages**

If the Contractor fails to attain any of the Key Milestones, Provisional Acceptance and/or Acceptance by the date on which Tabreed has become entitled to the maximum amount of Delay Liquidated Damages for delay (taking into account the Contractor's entitlement to extend the associated Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and the Contracted Date for Acceptance under this Contract) as set out in Clause 28.3.3, Tabreed may:

- 26.4.1 terminate this Contract under Clause 37 and have the Works or any part thereof completed to attain each Key Milestone, Provisional Acceptance and/or Acceptance by itself or by others at the Contractor's cost;
- 26.4.2 require the Contractor to complete the Works to attain each Key Milestone, Provisional Acceptance and/or Acceptance at the Contractor's cost; or
- 26.4.3 reject the Works and terminate this Contract and the provisions of Clause 27.5 shall apply.

27. **GUARANTEED PERFORMANCE LEVELS AND PERFORMANCE LIQUIDATED DAMAGES**

27.1 **Guaranteed Performance Levels**

- 27.1.1 The Contractor agrees to perform the Works and construct the Plant such that the Plant shall meet the Guaranteed Performance Levels during the Performance Tests.
- 27.1.2 The Contractor warrants that the Plant shall achieve the Guaranteed Performance Levels during the Performance Tests.

27.2 Liquidated Damages for Performance

27.2.1 If the Performance Tests demonstrate that the Plant has achieved all the Guaranteed Performance Levels other than those for specific matters listed in Exhibit 1 (*Project Specific Terms*) and Exhibit 11 (*Inspection, Commissioning and Operational Testing*), provided that:

- (a) the Plant has achieved the Minimum Performance Levels during the Performance Tests;
- (b) the Default Date of Acceptance has not been reached; and
- (c) the cap on Delay Liquidated Damages set out in Clause 28.3.3 has not been reached,

the Contractor may elect to incur Delay Liquidated Damages and continue its Works to achieve the Guaranteed Performance Levels for specific matters listed in Attachment 1 of Exhibit 1 (*Project Specific Terms*) and Exhibit 11 (*Inspection, Commissioning and Operational Testing*) or to apply for Acceptance and pay the Liquidated Damages applicable.

27.2.2 However, once the Default Date for Acceptance has been reached or the cap on Delay Liquidated Damages set out in Clause 28.3.3 has been reached (whichever shall first occur), if the Plant has achieved all the Guaranteed Performance Levels other than those for specific matters listed in Attachment 1 of Exhibit 1 (*Project Specific Terms*) and Exhibit 11 (*Inspection, Commissioning and Operational Testing*), provided that the Plant has achieved the Minimum Performance Levels during the Performance Tests, the Contractor shall pay to Tabreed Performance Liquidated Damages in such sums as are computed according to Exhibit 1 (*Project Specific Terms*) ("**Performance Liquidated Damages**"), as applicable, and the full Delay Liquidated Damages.

27.2.3 Any payment of Performance Liquidated Damages shall be made by the Contractor to Tabreed within 20 days of the Contractor's receipt of a notice from Tabreed which sets out the amount of Performance Liquidated Damages payable.

27.2.4 The Parties agree that because of the unique nature of the Works and the unavailability of substitute facilities, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Tabreed as a result of the Contractor's failure to complete the Works so that the Plant meets the Guaranteed Performance Levels for those specific matters listed in Exhibit 1 (*Project Specific Terms*) and Exhibit 11 (*Inspection, Commissioning and Operational Testing*) prior to the Contracted Date for Acceptance. The Parties further agree that Tabreed shall suffer loss and damages if the Contractor fails to meet such obligations and that:

- (a) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom;
- (b) any Performance Liquidated Damages which are payable under this Contract are in the nature of liquidated damages, and not a penalty, and are fair and reasonable; and

- (c) such payments represent a genuine and reasonable estimate of fair compensation to Tabreed for the losses that may reasonably be anticipated from such failure.

27.2.5 The Performance Liquidated Damages shall be Tabreed's exclusive remedy for the Contractor's failure to achieve the Guaranteed Performance Levels for those specific matters listed in Exhibit 1 (*Project Specific Terms*) and Exhibit 11 (*Inspection, Commissioning and Operational Testing*) subject to the Minimum Performance Levels having been achieved.

27.3 **Effect of Performance Liquidated Damages**

The payment or deduction of Performance Liquidated Damages shall not relieve the Contractor from its obligations to carry out and complete the Works, or from any other of its obligations or liabilities under this Contract.

27.4 **Failure to Attain Minimum Performance Levels**

If:

27.4.1 the results of the Performance Tests demonstrate that the Plant has not achieved the required Minimum Performance Levels on or before the Default Date for Acceptance; or

27.4.2 Tabreed becomes entitled to the maximum amount of Delay Liquidated Damages for delay,

(whichever is earlier), Tabreed may:

27.4.3 require such reduction in the Contract Price as may be agreed (or in default of agreement, determined pursuant to Clause 39 to be a reasonable reduction, with reference to the Performance Tests results, the ongoing delay and the effect on the Plant and the Project), and following such reduction, the Plant shall, subject to meeting all other Acceptance criteria, achieve Acceptance;

27.4.4 reject the Works and terminate this Contract and the provisions of Clause 27.5 shall apply; or

27.4.5 terminate this Contract under Clause 37.

27.5 **Consequences of Rejection**

Without prejudice to any other rights under this Contract or otherwise, upon rejection of the Works, pursuant to Clause 26.4.3 or 27.4.4, Tabreed shall be entitled to recover from the Contractor all sums paid to the Contractor in respect of the Works including the cost of dismantling and removing the same, clearing and restoring the Site to its original condition, returning Materials, Equipment and Construction Equipment to the Contractor (but not the Tabreed Items) or otherwise disposing of them in accordance with the Contractor's reasonable instructions and all other costs (including financing costs) incurred by Tabreed in connection with the rejection of the Works and performing the Contractor's obligations under this Contract.

28. LIMITATIONS ON LIABILITY

28.1 Aggregate Liability

28.1.1 The aggregate liability of the Contractor to Tabreed for any matters arising under or in connection with this Contract shall in no case, except as provided in this Clause 28.1, exceed an amount equal to 100% of the Contract Price ("**Contract Liability Limit**"). The Contract Liability Limit shall not apply to or be reduced by (and in calculating the same, no account shall be made in respect of):

- (a) payments made by the Contractor to the extent corresponding payments are received by the Contractor pursuant to insurance policies required to be effected and maintained pursuant to Clause 29 (or would have been received but for an act, omission, neglect or default of the Contractor);
- (b) the Contractor's liabilities towards third parties;
- (c) the Contractor's liabilities pursuant to Clause 5.26 or Clause 29.9;
- (d) the Contractor's liability in the case of gross negligence, fraud, fraudulent misrepresentation or wilful misconduct of itself or any Contractor Party;
- (e) the Contractor's liability in respect of its indemnity obligations under this Contract;
- (f) the Contractor's liability in respect of its warranty of title pursuant to Clause 12.1.2, and its warranty of no infringement of Intellectual Property Rights pursuant to Clause 24.3.1, any failure to pay any Subcontractor resulting in Tabreed having to make such payment on the Contractor's behalf and in respect of the discharge of any Lien pursuant to Clauses 12.2.5 and 12.3;
- (g) the cost of any dispute resolution proceedings commenced under Clause 39 and the cost of enforcement of any awards of such proceedings; and/or
- (h) any costs or expense which the Contractor is obliged to expend in excess of the Contract Price in order to carry out and complete the Works.

28.1.2 The Contract Liability Limit shall not limit the obligation of the Contractor to perform the Works as required under this Contract.

28.2 Exclusion of Consequential Loss

Neither Party shall be liable to the other Party for any consequential or indirect loss or damages, nor for incidental, punitive or exemplary damages, loss of profit or interest or revenues, loss of production, cost of replacement power and water, loss of contract or time, financial costs, loss of data or information or such consequential or indirect loss or damages based on third party contracts, provided always that this Clause 28.2 shall not prevent, limit or exclude:

- 28.2.1 any liability of the Contractor to pay Liquidated Damages under this Contract, the termination payments payable under Clauses 37.3.6, 37.3.8 and 37.3.9 and any interest payable under this Contract;
- 28.2.2 any liability of the Contractor relating to lost revenues as a result of acceptance by Tabreed of lower levels of performance under Clause 27.4.3;
- 28.2.3 any liabilities to the extent corresponding payments are received or are to be subsequently received pursuant to insurance policies required to be effected and maintained pursuant to Clause 29;
- 28.2.4 any liability pursuant to Clause 29.5.3 and 29.9;
- 28.2.5 any liability in the case of gross negligence, fraud, fraudulent misrepresentation or wilful misconduct; or
- 28.2.6 the Contractor's liability in respect of its indemnity obligations under this Contract including those set out in Clauses 5.2.2(c), 5.11.6, 28.5 and 34.7, and, any sums payable pursuant to any indemnity in this Contract in respect of a claim by a third party paid by the relevant indemnified Party.

28.3 **Caps on Liquidated Damages**

The liability of the Contractor to Tabreed for:

- 28.3.1 Liquidated Damages in aggregate shall not exceed the amount as set-out in Exhibit 1 (*Project Specific Terms*);
- 28.3.2 Performance Liquidated Damages shall not exceed the amount as set-out in Exhibit 1 (*Project Specific Terms*); and;
- 28.3.3 Delay Liquidated Damages in aggregate shall not exceed the amount as set-out in Exhibit 1 (*Project Specific Terms*);

28.4 **Extent of Liability**

The limitations of liability under Clauses 28.1 and 28.2 shall also apply to such Party's employees, directors, contractors and Subcontractors as well as contractor's and Subcontractor's employees.

28.5 **Indemnification**

- 28.5.1 The Contractor agrees to indemnify and hold harmless Tabreed, the Purchasers, the Funders (including the Funders' Representative), the Owner's Engineer and their shareholders, agents, officers, directors, partners, Affiliates and employees (each, a "**Tabreed Indemnatee**") from and against any and all Claims incurred or sustained by a Tabreed Indemnatee as a result of:
 - (a) the sickness, injury or death of any person employed directly or indirectly by such Tabreed Indemnatee;
 - (b) damage to or destruction of any property or equipment of such Tabreed Indemnatee; and

- (c) the sickness, injury or death of any third party and the damage to or destruction of any property of any third party,

in each case, in consequence of:

- (d) any negligent act or omission by the Contractor or any of the Contractor Parties;
- (e) any violation or alleged violation of any Applicable Laws by the Contractor or any of the Contractor Parties;
- (f) a breach of this Contract by the Contractor; or
- (g) a material misrepresentation made by the Contractor to Tabreed.

28.5.2 The Contractor agrees to indemnify, defend and hold harmless the Tabreed Indemnitees from and against all Claims made against or suffered by any Tabreed Indemnatee:

- (a) under any applicable Environmental Law arising out of the condition of the Site or any Temporary Areas, the Contractor's construction or operation of the Plant or the Works including the discharge, release, storage, treatment, generation, disposal or escape of Hazardous Materials from the Plant or the Works, the contamination of the soil, air, surface water or groundwater at or around the Site or any Temporary Areas or any pollution, abatement, replacement, removal or other decontamination or monitoring obligations with respect thereto;
- (b) under any Applicable Law arising out of the Contractor's design, construction, testing or commissioning of the Works or the Interfaces; and
- (c) that arise from the breach by the Contractor or any of the Contractor Parties of any provision of Clause 5.20,
- (d) in relation to the Taxes, whether the Taxes are levied on the Contractor and/or Subcontractor or their respective employees or otherwise charged to or levied on any person in relation to or by reason of the Contractor's and/or the Subcontractor's performance of the Works and which may be levied by any and all authorities whatsoever.

except to the extent, in the case of paragraph (a), such Claim results from or arises out of the condition of the Site existing prior to the Commencement Date.

28.5.3 The Contractor shall not have any obligation to indemnify any Tabreed Indemnatee to the extent that any Claim arises due to the gross negligence or wilful misconduct of such Tabreed Indemnatee.

28.5.4 Tabreed agrees to indemnify and hold harmless the Contractor and its agents, officers, directors, partners, Affiliates and employees (each, a "**Contractor Indemnatee**") from and against any and all Claims incurred or sustained by a Contractor Indemnatee as a result of:

- (a) the sickness, injury or death of any person employed directly or indirectly by such Contractor Indemnatee;
- (b) damage to or destruction of any property or equipment of such Contractor Indemnatee; and
- (c) the sickness, injury or death of any third party and the damage to or destruction of any property of any third party,

in each case, in consequence of:

- (d) any negligent act or omission by Tabreed;
- (e) any violation or alleged violation of any Applicable Laws by Tabreed;
- (f) a breach of this Contract by Tabreed; or
- (g) a material misrepresentation made by Tabreed to the Contractor.

28.5.5 Tabreed shall not have any obligation to indemnify any Contractor Indemnatee to the extent that any Claim arises due to the gross negligence or wilful misconduct of such Contractor Indemnatee.

28.6 Indemnification Procedures

The liability of a Party to make a payment to the other for any Claim under Clause 28.5 and any other indemnity under this Contract shall become fixed upon any of the following events (each a "**Final Determination**"):

- 28.6.1 the settlement of the Claim with the prior written consent of the indemnifying Party;
- 28.6.2 a final decision or arbitral award with respect to the Claim by the appropriate court of competent jurisdiction or arbitral tribunal of competent jurisdiction and expiration of applicable appeal periods, unless such decision or award is appealed; or
- 28.6.3 if appealed, a final non-appealable decision of a local or federal appellate court of last resort with respect to the Claim.

28.7 Payment of Claim

All payments required to be made in respect of a Claim shall be made to the Tabreed Indemnatee or Contractor Indemnatee (as may be the case) within 20 days after notice to the Contractor or Tabreed (as may be the case) of the actual payment by the Contractor or Tabreed of an amount constituting a loss in respect of such Claim (as may be the case), but in no event earlier than 10 Business Days after the Final Determination of such Claim as provided in Clause 28.6.

28.8 Procedures

28.8.1 Each Party shall notify the other Party in writing of any matter potentially indemnifiable under this Contract as soon as such Party becomes aware of the potentially indemnifiable event; provided that the failure to provide timely notice shall not reduce the indemnifying Party's obligations except to the

extent of any additional losses suffered by the indemnified Party as a result of the indemnified Party's failure to provide timely notice.

28.8.2 The indemnifying Party may, at its option and at its cost, contest, defend and control the contest and defense of any Claim with respect to which it is or may be obligated to indemnify the indemnified Party under this Contract and with respect to which it or the indemnified Party is named as a party.

28.8.3 If the indemnified Party is also named as a party to any proceeding, the indemnified Party shall have the right to retain counsel at its own cost to advise it with respect to such contest and defense, and, unless the interests of the indemnifying Party and the indemnified Party with respect to such Claim are adverse, the indemnifying Party shall:

- (a) keep the indemnified Party and its counsel reasonably informed as to the progress of such contest and defense;
- (b) to the extent reasonably practicable, give the indemnified Party and its counsel the opportunity to review and comment in advance on all written submissions and filings relevant to the Claim; and
- (c) consider in good faith any reasonable suggestions made by the indemnified Party or its counsel or the request of the indemnified Party and its counsel to submit documentation or attend those portions of any meetings and proceedings that relate to the Claim.

28.8.4 Neither Party shall be indemnified by the other Party to the extent such Party has received payment for a Claim from another source, including insurance. If, after receipt of payment from the indemnifying Party in respect of a Claim, the indemnified Party shall later receive a payment from another source, including insurance, in respect of such Claim, the indemnified Party shall promptly pay to the indemnifying Party an amount equal to the amount of the payment received from such other source in respect of such Claim (provided, that the indemnified Party shall not be obligated to pay an amount in excess of the amount paid by the indemnifying Party to the indemnified Party).

28.8.5 The indemnifying Party shall pay to the indemnified Party all reasonable costs incurred by the indemnified Party in the enforcement of Clause 28.8, if (and only if) the indemnifying Party admits, or is adjudged, to have breached its obligation to indemnify the indemnified Party for a Claim.

29. **INSURANCE** **Tabreed Insurances**

Tabreed may, at its sole cost and expense, take out and maintain in effect during the execution of the Works up to the Acceptance Date and for the Defects Correction Period (where applicable), any such insurances in the amounts and on the terms that Tabreed, in its sole discretion, deems necessary.

29.2 **The Contractor Insurances**

29.2.1 The Contractor shall at its sole cost and expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Works, those insurances specified in Exhibit 6

(*Insurances*) in the amounts and with the deductibles and on the terms set out therein and in this Clause 29.

- 29.2.2 The Contractor shall ensure that, where applicable, its Subcontractors shall take out and maintain in effect adequate insurance policies for their own personnel and vehicles and all work executed by them under this Contract unless the Subcontractors are covered by the policies taken out by either Tabreed or the Contractor.
- 29.2.3 The insurances referred to in this Clause 29.2 shall cover all potential claimants, including all persons employed in connection with the Work with respect to whom claims for death or injury could be asserted against a Tabreed Indemnitee. Such insurance policies shall include a waiver of rights of subrogation against each Tabreed Indemnitee. All such insurance shall be issued by an insurer or insurers authorised to carry on business in the UAE.
- 29.2.4 The Contractor shall indemnify and hold harmless each Tabreed Indemnitee from and against any Claims in any way related to the failure on the part of Contractor or its Subcontractors to maintain the insurances required under this Clause 29.2.

29.3 Endorsements

- 29.3.1 The Contractor shall cause its insurers to provide the following endorsement items (or equivalent endorsements providing substantially the same protection) in its comprehensive or commercial general liability insurance policies and, if applicable, umbrella or excess liability policies relating to the Works including the Interfaces:
- (a) the Purchasers, Tabreed, the Contractor, the Funders and their directors, officers, employees and agents shall be additional insureds under such policies;
 - (b) the insurance shall be primary with respect to the interest of the Purchasers, Tabreed, the Contractor, the Funders and its directors, officers, employees and agents and any other insurance maintained by them is excess and not contributory with such policies (other than policies which by their nature are designed to operate in contribution);
 - (c) such policies shall include the following cross liability clause:

"Subject to the terms of the policy, if claims are made by reason of (i) personal and/or bodily injuries suffered by any employee or employees of one of the insured hereunder for which another insured hereunder is or may be liable, or (ii) damage to property belonging to any insured hereunder for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is made or may be made in the same manner as if separate policies have been issued to each insured hereunder, except with respect to the limits of insurance."; and
 - (d) notwithstanding any provision of the policies, the policies may not be cancelled, non-renewed or materially changed by the insurer without giving 30 days' or, in the case of cancellation for non-payment of

premium, 10 days' prior written notice to Tabreed, the Contractor and the Funders.

29.3.2 The Contractor shall cause its insurers to waive all rights of subrogation against Tabreed, the Purchasers and the Funders and against the employees of Tabreed, the Purchasers and the Funders in respect of a claim arising under its insurance policies, unless such claim arises from wilful misconduct or gross negligence of Tabreed its employees or contractors (except for non-vitiation cover where rights of subrogation may be retained by the insurers in relation to an insured party who has vitiated the cover).

29.4 Insurance Certificates

29.4.1 On or before the dates set out in Exhibit 6 (*Insurance*) and thereafter at least 35 days prior to the date set for each annual renewal thereof or otherwise in accordance with the terms of the relevant insurance policies, the Contractor shall cause its insurers or agents to provide to Tabreed and, where required by Tabreed, the Purchasers and the Funders for such person's review and approval, full copies of the insurance policies evidencing the policies and terms that are required to have been procured by it pursuant to this Clause 29 and Exhibit 6 (*Insurances*).

29.4.2 The Contractor shall also provide Tabreed with copies of receipts or statements from its insurers evidencing payment of the annual premiums in respect of the insurance coverages and endorsements or that such premiums are not overdue.

29.4.3 Failure by the Contractor to obtain the insurance coverage or certificates of insurance required by this Clause 29 shall not relieve it of the insurance requirements set out or relieve or limit its obligations and liabilities under any other provision of this Contract.

29.4.4 If the Contractor fails to procure or maintain any insurance required pursuant to this Clause 29, then Tabreed shall have the right to procure such insurance at the Contractor's cost, provided that Tabreed shall have at least 5 days' prior written notice of such intention and the Contractor shall reimburse Tabreed for such cost within 7 Business Days of being notified to do so.

29.5 Disclosure Requirements

29.5.1 The Contractor shall disclose to Tabreed and/or its appointed representatives all information, including information regarding the design, engineering, manufacturing, operational history and transportation of the Equipment and Materials to be incorporated in the Works, required for the setting up of the insurances taken out pursuant to this Clause 29 including:

- (a) all information which the insurers specifically request to be disclosed;
- (b) all information which is of a type which in relation to the relevant policy should be disclosed to the insurers;
- (c) without prejudice to the above, all technical information to the extent required to be provided by the Contractor under this Contract;

- (d) details of any significant problems encountered in relation to the Works; and
- (e) all other information which the Contractor acting in accordance with Good Utility Practice and in good faith could reasonably consider to be material to the relevant insurance coverage.

29.5.2 The Contractor shall put in place appropriate internal reporting procedures to ensure that full disclosure as described above is made by the management and managers of the Contractor.

29.5.3 The Contractor shall indemnify Tabreed from and against any loss which Tabreed may suffer by reason of Tabreed not being able to recover under the insurances as a result of the Contractor's act, omission, neglect, default, including any misrepresentation, non-disclosure, want of due diligence or breach of any declaration, condition or warranty contained in the relevant insurance policy.

29.6 **Alteration to Insurances**

The Contractor shall not make any material alteration to the terms of any insurance without Tabreed's prior written approval which shall not be unreasonably withheld or delayed. If an insurer makes (or attempts to make) any such alteration, the Contractor shall promptly give notice thereof to Tabreed.

29.7 **Claims Assistance**

The Contractor shall give all such reasonable assistance to Tabreed and the insurers or their appointed representatives as may be appropriate in connection with any claims or incidents that may give rise to claims that may be made under the policies of insurance effected pursuant to this Clause 29 and Tabreed shall give to the Contractor all such reasonable assistance as may be appropriate in connection with claims under such insurances made by the Contractor reasonably requested by the Contractor. Neither the Contractor nor Tabreed shall give any release or make any compromise with any insurer without the prior written approval of the other.

29.8 **Continuance of underlying responsibilities**

Nothing in this Clause 29 nor the amount and scope of any insurance policy required to be procured pursuant to this Clause 29, nor the absence of any such policy shall limit the obligations or liabilities of the Contractor under this Contract. Any amounts not insured (including by reason of limitation, exclusion, deductible, excess) shall be borne by Tabreed or the Contractor in accordance with their obligations and liabilities under this Contract and, in particular, Clauses 13 and 28, subject to Clause 29.9.

29.9 **Failure to Insure**

If the Contractor fails to take out and/or maintain the relevant insurance under this Clause 29 and Tabreed does not approve such omission nor effect replacement insurance pursuant to Clause 29.4, any monies which would have been recoverable by Tabreed under the relevant insurance had it been properly taken out and maintained as required, shall be paid or allowed by the Contractor to Tabreed.

29.10 **Language**

All policies of insurance required by this Clause 29 shall be issued in the relevant language required by Applicable Law and translated to the English language if necessary or if reasonably required by the other Party.

29.11 **Approval of Insurers**

All insurance policies subscribed by the Contractor shall be effected with first class independent insurance companies approved by Tabreed and approved under Applicable Laws.

29.12 **Requirements of the Funders**

The identity of the insurers, insurance covers, deductibles, endorsements and other terms procured by Tabreed and the Contractor in accordance with this Clause 29 shall comply, or be modified to comply, with the reasonable requirements of the Funders notified by Tabreed to the Contractor. The Parties agree that the requirements of any Funders in relation to the identity of the insurers, insurance covers, deductibles, endorsements and other insurance terms which are in addition to those set out in this Contract, if required by Tabreed or the Funders to be implemented, shall be implemented by the Parties and the Contractor's reasonable and proper direct costs of doing so will be dealt with pursuant to a Change Order issued and assessed in accordance with Clause 30.

30. **CHANGES**

30.1 **Tabreed right to instruct Changes**

Tabreed shall have the right at any time prior to the Acceptance Date to propose and subsequently to require the Contractor to make any change, modification, addition or deletion to, in or from the Specification, the Works, the Plant or the timing of the Works (a "**Change**").

30.2 **Tabreed Change Procedure**

30.2.1 If Tabreed proposes a Change pursuant to Clause 30.1, the Contractor shall submit within 7 days (or such longer period as the Parties may reasonably agree) of receipt of Tabreed's proposal:

- (a) a description of the impact of the proposed Change on the carrying out of the Works including details of any additional or varied work necessary in order to implement such Change and a method statement for such implementation;
- (b) a costing of the adjustment, if any, to the Contract Price on a lump-sum fixed price basis with detailed price breakdown which the Contractor considers would arise if the proposed Change were implemented;
- (c) details of the timing which the Contractor considers would apply to the payment of any such adjustments to the Contract Price and any consequent changes which would be required to the Milestone Payment Schedule, if the proposed Change were implemented,

subject to the obligation of the Contractor to minimise such cost in accordance with Good Utility Practice;

- (d) a programme for the implementation of the proposed Change, details of any effect which the Contractor considers the same would have on the critical path schedule for construction of the Plant and thereby the Contractor Works Schedule and the achievement of the Key Milestones, Provisional Acceptance and/or Acceptance and a statement of any extension of time which the Contractor considers should be granted to the associated Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance as a result of the implementation of the proposed Change;
- (e) if the Contractor considers that the implementation of the proposed Change would be inconsistent with the performance of the Contractor's obligations under this Contract, a statement of such modifications of its obligations under this Contract as the Contractor believes to be necessary in response to the Change (including to any Acceptance Tests, the Guaranteed Performance Levels and/or the Minimum Performance Levels); and
- (f) all information in support of the above which is reasonably required in order for Tabreed to assess the proposed Change and the Contractor's submission.

30.2.2 Within 7 days of receipt of the Contractor's submission pursuant to Clause 30.2.1, Tabreed shall notify the Contractor whether it wishes the Contractor to carry out the Change in principle. If so, Tabreed and the Contractor shall each take reasonable steps to agree the details of the Contractor's submission referred to in Clause 30.2.1.

30.2.3 If Tabreed notifies the Contractor that it wishes the Contractor to carry out the Change in principle in accordance with Clause 30.2.2, the Contractor shall supply such further Documents as Tabreed may reasonably require to obtain any requisite Licence from any Public Sector Entity.

30.2.4 If, pursuant to Tabreed's proposal under Clause 30.1, the Parties have agreed the details of the Contractor's submission referred to in Clause 30.2.1 (or any alterations thereto) including a lump-sum fixed price for the Change, Tabreed shall issue a change order (a "**Change Order**") documenting all such matters and requiring the Contractor to implement the Change and Tabreed shall grant any agreed extension of time to the associated Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance pursuant to and in compliance with Clause 32 and make any agreed adjustments to the Contract Price and to any other provisions of this Contract.

30.2.5 If the Parties have been unable to agree upon the details of the Contractor's submission referred to in Clause 30.2.1, Tabreed may issue a Change Order requiring the Contractor to implement the Change and the Contractor shall proceed to carry out the Change Order and be bound by the terms and conditions of this Contract in doing so. For the avoidance of doubt, either Party may refer any disputed outstanding matters relating to the Change Order to be resolved pursuant to Clause 39 provided that the implementation

of the Change Order shall not be delayed pending the resolution of such disputed matters.

30.3 **Implementation**

On receipt of a Change Order from Tabreed under Clause 30.2.4 or 30.2.5, the Contractor shall promptly proceed to carry out the Change.

30.4 **The Contractor's Default**

Notwithstanding Clauses 30.1 and 30.2, no change, modification, addition or deletion to, in or from this Contract, the Specification or the Works or the Contractor's conditions and methods of working made necessary due to any default, act, neglect or omission of the Contractor in the performance of its obligations under this Contract shall be deemed to be a Change and any such change, modification, addition or deletion to, in or from this Contract, the Specification or the Works shall not result in any Additional Payment, adjustment of the Contract Price, extension of time or any other relief.

30.5 **The Contractor - Proposed Changes**

30.5.1 The Contractor may from time to time during its execution of the Works propose to Tabreed any Change.

30.5.2 Such proposal shall contain a description of the work to be performed in order to implement such Change and a method statement for its execution and, in relation to any genuine claim for additional Costs, the details relating to such and reasons for the claim including all appropriate supporting information or documentation.

30.5.3 Tabreed may at its discretion approve (by issuing a Change Order) or reject any Change proposed by the Contractor except that, in relation to genuine claims for additional Costs, Tabreed shall consider the claim on its merits and in good faith based on the respective obligations and liabilities of each Party under this Contract before becoming entitled to reject it.

30.5.4 A Change approved pursuant to this Clause 30.5 shall be implemented in accordance with the terms of the Change Order and implementation thereof shall not affect the Contractor's obligations or liabilities under this Contract and in particular its obligations to achieve each Key Milestone, Provisional Acceptance and Acceptance.

30.6 **Tabreed to Authorise Change Order**

30.6.1 No Change Order shall be of any force or effect unless specifically authorised in writing by Tabreed.

30.6.2 No Change Order or series of Change Orders shall affect the Contractor's obligation to perform any part of the Works except as specifically stated in such Change Order(s).

30.7 **Other Provisions Unaffected**

Except to the extent a Change Order specifically amends the Specification, the Plant, the Works or the timing of the Works, all provisions of this Contract shall apply to all

Change Orders and no Change Order shall be implied as a result of any other Change Order, individually or collectively.

30.8 **Payment for Change Orders**

Where applicable, except as otherwise provided herein or in an individual Change Order, if the Contract Price is adjusted by a Change Order, the Milestone Payment Schedule shall be amended as necessary to incorporate such changes in the Contract Price.

30.9 **Contractor's Records of Costs**

In any case where the Contractor is instructed to proceed with a Change Order prior to the agreement of the lump sum price for such Change, the Contractor shall keep contemporary records of the Cost of complying with the Change Order and of time expended thereon. Tabreed, the Funders, the Purchasers, the Funders' Representatives and their authorised representatives shall be entitled to inspect and audit such records, during normal business hours and upon reasonable advance written notice.

30.10 **Contractor Assistance**

In the event any Change or any claim for an extension of time or Additional Payment relates to any Purchase Contract activities or would entitle Tabreed to claim an extension of time or additional payment under the Purchase Contract, the Contractor shall promptly upon request co-operate with Tabreed and provide Tabreed with all reasonable assistance to enable Tabreed to claim any adjustment to the corresponding dates or any additional payment, under the Purchase Contract, including attending any meetings with Tabreed and the Purchaser.

31. **CHANGE IN APPLICABLE LAWS**

31.1 **Notice of Statutory Modification**

31.1.1 The Contractor shall give written notice to Tabreed if, after the Effective Date, any Applicable Laws are adopted, promulgated, modified or reinterpreted that is not the result of a breach by the Contractor of any of its obligations under this Contract or any Law which has an adverse impact on the Contractor's performance of the Works (a "**Change in Applicable Laws**") including Taxes (but always excluding Taxes on income or profits) payable by the Contractor which would not be required under the terms of this Contract but for such Change in Applicable Laws (a "**Statutory Modification**").

31.1.2 Such notice shall be provided to Tabreed as soon as practicable and in any event not later than 8 days after the date on which the Contractor first had knowledge, or should have had knowledge, of the need to make such a Statutory Modification.

31.1.3 Such notice shall state the date of commencement of the Change in Applicable Laws, the nature and expected duration thereof and the actions to be taken in order to comply with the requirements of this Clause 31.

31.1.4 Minor modifications or adjustments that do not involve an increase in the Contractor's costs to complete the Works in the aggregate shall not constitute a Statutory Modification for the purposes of this Clause.

31.2 Statutory Modification Procedure

31.2.1 As soon as practicable after giving notice under Clause 31.1, the Contractor shall submit a further notice to Tabreed giving details of the Statutory Modification which shall include:

- (a) details of the relevant Change in Applicable Laws and the manner in which the proposed Statutory Modification will secure compliance with it;
- (b) a costing of the adjustment, if any, to the Contract Price on a lump-sum fixed price basis with detailed price breakdown which the Contractor considers would arise if the proposed Statutory Modification were implemented;
- (c) details of the timing which the Contractor considers would apply to the payment of any such adjustments to the Contract Price, and any consequent changes which would be required to the Milestone Payment Schedule if the proposed Statutory Modification were implemented, subject to the obligation of the Contractor to minimise such cost in accordance with Good Utility Practice;
- (d) a programme for the implementation of the proposed Statutory Modification, details of any effect which the Contractor considers the same would have on the critical path schedule for construction of the Plant and thereby the Contractor Works Schedule and achievement of each of the affected Key Milestones, Provisional Acceptance and/or Acceptance and a statement of any extension of time which the Contractor considers should be granted to the associated Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance as a result of the implementation of the proposed Statutory Modification;
- (e) a statement of any further modifications of its obligations under this Contract as the Contractor believes to be necessary in response to the Statutory Modification (including to any tests, the Guaranteed Performance Levels and/or the Minimum Performance Levels); and
- (f) all information in support of the above which is reasonably required in order for Tabreed to assess the Change in Applicable Law, the Statutory Modification and the Contractor's submission.

31.2.2 Tabreed and the Contractor shall each take reasonable steps to agree the details of the Contractor's submission referred to in Clause 31.2.1. If the Parties have agreed the details of the Contractor's submission referred to in Clause 31.2.1 (or any alterations thereto), including a lump-sum fixed price for the Statutory Modification, Tabreed shall issue a written notice to the Contractor documenting all such matters and requiring implementation of the Statutory Modification and shall grant any agreed extension of time to the associated Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance pursuant

to and in compliance with the requirements of Clause 32 and make any agreed adjustments to the Contract Price and to any other provisions of this Contract.

31.2.3 If the Parties have agreed the nature of the Statutory Modification required but the Parties have been unable to agree upon the details of the Contractor's submission, Tabreed may issue a notice requiring the Contractor to implement the Statutory Modification in which case either Party may refer any disputed outstanding matters relating to the Statutory Modification to be resolved pursuant to Clause 39 provided that the implementation of the Statutory Modification shall not be delayed pending the resolution of such disputed matters.

31.3 **Implementation**

31.3.1 Without prejudice to its obligations generally to comply with Applicable Laws, on receipt of a notice from Tabreed requiring implementation of a Statutory Modification under Clause 31.2.2 or 31.2.3, the Contractor shall promptly proceed to carry out the Statutory Modification.

31.3.2 Clauses 30.6, 30.7, 30.8 and 30.9 shall apply in respect of Statutory Modifications with the following amendment, replace "Change Order" with "Statutory Modification" and "Change Orders" with "Statutory Modifications".

31.4 **Responsibilities of the Parties During a Change in Applicable Laws**

31.4.1 The Parties shall make all reasonable efforts to:

- (a) prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Change in Applicable Laws including recourse to alternate sources of services, Equipment, Materials and Construction Equipment; and
- (b) ensure resumption of normal performance of this Contract after the termination of any Change in Applicable Laws and shall otherwise perform their obligations under this Contract to the maximum of their ability.

31.4.2 Within 2 days following the termination of any Change in Applicable Laws, the Contractor shall submit to Tabreed reasonable proof of the nature of the delay and its effect upon the performance of the obligations of the Contractor under this Contract.

31.5 **Works Affected**

A Change in Applicable Laws may be invoked only with respect to any part of the Works affected by such event and not with respect to any other part of the Works not so affected.

32. EXTENSION OF TIME

32.1 Extension of Time Grounds

32.1.1 Subject to Clauses 32.1.2, 32.2.1 and 32.3.8, the Contractor shall be entitled to claim an extension of time to the Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance only if the critical path schedule for the achievement of Key Milestone Completion, Provisional Acceptance and/or Acceptance is or will be delayed as a direct result of any of the following events (the "**Extension of Time Grounds**"):

- (a) the occurrence of an Event of Force Majeure;
- (b) the implementation of a Change Order;
- (c) the implementation of a Statutory Modification;
- (d) any suspension of the Works pursuant to Clause 35 (or as a consequence thereof) other than suspension covered by Clause 35.1.2;
- (e) any breach of this Contract by Tabreed;
- (f) any act of prevention or disruption of the Work by a third party at the Site not under the control or supervision of the Contractor or its Subcontractors;
- (g) provided the Contractor has complied with its obligations under Clause 5.6, delay caused by a Public Sector Entity in relation to the grant of a Licence required to be held by the Contractor; or
- (h) complying with the instructions of Tabreed in relation to the discovery of any historical archaeological artefacts, Prohibited Materials or Hazardous Materials at the Site or Temporary Areas (other than any Prohibited Materials or Hazardous Materials brought onto the Site or Temporary Areas by the Contractor).

32.1.2 If the Contractor suffers delay and there are two or more concurrent reasons why the delay occurred, one which is the responsibility or at the risk of Tabreed and one which is the responsibility or at the risk of the Contractor, then the Contractor shall, subject to the other provisions of this Contract, be entitled to claim for an extension of time but the Contractor shall not be entitled to recover costs or profit, in respect of and due to such a period of concurrency.

32.2 Extension of Time Procedures

32.2.1 The Contractor shall serve a written notice of claim on Tabreed of its intention to make a claim for an extension of time as soon as possible or in any case within 14 days of the event or circumstance giving rise to the claim. If the Contractor fails to give the notice of claim within such period, the Contractor shall be deemed to have waived its right to make a claim for an extension of time in respect of such Extension of Time Ground. Thereafter, but in any event not later than 28 days after such notification, the Contractor

shall serve a further written notice on Tabreed which shall include, so far as can be reasonably ascertained by the Contractor at the time:

- (a) the material circumstances of the event including the cause or causes of such delay;
- (b) the nature and extent to which in its opinion such delay is caused by each Extension of Time Ground;
- (c) details of the circumstances from which the delay arises;
- (d) details of the contemporary records which the Contractor has, and will maintain, to support and evidence its claim;
- (e) details of the consequences, whether direct or indirect, such delay may have on the Programme, the Contractor Works Schedule and attainment of achievement of the affected Key Milestones, Provisional Acceptance and/or Acceptance;
- (f) details of any extension to the associated Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance to which the Contractor may consider itself entitled in accordance with this Clause 32 resulting from such delay; and
- (g) details of any measures which the Contractor has adopted or proposes to adopt to mitigate the consequences of such delay.

32.2.2 The Contractor shall keep and submit to Tabreed such contemporary records as may be necessary to support and evidence any claim for an extension of time. Without admitting any liability, Tabreed, the Owner's Engineer, the Funders and the Funders' Representative may at any time inspect and audit the Contractor's contemporary records and may instruct the Contractor to keep further contemporary records. The Contractor shall permit Tabreed, the Owner's Engineer, the Funders and the Funders' Representative to inspect all records kept pursuant to this Clause 32.2.2 and shall supply copies of such Documents to Tabreed on request.

32.2.3 In respect of a Change, the Contractor shall also provide the details required by Clause 30.2 in respect of the relevant Change. The Parties shall then seek to agree, or have determined, if appropriate, the extension of time in respect of such anticipated delay in the same manner as they seek to agree or have determined the other details of a Change in accordance with Clause 30, and any agreed extension of time shall be set out in the relevant Change Order.

32.2.4 In respect of a Statutory Modification, the Contractor shall also provide the details required by Clauses 31.1 and 31.2 in respect of the relevant Statutory Modification. The Parties shall then seek to agree, or have determined, if appropriate, the extension of time in respect of such anticipated delay in the same manner as they seek to agree or have determined the other details of a Statutory Modification in accordance with Clause 31, and any agreed extension of time shall be set out in the relevant notice requiring implementation of the Statutory Modification.

32.3 Award of Extensions

- 32.3.1 Subject to due compliance by the Contractor with this Clause 32, Tabreed shall as soon as reasonably practicable grant to the Contractor in writing either prospectively or retrospectively such extension of time to the Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance as Tabreed may reasonably determine having regard to all the relevant circumstances (or in the case of a Change or Statutory Modification as agreed or determined as referred to in Clause 30 or 31, respectively) and Tabreed shall fix revised Contracted Dates for Key Milestones, Contracted Date for Provisional Acceptance and/or Contracted Date for Acceptance accordingly provided always that the Contractor shall not be entitled to any extension of time to the Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance or the Contracted Date for Acceptance to the extent that:
- (a) any delay is due to any act, neglect, omission or default of the Contractor, any Subcontractor, any of its or the Subcontractors employees, or any person for whom the Contractor is responsible in accordance with this Contract; or
 - (b) the Contractor did not, in keeping with Good Utility Practice, use all reasonable efforts to eliminate or minimise any delay in attaining the Key Milestones, Provisional Acceptance and/or Acceptance.
- 32.3.2 In determining any extension of time (including interim extensions of time), Tabreed may take into account all relevant factors including:
- (a) any omission of any Works permitted or instructed under this Contract;
 - (b) whether (and if so to what extent) the Contractor has caused or contributed to or aggravated the respective delaying event or events; or
 - (c) the ability of the Contractor to reschedule the order of execution of the Works in order to minimise the overall delay.
- 32.3.3 An extension of the time to the Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance may be granted by Tabreed whether or not the delay occurs before or after the associated Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance.
- 32.3.4 If the Contractor does not submit any claim for extension of time under this Clause 32 in respect of any Extension of Time Ground then the Contractor shall not be entitled to use such Extension of Time Ground as an excuse for refusing to pay or denying liability for Liquidated Damages in respect of such Extension of Time Ground.
- 32.3.5 If Tabreed declines to grant an extension of time and fix revised Contracted Dates for Key Milestones, Contracted Date for Provisional Acceptance and/or Contracted Date for Acceptance or if the Contractor considers that different Contracted Dates for Key Milestones, Contracted Date for Provisional Acceptance and/or Contracted Date for Acceptance should be fixed, then

either Party shall be entitled to refer the matter for resolution in accordance with Clause 39.

32.3.6 The Contractor shall have no claim for any extension of time in respect of delay save as and to the extent set out in this Clause 32 or as otherwise expressly provided for in this Contract.

32.3.7 Any extension of time to achieve the Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance granted to the Contractor pursuant to Clause 32.3.1 shall, except where Contractor has also submitted a claim for Additional Payment under Clause 33.1 in respect of that matter, be deemed to be in full compensation and satisfaction for any loss or damage sustained or sustainable by the Contractor in respect of the matter in connection with which such extension shall have been granted.

32.3.8 The Contractor shall not be entitled to any extension of time (and shall lose any such entitlement which would otherwise have arisen) if the Contractor fails to strictly comply with the procedures and the time lines set out in this Clause 32.

32.4 **Acceleration**

In any circumstances where the Contractor is or would be entitled to an extension of time but for the provisions of this Clause 32.4, Tabreed:

32.4.1 may, prior to granting such extension of time, instruct the Contractor to submit written proposals to Tabreed within 7 days regarding the feasibility of acceleration of the Works as an alternative to such extension of time, such proposals to include details of:

- (a) any lump sum fixed price which the Contractor reasonably requires to be added to the Contract Price if instructed by Tabreed to accelerate the Works pursuant to this Clause 32.4, together with details showing the manner of calculation of the lump sum fixed amount and proposals for the terms of payment thereof;
- (b) the extent to which the extension of time to which the Contractor would otherwise be entitled can be cancelled or reduced and any dates which as a result would become the Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance; and
- (c) any other amendments to this Contract which the Contractor would reasonably require if Tabreed were to instruct an acceleration of the Works pursuant to this Clause 32.4;

32.4.2 shall, if the Contractor sustains a reasonable objection to Tabreed requesting such acceleration:

- (a) either inform the Contractor that Tabreed does not wish to proceed with the proposed acceleration (and shall grant the Contractor the extension of time to which the Contractor is entitled under this Contract); or

- (b) clarify or vary the instruction to meet the objection and reissue the clarified or varied instruction; and

32.4.3 may, following receipt of the Contractor's written proposals and, if the Contractor reasonably objected to Tabreed's request pursuant to Clause 32.4.2, following withdrawal by the Contractor of its reasonable objections on the basis of Tabreed's clarification or variation of the instruction, issue an instruction to proceed on the basis of such proposals and shall confirm in writing, and in accordance with the Contractor's proposals:

- (a) the amount by which the Contract Price is to be increased to take account of the lump sum fixed amount quoted by the Contractor and the terms of payment of such amount;
- (b) any revision to the Contracted Dates for Key Milestones, the Contracted Date for Provisional Acceptance and/or the Contracted Date for Acceptance;
- (c) the details of the acceleration and the alteration of sequence or timing required; and
- (d) any other appropriate amendments to this Contract.

32.5 **Mitigation of Delay**

The Contractor shall at all times use all reasonable endeavours consistent with Good Utility Practice to eliminate or minimise any delay in the performance of its obligations under this Contract.

32.6 **Adjustment for Purchase Contract**

The Contractor shall promptly upon request co-operate with Tabreed and provide Tabreed with all reasonable assistance to enable Tabreed to claim an adjustment of the corresponding dates under the Purchase Contracts as a result of any extension of time granted or awarded under this Contract.

33. **CLAIMS FOR ADDITIONAL PAYMENTS**

33.1 **Additional Payment Grounds**

33.1.1 Subject to this Clause 33, the Contractor shall be entitled to claim an Additional Payment in the following circumstances ("**Additional Payment Grounds**") and in respect of the following amounts:

- (a) where Tabreed commits a breach of this Contract, in which case the amount of the resulting Additional Payment shall be the Cost suffered by the Contractor as a result of such breach;
- (b) where Tabreed has issued a Change Order, in which case the amount of the resulting Additional Payment shall be as agreed or determined under Clause 30; and
- (c) where Tabreed has instructed the Contractor to proceed with a Statutory Modification, in which case the amount of the resulting

Additional Payment shall be as agreed or determined under Clause 31.

33.1.2 The Contractor shall have no entitlement to Additional Payment other than as stated in this Clause 33.

33.2 Additional Payment Procedures

33.2.1 The Contractor shall give written notice to Tabreed that an Additional Payment Ground has occurred and that the Contractor considers itself to be entitled to Additional Payment as a result, stating the reasons for its claim. Such notice shall be served on Tabreed no later than 21 days after the occurrence of the Additional Payment Ground became known to the Contractor, or should reasonably have become known to a contractor applying Good Utility Practice.

33.2.2 Following the occurrence of an Additional Payment Ground, the Contractor shall keep and submit to Tabreed such contemporary records as may be necessary to support and evidence any claim it may subsequently wish to make. Without admitting any liability, Tabreed, the Owner's Engineer, the Funders and the Funders' Representative may at any time inspect and audit the Contractor's contemporary records and may instruct the Contractor to keep further contemporary records. The Contractor shall permit Tabreed, the Owner's Engineer, the Funders and the Funders' Representative to inspect all records kept pursuant to this Clause 33.2.2 and shall supply copies of such Documents to Tabreed on request.

33.2.3 Not later than 28 days after giving notice under Clause 33.2.1, the Contractor shall submit to Tabreed a statement giving full and detailed particulars of the amount of Additional Payment claimed and the Additional Payment Grounds upon which the claim is based, accompanied by such evidence as is then available to the Contractor to enable Tabreed to evaluate the claim. Where an Additional Payment Ground has a continuing effect, such statement shall be considered to be an interim statement and the Contractor shall include in such statement details of the likely consequences of the event on progress of the Works and an estimate of the likelihood or likely event of the delay. The Contractor shall, at intervals of 30 days, send further interim statements containing the like information until the Additional Payment Ground has ended, at which time the Contractor shall as soon as practicable, but in any event within 21 days of the end of the effects of the Additional Payment Ground, send a final statement to Tabreed (containing the like information).

33.2.4 When Tabreed has received full and detailed particulars of the Contractor's claim in accordance with Clause 33.2.3 in respect of an interim statement or the final statement and such further particulars as Tabreed may have required, Tabreed shall, after due consultation with the Contractor, determine whether the Contractor is entitled to Additional Payment and shall notify the Contractor accordingly.

33.2.5 Where the Contractor has become entitled in accordance with this Clause 33 to receive any Additional Payment and the amount thereof has been properly notified in accordance with this Clause 33 and agreed by the Parties or, failing such agreement, determined in accordance with Clause 39, such amount shall be stated on the next Interim Payment Certificate. Tabreed shall pay such sum in accordance with the requirements of Clause 21.

33.2.6 The Contractor shall at all times use all reasonable endeavours in keeping with Good Utility Practice to mitigate the amounts of any Additional Payment.

33.2.7 If the Contractor fails to strictly comply with the procedures and the time lines set out in this Clause 33, the Contractor shall be deemed to have waived its rights to claim for Additional Payment under that Additional Payment Ground.

34. FORCE MAJEURE

34.1 Force Majeure Events

"**Event of Force Majeure**" means any event that prevents a Party from performing (in whole or in part) any obligation under this Contract where such event is neither within the reasonable control of the non-performing Party nor preventable by the reasonable actions of the non-performing Party including:

34.1.1 an act of God;

34.1.2 fire, lightning, earthquake, hurricane and storm;

34.1.3 civil disturbance, war, strike (other than by the Contractor's staff or the staff of any Subcontractors), lock-out and acts of terrorism;

34.1.4 unavailability of fuel, power, water or any other utilities;

34.1.5 subject to Clause 31, changes in Applicable Law;

34.1.6 orders, consents or approvals of third parties including, in the case of Tabreed:

(a) any failure or delay by a relevant entity to give any necessary land access right, no objection letter or governmental approval in relation to the construction, installation or operation of the Works; or

(b) a relevant entity amending or failing to renew any land access right, no objection letter or governmental approval previously given in relation to the Work; and

34.1.7 an act of piracy,

but only if and to the extent that such event occurs before the Acceptance Date and:

34.1.8 materially delays the critical path schedule for construction of the Plant, either:

(a) making it impossible for the non-performing Party to satisfy the Programme and the Contractor Works Schedule; or

(b) requiring the non-performing Party to incur material and substantial costs to satisfy the Programme and the Contractor Works Schedule;

34.1.9 is not the direct or indirect result of the breach by the non-performing Party of its obligations under this Contract; and

34.1.10 the non-performing Party has given the other Party notice in accordance with Clause 34.2.

34.2 Responsibilities of the Parties

34.2.1 If either Party desires to invoke an Event of Force Majeure as a cause for delay in the performance of any obligation hereunder, it shall advise the other Party in writing of the date of commencement of such Event of Force Majeure, the nature and expected duration thereof and the actions to be taken in order to comply with the requirements of this Clause 34 provided that such notice shall be sent by such Party not later than 7 days after the date on which such Party first had knowledge of the effect of such Event of Force Majeure.

34.2.2 The Parties:

- (a) shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any Event of Force Majeure including recourse to alternate sources of services, Equipment and Materials and Construction Equipment; and
- (b) shall make all reasonable efforts to ensure resumption of normal performance of this Contract after the termination of any Event of Force Majeure and shall otherwise perform their obligations as herein agreed to the maximum of their ability.

34.2.3 Within 3 days following termination of any Event of Force Majeure, the Party having invoked such Event of Force Majeure as a cause for such delay shall submit to the other Party reasonable proof of the nature of such delay and its effect upon the performance of the obligations of such Party under this Contract.

34.2.4 An Event of Force Majeure may be invoked only with respect to any part of the Works affected by such event and not with respect to any other part of the Works or other part of the Project not so affected.

34.3 Effect of Event of Force Majeure

34.3.1 Except as provided in Clause 34.4, a Party affected by an Event of Force Majeure shall be excused from performance and shall not be construed to be in default in respect of any obligation under this Contract for so long as failure to perform such obligation shall be due to an Event of Force Majeure.

34.3.2 Neither Party shall be in default of this Contract if that Party is unable to perform its obligation under this Contract by reason of an event of Force Majeure provided that:

- (a) the non-performing Party uses its best efforts to restore its ability to perform; and
- (b) the suspension of performance shall be commensurate with the nature and duration of the event of Force Majeure.

34.4 **Payment Not Excused**

Notwithstanding that an Event of Force Majeure otherwise exists, the provisions of this Clause 34 shall not excuse failure by either Party to make any payment of money in accordance with its obligations under this Contract.

34.5 **Certain Events not Force Majeure**

Notwithstanding any of the foregoing provisions, the following shall not constitute an Event of Force Majeure:

- 34.5.1 a lack of funds;
- 34.5.2 late delivery of Equipment or Materials caused by negligent acts or omissions on the part of the Contractor or any Subcontractors;
- 34.5.3 late performance by the Contractor or any Subcontractor caused by the Contractor's or such Subcontractor's failure to engage qualified subcontractors and suppliers or to hire an adequate number of personnel or labour;
- 34.5.4 submission of Documents for approval by Tabreed at such a time which does not leave sufficient time to permit review thereof within the time periods provided in Clause 10 and Exhibit 8 (*List of Documents for Approval*) prior to purchase or manufacture;
- 34.5.5 mechanical or electrical breakdown or failure of Equipment, the Plant, the Works or any part thereof due to the manner in which such Materials, Equipment, the Plant, the Works or any part thereof has been operated or maintained;
- 34.5.6 failure of either Party to perform any of its obligations under this Contract in accordance with the requirements thereof prior to the occurrence of an Event of Force Majeure; or
- 34.5.7 delays resulting from reasonably foreseeable unfavourable weather or reasonably foreseeable unsuitable ground or sea conditions or other similar reasonably foreseeable adverse conditions.

34.6 **Termination of Purchase Contract for Prolonged Force Majeure**

In the event that a Purchase Contract is terminated for an event of force majeure (howsoever defined) under the Purchase Contract, Tabreed may terminate this Contract immediately and the provisions of Clause 38.2.1 shall apply. In such case, the Parties shall not be liable to the other for any Claims arising out of the termination of this Contract except for obligations and liabilities which have accrued up to the date of such termination.

34.7 **Abandonment**

If the construction of the Project is deemed to have been abandoned, and such abandonment was caused by an act, omission, neglect or default of the Contractor or any Contractor Parties, the Contractor shall indemnify, defend and hold harmless Tabreed from and against all Claims suffered or incurred by or brought against Tabreed arising out of such act, omission, neglect or default.

35. **SUSPENSION**

35.1 **Tabreed's Right to Suspend**

35.1.1 Tabreed may, by written notice to the Contractor, suspend the carrying out of the Works or any part thereof. The Contractor shall, upon receipt of such notice of suspension from Tabreed suspend the Works or any part thereof for such time and in such manner as Tabreed sets out in its notice of suspension or as it may reasonably require and shall, during such time, properly protect, store and secure the Works or such part thereof so far as is necessary in the opinion of Tabreed.

35.1.2 Unless such suspension is:

- (a) otherwise provided for in this Contract;
- (b) reasonably required due to some default, act, omission, neglect or breach of contract by the Contractor or for which it is responsible; or
- (c) necessary for the proper execution of the Works or the safety of the Works or any part thereof,

Tabreed's suspension notice shall be treated as a Tabreed requested Change pursuant to Clause 30.

35.2 **Prolonged Suspension**

If the suspension period exceeds a period of 90 days, the Parties shall meet in good faith to discuss and agree the subsequent course of action.

35.3 **No Removal**

Unless otherwise instructed or agreed to by Tabreed, during any period of suspension, the Contractor shall:

35.3.1 maintain its personnel on or near the Site and any Temporary Areas; and

35.3.2 not remove from the Site or any Temporary Areas any Materials, Equipment or any Construction Equipment.

35.4 **Resumption**

35.4.1 At any time following a suspension of Works ordered by Tabreed under Clause 35.1, Tabreed may give written notice to the Contractor to proceed with the Works that are the subject of the suspension.

35.4.2 As soon as possible after receipt of such notice to proceed, the Parties shall jointly examine the Works, Materials, Equipment, the Tabreed Items and any damage affected by the suspension.

35.4.3 The Contractor shall make good any deterioration, damage or Defect in or loss to or of such Works, Materials, Equipment or the Tabreed Items which has or may have occurred during the suspension.

35.4.4 Upon receipt of a notice from Tabreed to proceed, the Contractor shall as soon as possible resume the Works that are the subject of the suspension.

35.5 **Contractor's Right to Suspend**

If Tabreed fails to comply with Clause 21.10 to the extent that it materially and adversely affects the Contractor's ability to pay its Subcontractors for the payments due under their Subcontracts, the Contractor may give Tabreed 30 days notice that it is considering suspending the Works and, if the relevant unpaid amount is not paid by Tabreed within that 30 day period, the Contractor may, by giving a further 7 days notice to Tabreed, suspend the Works unless and until the Contractor has received sufficient payment of amounts due under this Contract to meet its payment obligations under its Subcontracts. The Contractor's right to suspend the Works will not prejudice its entitlement to terminate the Contract under Clause 38.1.

36. **TERMINATION FOR TABREED CONVENIENCE**

36.1 **Tabreed may at any time terminate this Contract for any reason by giving the Contractor 14 days' written notice of termination which refers to this Clause 36.**

36.2 **Any termination of this Contract shall be deemed to be exercised:**

(a) within the meaning of mutual consent as contemplated by Articles 218, 267 and 892 of the United Arab Emirates Civil Code of 1985; and

(b) without the need to obtain a court order under Article 271 of the United Arab Emirates Civil Code of 1985.

37. **TERMINATION FOR CONTRACTOR DEFAULT**

37.1 **Contractor Events of Default**

The Contractor shall be in default of its obligations under this Contract if any of the following events arise or exist, and in the case of Clauses 37.1.2, 37.1.3 and 37.1.4 only, if the default is capable of remedy and the Contractor shall fail to remedy the same within 14 days after Tabreed's written notice of the occurrence of such event, or if such remedy cannot reasonably be completed in such time, the Contractor shall fail promptly to commence and diligently pursue remedial action within such period and, within a further 7 days, obtain the approval of Tabreed to a remedial programme and has begun to implement, and continue to implement, that programme, each a "**Contractor Event of Default**":

37.1.1 the occurrence of an Insolvency Event in respect of the Contractor;

37.1.2 the Contractor fails to commence execution of the Works on a continuous basis within 14 days of the Commencement Date by a cause attributable to the Contractor or the Contractor Parties;

37.1.3 the Contractor abandons the Works or reduces the level of Works being carried out to such a level that amounts, for all practical purposes, to abandonment;

37.1.4 the Contractor fails to proceed diligently with the Works giving rise to Tabreed having reasonable grounds to conclude that the Contractor would not be able to achieve Acceptance by the Default Date for Acceptance;

- 37.1.5 the Contractor fails to resume the Works within 10 days after the remediation of a Tabreed default or termination or cessation of an Event of Force Majeure or an Excluded Event;
- 37.1.6 the Contractor fails to procure that the Plant achieves the required performance and reliability levels, including the Minimum Performance Levels by the Default Date for Acceptance or after 3 retests of the Acceptance Tests;
- 37.1.7 the Contractor fails to attain Acceptance by the Default Date for Acceptance;
- 37.1.8 Tabreed has become entitled to the maximum amount of Delay Liquidated Damages pursuant to Clause 26.4 and Exhibit 1 (*Project Specific Terms*);
- 37.1.9 the Contractor fails to pay or cause to be paid any undisputed amounts within 60 days after it has become due and payable to Tabreed;
- 37.1.10 the Contractor carries out any Prohibited Practice;
- 37.1.11 the Contractor fails to remedy a defect in design, materials and workmanship within the period which is required to attain the dates specified in the Contractor Works Schedule which default is not remedied within 30 days after notice from Tabreed to the Contractor demanding remedy thereof;
- 37.1.12 the Contractor assigns, transfers, charges or otherwise parts with, or purports to assign, transfer, charge or otherwise part with any of its rights or interests in this Contract, except as expressly permitted hereunder;
- 37.1.13 the Contractor fails to pay any Liquidated Damages within the time period specified therefor in Clauses 26.2.2 or 27.2.4;
- 37.1.14 the Contractor breaches any of its other material obligations under this Contract which:
- (a) if capable of being remedied within 30 days after delivery of written notice from Tabreed to the Contractor demanding remedy thereof, is not so remedied despite the Contractor having exercised diligent and continuous efforts to do so; or
 - (b) if not capable of being remedied within such 30 day period, is not remedied within a further 30 day period or such longer period as the Parties may agree, provided always that the Contractor shall throughout such further period exercise reasonable continuous efforts to cure the default; or
- 37.1.15 the Contractor fails to replace a Bond within 30 days of the occurrence of a Bond Replacement Event.

37.2 Termination

Upon the occurrence of a Contractor's Event of Default, Tabreed may, without affecting the other rights or remedies conferred on Tabreed under this Contract, and without the need for a court order, terminate this Contract immediately upon delivery of written notice to the Contractor.

37.3 Consequences of Termination

37.3.1 Upon receipt of a notice of termination under Clause 37.2, the Contractor shall, at its own cost, immediately or upon such date as is specified in the notice of termination:

- (a) vacate the Site and cease all further Work, except for such Works as may be necessary for the purpose of protecting that part of the Works already executed or any work required to leave the Site and any Temporary Areas in a clean and safe condition;
- (b) unless otherwise requested by Tabreed, remove all Construction Equipment from the Site and any Temporary Areas and repatriate the Contractor's and its Subcontractors' personnel from the Site and any Temporary Areas, remove from the Site and any Temporary Areas any wreckage, rubbish and debris of any kind and leave the Works, the Site and any Temporary Areas in a clean and safe condition;
- (c) terminate all Subcontracts except those to be assigned or novated to Tabreed pursuant to Clause 37.3.1(e);
- (d) deliver to Tabreed the parts of the Works executed by the Contractor up to the date of termination together with any Manuals (including as-built drawings) or drafts of them in existence at the date of termination;
- (e) assign to Tabreed or its nominee, all rights, title and benefit of the Contractor to all performed Works and in the Materials and Equipment not already owned by Tabreed, and novate or assign all Subcontracts and other contractual agreements (including warranties or performance bonds) as may be required by Tabreed;
- (f) assign to Tabreed or its nominee, all Licences, Intellectual Property Rights and other Proprietary Information, if any, held by the Contractor pertaining to the Works and assign to Tabreed or its nominee any proprietary components required for the completion and/or operation of the Works and the Plant;
- (g) deliver to Tabreed all Documents prepared by the Contractor or the Contractor Parties as at the date of termination in connection with the Works (including all Contractor's Documents) in addition to those referred to Clause 37.3.1(e); and
- (h) deliver to Tabreed all unused Tabreed Items.

37.3.2 Upon termination of this Contract under Clause 37.2, Tabreed may either immediately or upon such date as is specified in the notice of termination:

- (a) enter upon the Site and expel the Contractor therefrom;
- (b) complete the Works itself and/or by employing any third party;
- (c) to the exclusion of any right of the Contractor over the same, take possession of and use, without payment to the Contractor or Contractor Party, the Tabreed Items, any Construction Equipment or

temporary works which are owned by the Contractor or a Contractor Party and are on the Site and/or any Temporary Areas in connection with the Works for the purpose of execution and completion of the Works, subject to Clause 37.3.3; and

- (d) in its sole discretion and without any obligation to do so, pay any Subcontractors amounts payable in accordance with their Subcontracts in respect of any Equipment or Materials delivered or works or services carried out for the purposes of the Works whether before or after the date of termination insofar as the price for the same has not already been discharged by the Contractor, and any payments so made may be deducted from any sum due, or to become due, to the Contractor under this Contract or may be recovered from the Contractor as a debt.

37.3.3 Where Clause 37.3.2(c) applies, upon completion of the Works or at such earlier date as Tabreed thinks appropriate, Tabreed shall give notice to the Contractor that the Construction Equipment shall be returned to the Contractor at or near the Site and/or Temporary Areas and shall return such Construction Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its risk and cost remove or arrange removal of the same from the Site and/or Temporary Areas. If the Contractor has not done so within 20 days after delivery of notice from Tabreed, Tabreed may (without being responsible for any Claims arising) remove and sell such Construction Equipment and shall hold the proceeds, less its reasonable costs and expenses incurred in the removal and sale of such Construction Equipment, to the credit of the Contractor.

37.3.4 If Tabreed terminates this Contract pursuant to this Clause 37, the Contractor shall not be entitled to any compensation and all obligations (other than the amounts, if any, due to the Contractor up to the termination date as set out in this Clause 37.3) for Tabreed to make payments to the Contractor shall cease.

37.3.5 If, following a termination of this Contract pursuant to this Clause 37 Tabreed determines to complete the Works or any part thereof itself or by a third party then, within 120 days after the termination of this Contract (or such longer period as Tabreed may reasonably require) Tabreed shall prepare and deliver to the Contractor an account in respect of the matters referred to below, and set out as a certificate ("**Interim Termination Account**").

$$P = PB + PC + PD + PE$$

where:

P = the provisional termination payment;

PB = the total costs and expenses reasonably estimated by Tabreed as incurred or to be incurred by Tabreed in connection with the termination of this Contract and in carrying out and completing the Works and in making good any Defects for which the Contractor was responsible (including Tabreed's costs and expenses incurred or to be incurred in connection with engaging any replacement contractor or contractors, sums payable to such contractor or contractors for such completion of the Works (including on an accelerated or expedited basis) and making good of Defects, sums payable under any

Subcontracts or other contractual agreements that Tabreed elects or elected to have assigned to it or its nominee and Tabreed's other additional costs, overheads, management, professional fees and any other expenses arising as a result of the Contractor Event of Default and the termination) less the unpaid balance of the Contract Price attributable to the Works executed by the Contractor as at the date of termination together with any Additional Payments and other sums due and payable by Tabreed to the Contractor under this Contract as at the date of termination but not of any sums due and payable by the Contractor to Tabreed as at the date of termination;

PC = the costs and expenses reasonably estimated by Tabreed as incurred or to be incurred by Tabreed in connection with discharging Liens or other Claims by and damages payable to Subcontractors in connection with the Works;

PD = liquidated and ascertained damages at the same rate as Liquidated Damages in respect of:

- (a) the periods, if any, by which it is reasonably estimated by Tabreed that:
 - (i) each of the affected Key Milestones will be later than the associated Contracted Dates for Key Milestones;
 - (ii) Provisional Acceptance will be later than the Contracted Date for Provisional Acceptance; and/or
 - (iii) Acceptance will be later than the Contracted Date for Acceptance; or
- (b) the failure, if any, of the Works to achieve the Guaranteed Performance Levels,

by reason of the termination, the Contractor Event of Default and any other delay (for which there is no extension of time entitlement under this Contract) for which the Contractor is responsible as at the date of termination together with any Liquidated Damages which have accrued but not been paid or allowed at the date of termination up to a maximum (together with any Liquidated Damages which have been paid or allowed for at the date of termination) of the cap stated in Exhibit 1 (*Project Specific Terms*) as the maximum amount of Liquidated Damages; and

PE = any other Claims reasonably estimated by Tabreed to be reasonably and properly incurred by Tabreed arising by reason of the termination and the relevant Contractor Event of Default including any financing costs, legal fees and, if any of the Project Documents or the Purchase Contracts are terminated as a result of a Contractor Event of Default, any costs and expenses in connection with such termination but excluding sums accounted for in PB, PC and PD,

provided always that the estimates in PB, PC, PD and PE shall be calculated respectively by reference to the contract prices and completion dates in replacement contracts let or shortly due to be let by Tabreed at the time of

preparation of the Interim Termination Account, or if no such contracts have been prepared at such date, by reference to competitive tenders received and/or professionally prepared estimates for such purposes determined by the prevailing circumstances at the relevant time (and in the case of the estimated dates for each of the affected Key Milestones, Provisional Acceptance and Acceptance, taking into account Costs of potential future acceleration or future variations of the Works).

37.3.6 Subject to any dispute over the sum being resolved in accordance with Clause 39, if the sum of P certified in accordance with Clause 37.3.5 is:

- (a) positive, it shall be a debt payable by the Contractor to Tabreed within 28 days of the issue of the Interim Termination Account; or
- (b) negative, it shall be payable by Tabreed to the Contractor only after the Final Termination Account has been prepared in accordance with Clause 37.3.7.

37.3.7 Within 120 days of completion of the Works (being the nearest equivalent of Acceptance pursuant to this Contract) Tabreed shall prepare and deliver to the Contractor an account in respect of the matters referred to below and set out as a certificate (the "**Final Termination Account**").

$$F = FB + FC + FD + FE - P$$

where:

F = the final termination payment;

FB = the equivalent calculation to "PB" under Clause 37.3.5 but instead calculated by reference to the actual costs reasonably and properly incurred;

FC = the equivalent calculation to "PC" under Clause 37.3.5 but instead calculated by reference to the actual costs, expenses and damages reasonably and properly incurred;

FD = the equivalent calculation to "PD" under Clause 37.3.5 but instead calculated by reference to the actual delay and failure to achieve performance guarantees;

FE = the equivalent calculation to "PE" under Clause 37.3.5 but instead calculated by reference to the actual Claims incurred but excluding sums accounted for in FB, FC and FD; and

P = "P" as certified in accordance with Clause 37.3.5.

37.3.8 Subject to any dispute over the sum being resolved in accordance with Clause 39, if the sum of F certified in accordance with Clause 37.3.7 is:

- (a) positive, it shall be a debt payable by the Contractor to Tabreed; or
- (b) negative, it shall be a debt payable by Tabreed to the Contractor, within 20 days of issue of the Final Termination Account.

37.3.9 If a Contractor Event of Default gives rise to circumstances rendering completion of the Plant impossible, termination of any of the Project Documents or a Purchase Contract, forfeiture of the Land Lease Agreement (but only where that forfeiture is attributable to a failure by the Contractor to comply with the Land Lease Requirements) or the withdrawal of relevant Licences permitting execution of the Works or operation of the Plant or production of chilled water by Tabreed (whether or not at the relevant time, this Contract had been terminated for the Contractor Event of Default), the Contractor shall be liable to Tabreed for all of Tabreed's actual reasonable costs and expenses in connection with such termination.

37.3.10 Termination of this Contract shall not prejudice any antecedent rights or remedies of the Parties under this Contract.

38. TERMINATION FOR TABREED DEFAULT

38.1 Tabreed's Default

38.1.1 The Contractor shall be entitled to terminate this Contract upon delivery of written notice to Tabreed (except that, subject to Clause 38.1.3, any such notice shall be of no effect unless it is simultaneously copied to the Funders), upon occurrence of any of the following events:

- (a) Tabreed suffers an Insolvency Event; or
- (b) Tabreed fails to pay or cause to be paid any undisputed amounts within 60 days of the date such amount became due and payable and Tabreed has failed to cure such default after the Contractor has given Tabreed 30 days written notice of non-payment.

38.1.2 The Contractor's right to terminate this Contract provided under Clause 38.1.1 is its sole termination right.

38.1.3 The Contractor's obligation to notify the Funders under Clause 38.1.1 only applies to the extent that Tabreed has given to the Contractor written notice of the Funders' addresses and other relevant details.

38.2 Consequences of Termination – Tabreed Default or Tabreed Convenience

38.2.1 If this Contract is terminated under Clause 38.1 or Clause 36, then the Contractor shall immediately or upon such date as is specified in the notice of termination:

- (a) vacate the Site and any Temporary Areas and cease all further Work, except for such Works as may be necessary for the purpose of protecting that part of the Works already executed or any work required to leave the Site and any Temporary Areas in a clean and safe condition;
- (b) unless otherwise requested by Tabreed, remove all Construction Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site and any Temporary Areas any wreckage, rubbish and debris of any kind and leave the Works, the Site and any Temporary Areas in a clean and safe condition;

- (c) terminate all Subcontracts except those to be assigned or novated to Tabreed pursuant to Clause 38.2.1(e);
- (d) deliver to Tabreed the parts of the Works executed by the Contractor up to the date of termination together with any Manuals (including as-built drawings) or drafts of them in existence at the date of termination;
- (e) assign to Tabreed or its nominee, all rights, title and benefit of the Contractor to all performed Works and in the Materials and Equipment not already owned by Tabreed, and novate or assign all Subcontracts and other contractual agreements (including warranties or performance bonds) as may be required by Tabreed;
- (f) assign to Tabreed or its nominee, all Licences, Intellectual Property Rights and other Proprietary Information, if any, held by the Contractor pertaining to the Works and shall assign to Tabreed or its nominee any proprietary components required for the completion and/or operation of the Works and the Plant;
- (g) deliver to Tabreed all Documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Works (including all Contractor's Documents) in addition to those referred to Clause 38.2.1(e); and
- (h) deliver to Tabreed all unused Tabreed Items.

38.2.2 If the Contractor terminates this Contract pursuant to Clause 38.1 or this Contract is terminated under Clause 36, the Contractor shall with reasonable dispatch prepare an account, accompanied by relevant supporting documentation, setting out the sum of the amounts it considers are due as referred to below (without double counting):

- (a) the total value of the Works properly executed as at the date of termination of this Contract, such value to be ascertained by reference to the Contract Price, as if this Contract had not been terminated, together with any amounts due to the Contractor under this Contract not included in such total value;
- (b) the Cost reasonably incurred by the Contractor in the removal of Construction Equipment from the Site and the repatriation of the Contractor's personnel and Subcontractor's personnel employed wholly in connection with the Works;
- (c) the cost of Materials and Equipment properly ordered on an arm's length basis for the Works which the Contractor shall have paid for or for which the Contractor is legally bound to pay, and on such payment in full by Tabreed such Materials and Equipment shall become the property of Tabreed;
- (d) any reasonable amounts to be paid by the Contractor to its Subcontractors in connection with termination of the Subcontracts including reasonable cancellation charges (subject to delivery to Tabreed of any Materials or Equipment and the performance of all services the subject of such amounts); and

- (e) the reasonable cost incurred or to be incurred by the Contractor in protecting the Works and leaving the Site in a clean and safe condition.

38.2.3 The Contractor shall use its reasonable efforts to minimise its costs of termination. If amounts previously paid by Tabreed to or otherwise discharged in favour of the Contractor are less than the forgoing account, Tabreed shall pay to the Contractor the difference within 28 days of receipt of the account by Tabreed. If such amounts exceed the foregoing account, the Contractor shall pay the difference to Tabreed within 28 days of the account being issued. If Tabreed disputes the amount set out in the account, such amount shall be determined in accordance with Clause 39.

38.2.4 Save as specified in this Clause 38.2, the Contractor shall have no further rights or any monetary claim whatsoever against Tabreed in respect of the termination of this Contract and/or the events giving rise to the same.

38.2.5 Termination by the Contractor under this Clause shall not prejudice any antecedent rights or remedies of the Parties under this Contract.

38.2.6 Without prejudice to the Contractor's rights under this Contract, following termination of this Contract under Clause 36 or 38.1, Tabreed, the Funders or their designees may complete the Works itself and/or by employing any third party.

39. **DISPUTE RESOLUTION**

39.1 **Negotiations**

39.1.1 The Parties shall attempt to resolve any dispute, controversy, difference or claim between them in connection with this Contract ("**Dispute**") promptly, equitably and in a good faith manner. To this end, each Party shall designate in writing to the other Party from time to time a representative who shall be authorised to resolve by an agreement between them any Dispute in connection with this Contract and, unless otherwise expressly provided herein, to exercise the authority of such Party to reach such an agreement.

39.1.2 If any Dispute is not resolved between the Parties pursuant to this Clause 39.1 within 30 days from the date on which one Party receives written notification from the other Party that a Dispute exists, then such Dispute shall be settled exclusively and finally by arbitration in accordance with Clause 39.3 unless the Dispute is first submitted as a technical dispute, as described in Clause 39.2. Any dispute regarding compliance with the Contractor's obligation to engineer, design, procure, supply, erect, construct, install, test or commission the Plant in all material respects in accordance with the design and equipment parameters set out in the Specification shall be referred to the Third Party Engineer pursuant to Clause 39.2.

39.2 **Technical Disputes**

39.2.1 If the Parties cannot resolve a Dispute pursuant to the procedures set out in Clause 39.1, a Party may require by sending a written notice within 30 days after the expiration of the 30 day period stipulated in Clause 39.1.2 that such Dispute be submitted to a single third party engineer (the "**Third Party Engineer**") who shall be designated to consider and decide the issues raised

by such Dispute. The selection of such Third Party Engineer shall be made from the list of engineers of which the Parties shall agree in good faith (as supplemented or otherwise modified pursuant to Clauses 39.2.6, 39.2.7 and 39.2.8). In selecting the Third Party Engineer, each Party (starting with Tabreed for the first Dispute and alternating between Tabreed and the Contractor for each Dispute thereafter) shall alternate in deleting one name from the list of engineers until only one such engineer shall remain, which engineer shall be the Third Party Engineer. The Third Party Engineer shall be designated from such list not later than the 7th Business Day following the expiration of the 30 day period stipulated above, and such designation shall become effective on the 7th Business Day following such designation. If the remaining engineer is not independent of the Parties or is unable or unwilling to meet the requirements set out in this Clause, or a Party fails to delete a name from the list of engineers, the Third Party Engineer shall be appointed by the ICC International Centre for Expertise (the "**ICC Centre**") unless the Parties agree upon another appointment procedure. Within 15 Business Days of the designation of a Third Party Engineer, each Party shall submit to the Third Party Engineer a notice (a "**Position Notice**") setting out in detail such Party's position in respect of the issues in Dispute. The Position Notice shall include supporting documentation, if appropriate.

- 39.2.2 The Third Party Engineer shall complete all proceedings and issue his decision with reasons with regard to the Dispute as promptly as reasonably possible, but in any event within 15 Business Days of the date on which both Position Notices are submitted unless the Third Party Engineer reasonably determines that additional time is required in order to give adequate consideration to the issues raised. In such cases, the Third Party Engineer shall state in writing his reasons for believing that additional time is needed and shall specify the additional period required, which period shall not exceed 14 Business Days unless Tabreed and the Contractor agree otherwise.
- 39.2.3 In resolving a Dispute, the Third Party Engineer shall:
- (a) consider all facts and circumstances he deems reasonable given the nature of the Dispute; and
 - (b) choose the position of one of the Party's as set out in that Party's Position Notice.
- 39.2.4 If the Third Party Engineer fails to notify the Parties of his decision with respect to any Dispute referred to him pursuant to Clause 39.2.1 within the time limit specified in Clause 39.2.2, any Party may give notice within 30 days after expiration of such time limit that the Dispute is to be decided by arbitration pursuant to Clause 39.3 whereupon the Third Party Engineer shall give no further consideration to the Dispute and shall not issue a decision.
- 39.2.5 The decision of the Third Party Engineer regarding a Dispute shall be final and binding on the Parties unless written notice of dissatisfaction with the decision is given by one Party to the other Party, with a copy to the Third Party Engineer, within 30 days of such Party's receipt of the Third Party Engineer's decision, in which event such Dispute may be settled by arbitration pursuant to Clause 39.3, provided that a Party commences such arbitration within 60 days from the date of the receipt by a Party of the written notice of dissatisfaction. If no arbitration is so commenced within 60 days of the issuance of the notice of dissatisfaction, the Third Party

Engineer's decision shall be final and binding upon the Parties, notwithstanding the notice of dissatisfaction given by the Party.

- 39.2.6 The list of Third Party Engineers referred to in Clause 39.2.1 shall contain qualified engineers who are independent of the Parties and who are experienced in the design, construction, operation and maintenance of district cooling facilities. A Party may at any time remove a particular engineer from the list by obtaining the other Party's reasonable consent to such removal. However, neither Party may remove a name or names from the list if such removal would leave the list without at least 3 names after giving effect to any concurrent addition of names pursuant to Clause 39.2.7.
- 39.2.7 During January of each year, each Party shall review the current list of Third Party Engineers and give notice to the other Party of any proposed additions to the list and any intended deletions. Intended deletions shall automatically become effective 30 days after notice is received by the other Party unless written objection is made by such other Party within such 30 days and provided that such deletions do not leave the list without at least 3 names after giving effect to any concurrent addition of names pursuant to this Clause 39.2.7. Proposed additions to the list shall automatically become effective 30 days after notice is received by the other Party unless written objection is made by such other Party within 30 days. By mutual agreement between Tabreed and the Contractor, a new name or names may be added to the list of Third Party Engineers at any time.
- 39.2.8 If, for any reason, the number of names on the current list of Third Party Engineers should fall below 3, any Party may request the ICC Centre to name up to 5 individuals, who will automatically be added to the list of Third Party Engineers. All individuals named in this manner by the ICC Centre shall be qualified engineers with experience in the design, construction, operation and maintenance of facilities similar to water cooling plants.
- 39.2.9 The Party that initiated the submission of a Dispute to a Third Party Engineer by giving notice in accordance with the provisions of Clause 39.2.1 shall pay 100% of all fees and expenses of the Third Party Engineer including any advance on account of such fees and costs set by the Third Party Engineer. All fees and costs of the Third Party Engineer shall be borne or reimbursed by the losing Party as determined by the Third Party Engineer's decision, unless a Party has given notice in accordance with the provisions of Clause 39.2.4 that the Dispute is to be decided by arbitration prior to the rendering of a decision by the Third Party Engineer. In such event, the Party that initiated the submission of a Dispute to the Third Party Engineer shall bear all such fees and costs and shall be entitled to claim for reimbursement of such fees and costs in the arbitration. Each Party shall bear its own costs (including costs of its advisors or consultants) with respect to a Dispute submitted to a Third Party Engineer.

39.3 Arbitration

- 39.3.1 Any Dispute that has not been resolved between the Parties pursuant to Clauses 39.1 or 39.2 may be submitted to arbitration irrespective of the amount in Dispute or whether such Dispute would otherwise be considered justifiable or ripe for resolution by any court. This Contract and the rights and obligations of the Parties shall remain in full force and effect pending the

award in such arbitration proceeding, which award, if appropriate, shall determine whether and when any termination shall become effective.

- 39.3.2 Each arbitration between the Parties shall be held and finally settled in Abu Dhabi and shall be conducted pursuant to the Rules of Arbitration of the International Chamber of Commerce ("**ICC Rules**") in force when the arbitration commences.
- 39.3.3 The arbitration shall be conducted before an arbitral tribunal ("**Tribunal**") composed of 3 arbitrators. Each Party shall nominate an arbitrator, and the two Party-appointed arbitrators shall jointly nominate the third (who shall be the chairperson) within 30 days after the confirmation of the second arbitrator, failing which the chairman shall be appointed by the Secretary General of the ICC International Court of Arbitration (the "**ICC**").
- 39.3.4 Any arbitration commenced hereunder shall be completed within 240 days of the appointment of the Tribunal absent agreement of the Parties. All direct testimony shall be offered by way of affidavit. The Party submitting an affidavit shall make the affiant available for cross-examination before the Tribunal. The Parties waive any claim to any damages in the nature of punitive, exemplary or statutory damages in excess of compensatory damages, and the Tribunal is specifically divested of any power to award such damages. The award of the Tribunal shall be final and binding on the Parties and the Parties agree that an arbitration award may be entered in any court having jurisdiction thereof. The Tribunal shall have the right and authority to grant injunctive, declaratory and other equitable relief.
- 39.3.5 Only persons who are engineers, attorneys, financial advisors, former judges, managers, executives and other professionals with technical or legal experience related to the design, construction, financing, ownership, operation and/or maintenance of mechanical and electrical facilities similar to water cooling plants shall be appointed as arbitrators. No arbitrator shall be a present employee or agent of, or consultant or counsel to, either Party or any Affiliate of either Party or a national of a state with which the domicile of any Party does not maintain diplomatic relations. The chairperson shall not be a national of the UAE.
- 39.3.6 The arbitration shall be conducted in the English language and all documents submitted in connection with such proceeding shall be in the English language or, if in another language, accompanied by a certified English translation.
- 39.3.7 The Parties shall each pay one-half of any advance on costs set by the ICC. The Tribunal shall be entitled to allocate the costs of arbitration between the Parties, which costs shall be borne by each Party as determined in any arbitral award or awards by the Tribunal.

40. **ASSIGNMENT AND NOVATION**

- 40.1.1 Tabreed shall be entitled to transfer its rights and obligations under this Contract, in whole or in part, to a Funder or Purchaser without the consent of the Contractor being required by entering into a novation agreement in the form as set out in Exhibit 18 (*Form of Novation Agreement*). Tabreed shall not be entitled to transfer its rights and obligations under the Contract, in whole or in part, to any other person without the prior written consent of the

Contractor, such consent not be unreasonably withheld, conditioned or delayed by the Contractor.

40.1.2 The Bonds may be assigned by Tabreed to any person to whom the benefit of this Contract is transferred. The Bonds may only otherwise be assigned by Tabreed with the prior written consent of the Contractor, which shall not be unreasonable withheld, conditioned or delayed.

40.1.3 The Contractor shall not be entitled to assign any of its rights or obligations under this Contract, without the express prior written consent of Tabreed.

41. NOTICES

41.1.1 Any notice or other communication from one Party to the other Party which is required or permitted to be made under the provisions of this Contract shall be:

- (a) in English;
- (b) in writing;
- (c) delivered personally (by hand delivery or by courier) to the address of the other Party which is shown below or as otherwise notified or sent by facsimile transmission (with receipt of transmission confirmation) to the facsimile number of the other Party which is shown below or as otherwise notified; and
- (d) marked for the attention of the person(s) designated below or to such other person(s) as the other Party shall by notice require.

41.1.2 Any notice or other communication made by one Party to the other Party in accordance with this Clause 41 shall be deemed to be received by the other Party:

- (a) if delivered by hand or by courier, on the day on which it is left at that Party's address; or
- (b) if sent by facsimile transmission, on the next Business Day following the day on which it is sent to that Party's address.

41.1.3 The address for each Party is as set-out in Exhibit 1 (*Project Specific Terms*).

41.1.4 Either Party may change its address, facsimile number or other information for the purpose of notices to such Party by giving notice specifying such change to the other Party.

42. REMEDIES

42.1 Preservation of Remedies

Subject to Clause 42.2, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of this Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under this Contract, nor shall any waiver by either Party of any breach of this Contract operate as a waiver of any subsequent or continuing breach of this Contract.

42.2 **No Relief from Liability**

42.2.1 Neither:

- (a) the review, inspection, approval, expression of satisfaction, testing, attendance at tests, or the making of objections, representation, comments or suggestions, or any failure to make the same in relation to any aspect of the Works (including the approval of any Contractor's Documents) by Tabreed, the Funders, the Funders' Representative, the Owner's Engineer, the Purchasers, any Public Sector Entity or any of its or their representatives; nor
- (b) any other act or omission of Tabreed, the Funders, the Funders' Representative, the Owner's Engineer, the Purchasers, any Public Sector Entity or any of its or their representatives, or of any other person acting or purporting to act on their behalf in relation to any aspect of the Works (including the issue of any Certificate of Payment, payment of any monies pursuant to this Contract or the issue of any order or instruction pursuant to this Contract),

shall relieve the Contractor in whole or in part of any obligation or liability undertaken by the Contractor in relation to the Works whether under this Contract or otherwise, or diminish or vary any such obligation or liability, whether by way of contribution or otherwise.

42.2.2 Tabreed shall not be under any obligation to warn or notify the Contractor of the breach of any obligation owed by the Contractor to Tabreed hereunder or otherwise in relation to the Works of which Tabreed is or should be aware.

42.2.3 Neither Tabreed, the Funders, the Funders' Representative, the Owner's Engineer, the Purchasers, any Public Sector Entity nor any of its or their representatives or advisers shall be liable to the Contractor or any other person by reason of its review, inspection, approval, expression of satisfaction, testing, attendance at tests, of any aspect of the Works.

42.2.4 The Contractor agrees that Tabreed, in receiving any matter conducting any inspection or review thereof, or attending any tests makes no endorsement of the design or representation or warranty of the safety, durability or reliability of the Works or the Plant.

42.3 **Waiver**

Any term or condition of this Contract may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set out in a written instrument duly executed by such Party.

42.4 **Cumulative rights**

Unless expressly stated otherwise in this Contract, all remedies, either under this Contract or by Applicable Law or otherwise afforded, shall be cumulative and not alternative.

42.5 **Duty to Mitigate**

A Party claiming a breach of this Contract or a right to be indemnified in accordance with this Contract shall be obliged to take all reasonable measures to mitigate the loss or damage which has occurred or may occur. Such reasonable measures shall not be construed as an obligation on either Party to incur costs or to do anything in breach of this Contract or Applicable Laws or for Tabreed to do anything in breach of the Project Documents.

42.6 **No Winding Up**

Neither Party shall, prior to termination of this Contract take any action or other steps, or present or issue a petition or legal proceedings or otherwise be a party to any winding-up of the other Party or intended to lead to any other Insolvency Event in respect of the other Party.

42.7 **Failure of Liquidated Damages**

If the Contractor's obligation to pay any Liquidated Damages under this Contract is, or becomes, void or unenforceable (either in whole or in part) for any reason, then Tabreed shall, to the extent of the voidness or unenforceability, be entitled to claim general damages at law in relation to any relevant delay or other matter which would otherwise have been the subject of the Liquidated Damages.

43. **REPRESENTATIONS AND WARRANTIES**

43.1 **Contractor Representations and Warranties**

The Contractor represents and warrants to Tabreed that:

43.1.1 it is duly organised, validly existing and in good standing under the laws of its country of incorporation and has the right, power and authority to enter into this Contract and to perform its obligations under this Contract;

43.1.2 the execution, delivery and performance of this Contract by the Contractor has been duly authorised by all necessary corporate action of the Contractor, and this Contract constitutes the valid, binding and enforceable obligation of the Contractor;

43.1.3 all information provided to Tabreed or to any adviser or employee or agent of Tabreed, on or prior to the date of this Contract, by the Contractor, which information is relevant to:

- (a) this Contract;
- (b) the Works; and/or
- (c) the Project,

was, at the time given, true, accurate and complete in all material respects;

43.1.4 every Licence and other consent, approval, authorisation of any third party required with respect to the Contractor in connection with its execution and delivery of, and performance of its obligations under, this Contract either have been obtained or will be obtained in due course by it and it has no

reason to believe that such Licences, consents, approvals or authorisations, will not be obtained in a timely manner such as to enable it to perform its obligations under this Contract;

- 43.1.5 to the best of its knowledge, no action and suit, investigation, arbitration or other proceeding is currently pending or threatened against it that would impair its ability to perform its obligations under this Contract;
- 43.1.6 to the best of its knowledge, there are no writs, judgments, injunctions, decrees or similar orders of any Public Sector Entity outstanding against it which would materially adversely affect its occupancy, use, operation or maintenance of the Site or any Temporary Areas;
- 43.1.7 its execution and delivery of this Contract and the performance by it of its obligations under this Contract do not and will not violate, conflict with or result in a breach of any decree, memorandum and/or articles of incorporation, charter, bylaw, Applicable Law, contract or obligation to which it is a party or by which it or any of its properties are bound; and
- 43.1.8 no agent, broker or finder has been engaged by it or any of its Affiliates in connection with the transactions contemplated by this Contract. If any Claim for any agent's, broker's or finder's fees or commissions is asserted in connection with the negotiation, execution or consummation of this Contract or of any of the transactions contemplated hereby through it, then it shall protect, indemnify, hold harmless and defend Tabreed from and against such Claim.

43.2 **Tabreed Representations and Warranties**

Tabreed represents and warrants to the Contractor that:

- 43.2.1 it is duly organised, validly existing and in good standing under the laws of its country of incorporation and has the right, power and authority to enter into this Contract and to perform its obligations under this Contract;
- 43.2.2 the execution, delivery and performance of this Contract by Tabreed has been duly authorised by all necessary corporate action of Tabreed and this Contract constitutes the valid, binding and enforceable obligation of Tabreed;
- 43.2.3 to the best of its knowledge, no action and suit, investigation, arbitration or other proceeding is currently pending or threatened against it that would impair its ability to perform its obligations under this Contract;
- 43.2.4 to the best of its knowledge, there are no writs, judgments, injunctions, decrees or similar orders of any Public Sector Entity outstanding against it which would materially adversely affect its occupancy, use, operation or maintenance of the Site;
- 43.2.5 its execution and delivery of this Contract and the performance by it of its obligations under this Contract do not and will not violate, conflict with or result in a breach of any decree, memorandum and/or articles of incorporation, charter, bylaw, Applicable Laws, contract or obligation to which it is a party or by which it or any of its properties are bound; and

43.2.6 no agent, broker or finder has been engaged by it or any its Affiliates in connection with the transactions contemplated by this Contract.

43.3 **Continuing Warranties**

43.3.1 The warranties in Clauses 43.1 and 43.2 shall be deemed to be repeated by the Contractor and Tabreed, respectively, on and as of December 31 of each year until the date the Final Completion Certificate is issued as if made with reference to the facts and circumstances on such date.

43.3.2 Each Party shall promptly notify the other Party in writing if any of the warranties given by it in this Clause 43 ceases to be true in any material respect.

43.4 **No Breach**

Clause 43.3 is intended only as a provision for the notification of information by each Party to the other Party, and any breach by such Party of its obligations under Clause 43.3 shall not in any circumstances constitute an event of default by such Party pursuant to Clauses 37 or 38 or otherwise constitute a breach by such Party of this Contract.

44. **MISCELLANEOUS**

44.1 **Tabreed Assistance**

Any obligation imposed on Tabreed pursuant to the terms of this Contract to assist, or to use its reasonable endeavours to assist, the Contractor shall not be construed as an obligation on Tabreed to incur costs in providing such assistance, nor shall Tabreed be obliged to do anything in breach of any Applicable Law, the Project Documents or any other agreement.

44.2 **Entire Agreement**

This Contract constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Contract and the transactions contemplated in this Contract, and any and all previous understandings, proposals, negotiations, agreements, commitments and representations, whether oral or written, are superseded by this Contract.

44.3 **Amendment**

44.3.1 No modification or amendment of any provisions of this Contract shall be valid unless it is in writing and signed by both Parties.

44.3.2 The Contractor agrees to co-operate with Tabreed in the negotiation and execution of such amendments or additions to this Contract that the Funders may reasonably request. The Contractor agrees that it shall not unreasonably withhold its consent to any amendment which any Funder in connection with the financing of the Project or prospective Funder requires to be made to this Contract provided that in the case of a prospective Funder no such amendment shall actually be made save to the extent that any such person in fact becomes a Funder and such amendment is required by such person in connection with the actual funds or facilities made available. The Contractor further agrees to make available to the Funders' Representative such data,

reports, certifications and other documents as the Funders may reasonably request.

44.4 **Invalidity**

The invalidity or unenforceability of any provisions of this Contract shall be determined in accordance with Clause 39.3. Any provision in this Contract that is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of this Contract.

44.5 **Counterparts**

The Parties may execute this Contract in counterparts, which shall, in the aggregate, when signed by both Parties constitute one and the same instrument; and thereafter, each counterpart shall be deemed to be an original instrument as against any Party who has signed it.

44.6 **Business Days**

Whenever the date for the performance of any term, condition, obligation, covenant, agreement or provision required or provided under this Contract falls on a day other than a Business Day, such date shall be extended to the next succeeding Business Day.

44.7 **Further Assurances**

The Parties shall at all times do all such further acts and execute and deliver such further deeds and documents as shall be reasonably required in order to perform and carry out the provisions of this Contract.

44.8 **Language**

This Contract is being executed in the English language only and such version shall be the definitive version of this Contract.

44.9 **Binding Effect**

This Contract shall be binding upon and inure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns.

44.10 **Publicity**

Other than as ordered or required by Applicable Law or in the course of administrative or judicial proceedings, or in accordance with the requirements of any applicable stock exchange, the Contractor shall not issue any press release or make any other public announcement relating to the transactions contemplated by this Contract without the prior written approval of Tabreed as to the contents and the manner of presentation and publication of such press release or public announcement.

44.11 **Relationship of the Parties**

This Contract shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to

enter into any agreement or undertaking for, to act on behalf of, to act as or be an agent or representative of, or to otherwise bind, the other Party.

44.12 Survival

All provisions expressed to have effect after termination of this Contract or by implication having effect after its termination or necessary to give effect to any such provisions after termination or to give effect to termination and its consequences or to confer protection on Tabreed (such as provisions relating to confidentiality and the provision of collateral warranties) shall continue in force notwithstanding termination of this Contract.

44.13 Expenses

Each Party shall pay its own costs and expenses (including the fees and expenses of its agents, representatives, advisers, counsel and accountants) necessary for the negotiation, preparation, execution, delivery, performance of and compliance with this Contract.

- end of Conditions of Contract -