

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 5
1. REQUEST FOR PROPOSAL No.:  76161	2. CONTRACT No.:  CMC-221427	3. DATE: August 31, 2014
		4. VARIATION No.: 115

5. ISSUED BY:

PANAMA CANAL AUTHORITY  
Employer's Representative  
Locks Project Management Division  
Building 740, Corozal  
Panama, Republic of Panama

6. NAME AND ADDRESS OF CONTRACTOR (INCLUDE PHYSICAL & POSTAL ADDRESS)

Grupo Unidos por el Canal, S.A.  
Building 22B, Brujas Road  
Cocoli, Republic of Panama

7. CONTRACTOR'S TELEPHONE NUMBER:

507-316-9900

8. CONTRACTOR'S FACSIMILE NUMBER:

**9. VARIATION:**


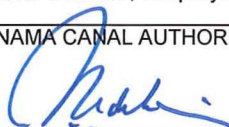
The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled "DESCRIPTION OF VARIATION".  
YES. NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	9 A. THIS VARIATION IS EXECUTED ON THE BASIS OF: (Specify the legal authority).  THE VARIATION DESCRIBED IN ITEM 10 IS HEREBY INCORPORATED AND MADE A PART OF THE CONTRACT.
	9 B. THE CONTRACT REFERRED TO IN ITEM NO. 2, IS VARIED TO INCORPORATE ADMINISTRATIVE CHANGES (such as the paying office, account numbers, etc.).
X	9 C. THIS BILATERAL AGREEMENT IS SIGNED AND INCORPORATED INTO THE CONTRACT REFERRED TO IN ITEM NO. 2 OF THIS FORM, ON THE BASIS OF: (Specify the legal authority) Volume III, Conditions of Contract, Sub-Clause 1.16 [Entire Agreement], 4 <sup>th</sup> Paragraph
	9 D. OTHER. (Specify manner and the legal authority).
	9 E. ACCOUNT NUMBER (If required):

**10. DESCRIPTION OF THE VARIATION** (List in accordance with the order of the Contract. If additional space is required, use blank sheets).

### See Variation Agreement Enclosed

Except for the variation(s) herein specified, all other terms and conditions of the Contract remain unchanged.

11. NAME AND TITLE OF THE PERSON AUTHORIZED TO SIGN (Type or print)  Giuseppe Quarta Contractor's Representative		12. NAME AND TITLE OF THE EMPLOYER'S REPRESENTATIVE/CONTRACTING OFFICER (Type or print)  Jorge de la Guardia, Employer's Representative	
13. CONTRACTOR   (Authorized signature)	14. DATE:  31/8/2014	15. PANAMA CANAL AUTHORITY   (Employer's Representative/Contracting Officer's signature)	16. DATE:  31/VIII/2014

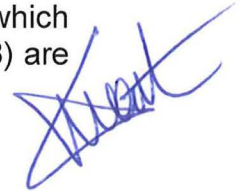
**This Variation Agreement Number 115, is dated as of the 31th day of August 2014 and made**

**Between:**

Autoridad del Canal de Panama, Building 740, Corozal, Panama, Republic of Panama (hereinafter called the "**Employer**") on the one part,  
**and**  
Grupo Unidos por el Canal S.A., of Building 22B, Brujas Road, Cocoli, Panama, Republic of Panama, a corporation organised under the laws of the Republic of Panama, registered under microjacket number 682266, document number 1683284 of the Mercantile Section of the Public Registry Office of the Republic of Panama (hereinafter called the "**Contractor**" and together with the Employer, the "**Parties**") on the other part.

**Whereas:**

- a) The Employer and the Contractor are party to Contract CMC-221427 for the Design and Construction of the Third Set of Locks, dated August 11, 2009 (as the same has been or may be varied, amended, supplemented or otherwise modified (the "**Contract**")).
- b) The Parties have executed Variation Agreement No. 108 on 1 August 2014, which provides that the amendments to the Contract set out therein will come into effect when the conditions set out in paragraph 9 of Variation Agreement No. 108 have been satisfied (save for the amendment to the Contract set out in paragraph 21 of Variation Agreement No. 108 which came into effect on the date of signature of Variation Agreement No. 108).
- c) The Contractor has requested through letter GUPC-IAE-3111 dated August 29, 2014, that the Employer agrees to extend the date by when the pre-conditions to the coming into effect of the amendments to the Contract set out in paragraphs 10 to 26 of Variation Agreement No. 108 (other than only in relation to the amendment to the Contract in Sub-Clause 14.1A.2 set out in paragraph 21 of Variation Agreement No. 108 which shall come into effect on the date of signature of Variation Agreement No. 108) are required to be satisfied from August 31, 2014 to September 15, 2014.
- d) Accordingly, the Employer has responded through letter IAE-UPC-2225 dated August 31, 2014, indicating to the Contractor that the Employer has agreed to extend the date by when the pre-conditions to the coming into effect of the amendments to the Contract set out in paragraphs 10 to 26 of Variation Agreement No. 108 (other than only in relation to the amendment to the Contract in Sub-Clause 14.1A.2 set out in paragraph 21 of Variation Agreement No. 108 which shall come into effect on the date of signature of Variation Agreement No. 108) are





required to be satisfied from August 31, 2014 to September 15, 2014, subject to the Parties agreeing a formal variation to reflect such revised arrangements.

- e) As a condition to the Employer's agreement to extend the date by when the pre-conditions to the coming into effect of the amendments to the Contract set out in Variation Agreement No. 108 are required to be satisfied referred to in subparagraph (e) above and the effectiveness of the amendments specified in this Variation Agreement No. 115, the Contractor shall provide the VO No. 115 Bond Issuer Confirmation in the form set out in Appendix 1 to this Variation Agreement No. 115 no later than 5 Business Days after the date of this Variation Agreement No. 115.
- f) Therefore, subject to the terms of this Variation Agreement No. 115, the Parties have agreed to a variation to the Contract as hereinafter stated, but not further or otherwise.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

The Employer and the Contractor agree to vary the Contract as follows:

- 1. In this Variation Agreement No. 115, the words and expressions shall have the same meanings as are respectively assigned to them in the Contract, save as amended below or as expressly stated.
- 2. It is agreed that this Variation Agreement No. 115 and the modifications contained herein are approved and dated in writing by the authorized representatives of the Contractor and the Employer and in doing so the Parties acknowledge and identify that this is done in accordance with Sub-Clause 1.16 [*Entire Agreement*] of the Contract.
- 3. The Parties acknowledge and agree that this Variation Agreement No. 115 shall not be deemed to settle any outstanding issues, claims, demands, actions, disputes or proceedings between the Parties including but not limited to those in relation to any delay to the Works (both as to time and costs) and all such issues, claims, demands, actions, disputes or proceedings remain in contention between the Parties and all respective rights, remedies, claims and defenses of the Parties including but not limited to those concerning and arising out of any delay and/or responsibility for delay and the consequences thereof remain fully reserved. The Parties expressly agree that no Party is waiving, making an admission with respect to, or intending to prejudice any claims, defenses, arguments or remedies that any of them has or may have arising out of events up to and including the date of this Variation Agreement No. 115 or in the future concerning their respective performance under and in relation to the Contract. For the avoidance of doubt, all delay-related issues between the Contractor and the Employer, and their respective rights and remedies regarding responsibility for delay and the



consequences thereof, remain fully reserved. Nothing in this Variation Agreement No. 115 will have the effect of changing or extending the Time for Completion or any Milestone Dates under the Contract which, as at the date of this Variation Agreement No. 115, remain as stated in the Contract it being acknowledged that the Contractor has raised among its claims, delay claims which could affect the Time for Completion, and which claims the Employer denies and is currently contesting.

4. Save in relation to breaches of, or failure by either Party to comply with, the terms of this Variation Agreement No. 115, and without limitation to any claims relating to delay that either Party may have, the Parties agree that they shall have no claims for additional time or money or any other relief or entitlement of any kind as a direct consequence of this Variation Agreement No. 115.
5. Further, the Contractor's obligations as to the progress of the Works and to complete the Works and comply with the Contract remain in all respects unaffected and nothing within this Variation Agreement No. 115 is intended to be a waiver or relaxation of the Contractor's obligations under the Contract, save only as expressly stated herein. The Contract shall remain fully effective as varied herein and the Contract shall have effect as though the provisions contained in this Variation Agreement No. 115 had been originally contained in the Contract, but notwithstanding the generality of the foregoing and for the avoidance of doubt, the provisions relating to the Employer's agreement to extend the date by when the pre-conditions to the coming into effect of the amendments to the Contract set out in Variation Agreement No. 108 are required to be satisfied as set out in paragraph 8 of this Variation Agreement No. 115 shall only apply as from the date of this Variation Agreement No. 115.
6. This Variation Agreement No. 115 shall be governed by the Laws of the Republic of Panama and is deemed to be incorporated into and form an integral part of the Contract.
7. The Parties agree to amend Sub-Clause 1.1 [*Definitions*] of the Contract as follows:

The Parties agree to add the following definitions to Sub-Clause 1.1.6 [*Other Definitions*] of the Contract (which shall be added in proper alphabetical order but without any number):

**"Variation Agreement No. 115 "** means Variation Agreement Number 115 dated 31th day of August, 2014, between the Employer and the Contractor.

**"VO No. 115 Bond Issuer Confirmation"** means a written confirmation (or rider, amendment or modification, as applicable), in the form set out in Appendix 1 to Variation Agreement No. 115 and otherwise acceptable to the Employer, from





- each of (i) the issuer of the Performance Bond, (ii) the issuer of the Payment Bond and (iii) the issuer of the Plant and Material Security, in each case consenting to the modifications to the Contract made pursuant to the terms of Variation Agreement No. 115 and confirming the continuing validity of such bonds notwithstanding such modifications.
8. Subject to paragraph 9 of this Variation Agreement No. 115, the Parties hereby agree to amend paragraph 9 of Variation Agreement No. 108 as follows:
- (a) in line 1 of the second paragraph delete "August 31, 2014" and replace with "September 15, 2014"; and
  - (b) in line 1 of the third paragraph delete "August 31, 2014" and replace with "September 15, 2014".
9. The Parties agree that the amendment of Variation Agreement No. 108 and the Employer's agreement to the Contractor's request as set out in and in accordance with paragraph 8 of this Variation Agreement No. 115 is subject to the Contractor delivering to the Employer no later than 5 Business Days after the date of this Variation Agreement No. 115 the VO No. 115 Bond Issuer Confirmation in the form set out in Appendix 1 to this Variation Agreement No. 115, failing which the amendments set out in paragraph 8 above shall be of no effect and void.
10. Each Party shall from time to time (at its own cost) do, perform, sign, execute and deliver all such acts, deeds, documents and things (or procure the doing; performance, signing, execution or delivery of them) to give full effect to this Variation Agreement No. 115 and secure the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 115.

**In Witness** whereof the Parties hereto have caused this Variation Agreement No. 115 to the Contract to be executed on the 31th day of August of the year 2014 by their duly authorized representatives.

For ACP

  
Jorge de la Guardia  
Employer's Representative

For GUPCSA

  
Giuseppe Quarta  
Contractor's Representative

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## APPENDIX 1

### VO NO. 115 BOND ISSUER CONFIRMATION

[Letterhead of Zurich]

\_\_\_\_\_, 2014

Autoridad del Canal de Panama  
Edificio 740, Corozal  
Panama, Republica de Panama

Reference: Contract No. CMC-221427, Design and Construction of the Third Set of Locks, Panama Canal

Confirmation regarding certain amendments to the Contract (as defined below)

Dear Sirs:

We refer to (i) the Design and Build Contract for the Third Set of Locks on the Panama Canal (as amended, modified, varied or supplemented, the "Contract") tendered under RFP #76161 between you, as owner and Employer thereunder (the "Owner") and Grupo Unidos por el Canal, S.A., as contractor (the "Contractor"); (ii) the performance bond, Bond no. 08960193, dated August 7, 2009, in an amount of USD 400,000,000.00, issued in the Owner's favor in respect of the Contract (as amended, supplemented or otherwise modified from time to time, the "Performance Bond"); (iii) the payment bond, Bond no. 08960194, dated August 7, 2009, in an amount of USD 50,000,000.00, issued in the Owner's favor in respect of the Contract (as amended, supplemented or otherwise modified from time to time, the "Payment Bond"); and (iv) the advance payment bond in respect of Plant and Material Security, Bond no. 09098907, dated December 20, 2012, in an amount of USD 150,000,000.00, issued in the Owner's favor in respect of the Contract (as amended, supplemented or otherwise modified from time to time, the "P&M Bond" and, together with the Performance Bond and the Payment Bond, the "Bonds"). Unless otherwise specified, capitalized terms used herein have the respective meanings specified in the Contract.

We have been provided with a copy of Variation Agreement No. 115, dated August 31, 2014 ("Variation Agreement No. 115") to the Contract, executed by the Owner and the Contractor, which provides for certain amendments to the Contract relating to the Employer's agreement to extend the date by when the pre-conditions to the coming into effect of the amendments to the Contract set out in Variation Agreement No. 108 are required to be satisfied.

The undersigned, as Surety under and as defined in the Bonds, hereby consents to the amendments to the Contract relating to the Employer's agreement to extend the date by when the pre-conditions to the coming into effect of the amendments to the Contract set out in Variation Agreement No. 108 are required to be satisfied pursuant to the aforementioned Variation Agreement No. 115 and confirms to you, as Owner and beneficiary under the Bonds, the continued validity of the Bonds in the respective amounts originally stated therein, notwithstanding such amendments to the Contract and the terms of Variation Agreement No. 115.

Nothing in this confirmation letter is intended to or shall waive, alter, amend or otherwise affect any of the terms or conditions of the Bonds, other than as stated herein.

ZURICH AMERICAN INSURANCE  
COMPANY, as Surety under the Bonds

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACCEPTED:

AUTORIDAD DEL CANAL DE PANAMA,  
as Owner under the Contract and beneficiary under the Bonds referred to above

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_